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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, November 9, 2010
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Presidential Documents

Title 3—

The President

Proclamation 8589 of October 22, 2010

United Nations Day, 2010

By the President of the United States of America

A Proclamation

Sixty-five years ago, 51 nations came together in the aftermath of one of history's most devastating wars to rededicate themselves to peace, justice, and progress. The founders of the United Nations vowed to work together to ensure that the horrors seen in World War II would never be repeated. On United Nations Day, we join our friends around the world in reflecting on our shared interests and renewing our commitment to international law, common security, accountability, and prosperity for all peoples.

The United Nations has made great advances since it first developed out of ruin and genocide, and, today, this partnership includes 192 member states. Throughout its journey to live up to its founding values, it has remained an indispensable vehicle for coordinated action to tackle global problems. In a time when we face challenges such as nuclear proliferation, climate change, transnational terrorism, food security risks, and pandemic disease, we must work as one to build the kind of world we want to see in the 21st century.

This vital international body provides a forum and framework for leaders to come together to advance our shared ideals. Through its broad range of peace operations, it helps limit and resolve conflicts that could otherwise threaten the security of individuals and the stability of nations. The United Nations' humanitarian assistance lifts up countless lives, supporting nations in meeting the most immediate human needs and in building their own capabilities. Its history of rushing assistance to disaster victims was reflected this year in its response to the devastating earthquake in Haiti, which also claimed the lives of many United Nations officers. And, through its health, education, and development programs, the United Nations is helping empower the next generation of world leaders. Although difficulties remain, the dialogue fostered and actions taken by the United Nations will continue to strengthen the foundations of freedom across the globe.

Though the future we envision for all the world's children may not come easily, the founding of the United Nations itself is a testament to human progress. Let us continue to be guided by its founders' soaring example, and move through the conflicts and divisions of our time to a day when people from every part of this world can live together in peace.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 24, 2010, as United Nations Day. I urge the Governors of the 50 States, and the officials of all other areas under the flag of the United States, to observe United Nations Day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of October, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fifth.

[FR Doc. 2010–27189
Filed 10–25–10; 8:45 am]
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Rules and Regulations

Federal Register

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Tuesday, October 26, 2010

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

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

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1395]

RIN AD71–0057

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to reflect the annual indexing of the reserve requirement exemption amount and the low reserve tranche for 2011. The Regulation D amendments set the amount of total reservable liabilities of each depository institution that is subject to a zero percent reserve requirement in 2011 at $10.7 million, unchanged from its level in 2010. This amount is known as the reserve requirement exemption amount. The Regulation D amendments also set the amount of net transaction accounts at each depository institution that is subject to a three percent reserve requirement in 2011 at $58.8 million, up from $55.2 million in 2010. This amount is known as the low reserve tranche. The adjustments to both of these amounts are derived using statutory formulas specified in the Federal Reserve Act.

The Board is also announcing changes in two other amounts, the nonexempt deposit cutoff level and the reduced reporting limit, that are used to determine the frequency at which depository institutions must submit deposit reports.

DATES: *Effective Date:* November 26, 2010.

Compliance Dates: For depository institutions that report deposit data weekly, the new low reserve tranche and reserve requirement exemption amount will apply to the fourteen-day reserve computation period that begins Tuesday, November 30, 2010, and the corresponding fourteen-day reserve maintenance period that begins Thursday, December 30, 2010. For depository institutions that report deposit data quarterly, the new low reserve tranche and reserve requirement exemption amount will apply to the seven-day reserve computation period that begins Tuesday, December 21, 2010, and the corresponding seven-day reserve maintenance period that begins Thursday, January 20, 2011. For all depository institutions, these new values of the nonexempt deposit cutoff level, the reserve requirement exemption amount, and the reduced reporting limit will be used to determine the frequency at which a depository institution submits deposit reports effective in either June or September 2011.

FOR FURTHER INFORMATION CONTACT: Sophia Allison, Senior Counsel (202/452–3565), Legal Division, or Mary-Frances Styczynski, Financial Analyst (202/452–33033), Division of Monetary Affairs; for users of Telecommunications Device for the Deaf (TDD) only, contact (202/263–4869); Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations, for the purpose of implementing monetary policy. Section 11(a)(2) of the Federal Reserve Act (12 U.S.C. 248(a)(2)) authorizes the Board to require reports of liabilities and assets from depository institutions to enable the Board to conduct monetary policy. The Board's actions with respect to each of these provisions are discussed in turn below.

1. Reserve Requirements

Pursuant to section 19(b) of the Federal Reserve Act (Act), transaction account balances maintained at each depository institution are subject to reserve requirement ratios of zero, three, or ten percent. Section 19(b)(11)(A) of the Act (12 U.S.C. 461(b)(11)(A)) provides that a zero percent reserve requirement shall apply at each depository institution to total reservable liabilities that do not exceed a certain amount, known as the reserve requirement exemption amount. Section 19(b)(11)(B) provides that, before December 31 of each year, the Board shall issue a regulation adjusting the reserve requirement exemption amount for the next calendar year if total reservable liabilities held at all depository institutions increase from one year to the next. No adjustment is made to the reserve requirement exemption amount if total reservable liabilities held at all depository institutions should decrease during the applicable time period. The Act requires the percentage increase in the reserve requirement exemption amount to be 80 percent of the increase in total reservable liabilities of all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Total reservable liabilities of all depository institutions decreased about 1.0 percent (from $4,961 billion to $4,914 billion) between June 30, 2009, and June 30, 2010. Accordingly, the Board is amending Regulation D to set the reserve requirement exemption amount for 2011 at $10.7 million, unchanged from its level in 2010.[1]

Pursuant to Section 19(b)(2) of the Act (12 U.S.C. 461(b)(2)), transaction account balances maintained at each depository institution over the reserve requirement exemption amount and up to a certain amount, known as the low reserve tranche, are subject to a three percent reserve requirement. Transaction account balances over the low reserve tranche are subject to a ten percent reserve requirement. Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting the low reserve tranche for the next calendar year. The Act requires the adjustment in the low reserve tranche to be 80 percent of the percentage increase or decrease in total transaction accounts of all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Net transaction accounts of all depository institutions increased 8.0

[1] Consistent with Board practice, the low reserve tranche and reserve requirement exemption amounts have been rounded to the nearest $0.1 million.

percent (from $870 billion to $941 billion) between June 30, 2009 and June 30, 2010. Accordingly, the Board is amending Regulation D to increase the low reserve tranche for net transaction accounts by $3.6 million, from $55.2 million for 2010 to $58.8 million for 2011.

For depository institutions that file deposit reports weekly, the new low reserve tranche and reserve requirement exemption amount will be effective for the fourteen-day reserve computation period beginning Tuesday, November 30, 2010, and for the corresponding fourteen-day reserve maintenance period beginning Thursday, December 30, 2010. For depository institutions that report quarterly, the new low reserve tranche and reserve requirement exemption amount will be effective for the seven-day reserve computation period beginning Tuesday, December 21, 2010, and for the corresponding seven-day reserve maintenance period beginning Thursday, January 20, 2011.

2. Deposit Reports

Section 11(b)(2) of the Federal Reserve Act authorizes the Board to require depository institutions to file reports of their liabilities and assets as the Board may determine to be necessary or desirable to enable it to discharge its responsibility to monitor and control the monetary and credit aggregates. The Board screens depository institutions each year and assigns them to one of four deposit reporting panels (weekly reporters, quarterly reporters, annual reporters, or nonreporters). The panel assignment for annual reporters is effective in June of the screening year; the panel assignment for weekly and quarterly reporters is effective in September of the screening year.

In order to ease reporting burden, the Board permits smaller depository institutions to submit deposit reports less frequently than larger depository institutions. The Board permits depository institutions with net transaction accounts above the reserve requirement exemption amount but total transaction accounts, savings deposits, and small time deposits below a specified level (the "nonexempt deposit cutoff") to report deposit data quarterly. Depository institutions with net transaction accounts above the reserve requirement exemption amount but with total transaction accounts, savings deposits, and small time deposits above the nonexempt deposit cutoff are required to report deposit data weekly. The Board requires certain large depository institutions to report weekly regardless of the level of their net transaction accounts if the depository institution's total transaction accounts, savings deposits, and small time deposits exceeds a specified level (the "reduced reporting limit"). The nonexempt deposit cutoff level and the reduced reporting limit are adjusted annually, by an amount equal to 80 percent of the increase, if any, in total transaction accounts, savings deposits, and small time deposits of all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

From June 30, 2009 to June 30, 2010, total transaction accounts, savings deposits, and small time deposits at all depository institutions increased 5 percent (from $7,128 billion to $7,475 billion). Accordingly, the Board is increasing the nonexempt deposit cutoff level by $9.5 million to $252.6 million for 2011 (up from $243.1 million in 2010). The Board is also increasing the reduced reporting limit by $53 million to $1.415 billion in 2011 (up from $1.362 billion for 2010).[2]

Beginning in 2011, the boundaries of the four deposit reporting panels will be defined as follows. Those depository institutions with net transaction accounts over $10.7 million (the reserve requirement exemption amount) or with total transaction accounts, savings deposits, and small time deposits greater than or equal to $1.415 billion (the reduced reporting limit) are subject to detailed reporting, and must file a Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900 report) either weekly or quarterly. Of this group, those with total transaction accounts, savings deposits, and small time deposits greater than or equal to $252.6 million (the nonexempt deposit cutoff level) are required to file the FR 2900 report each week, while those with total transaction accounts, savings deposits, and small time deposits less than $252.6 million are required to file the FR 2900 report each quarter. Those depository institutions with net transaction accounts less than or equal to $10.7 million (the reserve requirement exemption amount) and with total transaction accounts, savings deposits, and small time deposits less than $1.415 billion (the reduced reporting limit) are eligible for reduced reporting, and must either file a deposit report annually or not at all. Of this group, those with total deposits greater than $10.7 million (but with total transaction accounts, savings deposits, and small time deposits less than $1.415 billion) are required to file the Annual Report of Deposits and Reservable Liabilities (FR 2910a) report annually, while those with total deposits less than or equal to $10.7 million are not required to file a deposit report. A depository institution that adjusts reported values on its FR 2910a report in order to qualify for reduced reporting will be shifted to an FR 2900 reporting panel.

Notice and Regulatory Flexibility Act. The provisions of 5 U.S.C. 553(b) relating to notice of proposed rulemaking have not been followed in connection with the adoption of these amendments. The amendments involve expected, ministerial adjustments prescribed by statute and by the Board's policy concerning reporting practices. The adjustments in the reserve requirement exemption amount, the low reserve tranche, the nonexempt deposit cutoff level, and the reduced reporting limit serve to reduce regulatory burdens on depository institutions. Accordingly, the Board finds good cause for determining, and so determines, that notice in accordance with 5 U.S.C. 553(b) is unnecessary. Consequently, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, do not apply to these amendments.

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

■ 2. Section 204.4(f) is revised to read as follows:

§ 204.4 Computation of required reserves.

* * * * *

(f) For all depository institutions, Edge and Agreement corporations, and United States branches and agencies of foreign banks, required reserves are computed by applying the reserve requirement ratios below to net transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities of the institution during the computation period.

[2] Consistent with Board practice, the nonexempt deposit cutoff level has been rounded to the nearest $0.1 million, and the reduced reporting limit has been rounded to the nearest $1 million.

Reservable liability	Reserve requirement
NET TRANSACTION ACCOUNTS:	
$0 to reserve requirement exemption amount ($10.7 million)	0 percent of amount.
Over reserve requirement exemption amount ($10.7 million) and up to low reserve tranche ($58.8 million).	3 percent of amount.
Over low reserve tranche ($58.8 million)	$1,443,000 plus 10 percent of amount over $58.8 million.
Nonpersonal time deposits	0 percent.
Eurocurrency liabilities	0 percent.

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Monetary Affairs under delegated authority, October 21, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–27014 Filed 10–25–10; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520, 556, and 558

[Docket No. FDA–2010–N–0002]

Animal Drugs, Feeds, and Related Products; Withdrawal of Approval of New Animal Drug Applications; Aklomide; Levamisole Hydrochloride; Nitromide and Sulfanitran

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations by removing those portions that reflect approval of eight new animal drug applications (NADAs). In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of these NADAs.

DATES: This rule is effective November 5, 2010.

FOR FURTHER INFORMATION CONTACT: John Bartkowiak, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9079, e-mail: *john.bartkowiak@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, a Division of Wyeth Holdings, a Wholly Owned Subsidiary of Pfizer, Inc., 235 East 42d St., New York, NY 10017 has requested that FDA withdraw approval of the eight NADAs listed in Table 1 of this document because they are no longer manufactured or marketed.

TABLE 1

NADA No.	Product	Established name of drug(s)
NADA 11–141	UNISTAT–2 Type A medicated article	nitromide and sulfanitran.
NADA 14–250	NOVASTAT Type A medicated article	aklomide and sulfanitran.
NADA 34–536	ALKOMIX Type A medicated article	aklomide.
	ALKOMIX–3 Type A medicated article	aklomide, sulfanitran, and roxarsone.
NADA 34–537	NOVASTAT–3 Type A medicated article	aklomide, sulfanitran, and roxarsone.
NADA 35–388	NOVASTAT–W Soluble Powder	aklomide and sulfanitran.
NADA 39–666	UNISTAT–3 Type A medicated article	nitromide, sulfanitran, and roxarsone.
NADA 44–015	TRAMISOL Type A medicated article	levamisole.
NADA 45–455	TRAMISOL Type A medicated article	levamisole.

In a notice published elsewhere in this issue of the **Federal Register**, FDA gave notice that approval of NADA 11–141, 14–250, 34–536, 34–537, 35–388, 39–666, 44–015, and 45–455, and all supplements and amendments thereto, is withdrawn, effective November 5, 2010. As provided in the regulatory text of this document, the animal drug regulations are amended to reflect these withdrawals of approval.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520, 556, and 558 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.2320 [Removed]

■ 2. Remove § 520.2320.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

§ 556.30 [Removed]

■ 4. Remove § 556.30.

§ 556.220 [Removed]

■ 5. Remove § 556.220.

§ 556.680 [Removed]

■ 6. Remove § 556.680.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 7. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.4 [Amended]

■ 8. In § 558.4, in paragraph (d), in the "Category I" table, remove the listing for "Aklomide"; and in the "Category II" table, remove the listings for "Levamisole", "Nitromide" immediately followed in sequence by "Sulfanitran", "Nitromide" immediately followed in sequence by "Sulfanitran" and by "Roxarsone"; "Sulfanitran" immediately followed in sequence by "Aklomide", and the two listings for "Sulfanitran" immediately followed in sequence by "Aklomide" and by "Roxarsone".

§ 558.35 [Removed]

■ 9. Remove § 558.35.

§ 558.315 [Removed]

■ 10. Remove § 558.315.

§ 558.376 [Removed]

■ 11. Remove § 558.376.

Dated: *October 8, 2010.*

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2010–27011 Filed 10–25–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9340]

RIN 1545–BB64

Revised Regulations Concerning Section 403(b) Tax-Sheltered Annuity Contracts; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9340) that were published in the **Federal Register** on Thursday, July 26, 2007 (72 FR 41128) providing updated guidance on section 403(b) contracts of public schools and tax-exempt organizations described in section 501(c)(3). These regulations will affect sponsors of section 403(b) contracts, administrators, participants, and beneficiaries.

DATES: The correction is effective October 26, 2010, and is applicable on July 26, 2007.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, John Tolleris at (202) 622–6060; concerning the regulations as applied to church-related entities, Sherri Edelman or Jason Levine at (202) 283–9634 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 403(b) of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9340) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.403(b)–4 is amended by revising the third and fourth sentences of paragraph (c)(5) *Example 12.*(i) to read as follows:

§ 1.403(b)–4 Contribution limitations.

* * * * *

(c) * * *

(5) * * *

Example 12. (i) * * * However, the $5,000 age 50 catch-up amount deferred in 2006 is disregarded for purposes of applying the limitation at paragraph (c)(3)(i)(C) of this section to determine the special section 403(b) catch-up amount. Thus, for 2007, only $80,000 of section 403(b) elective deferrals are taken into account in applying the limitation at paragraph (c)(3)(i)(C) of this section. * * *

* * * * *

■ **Par. 3.** Section 1.403(b)–6 is amended by revising the last sentence of paragraph (e)(5) to read as follows:

§ 1.403(b)–6 Timing of distributions and benefits.

* * * * *

(e) * * *

(5) * * * See also § 1.403(b)–9(a)(5) for additional rules relating to annuities payable from a retirement income account.

* * * * *

■ **Par. 4.** Section 1.403(b)–7 is amended by revising the fourth sentence of paragraph (b)(1) to read as follows:

§ 1.403(b)–7 Taxation of distributions and benefits.

* * * * *

(b) * * *

(1) * * * Thus, to the extent that a portion of a distribution (including a distribution from a designated Roth account) would be excluded from gross income if it were not rolled over, if that portion of the distribution is to be rolled over into an eligible retirement plan that is not an IRA, the rollover must be accomplished through a direct rollover of the entire distribution to a plan qualified under section 401(a) or a section 403(b) plan and that plan must agree to separately account for the amount not includible in income (so that a 60-day rollover to a plan qualified under section 401(a) or another section 403(b) plan is not available for this portion of the distribution). * * *

* * * * *

■ **Par. 5.** Section 1.403(b)–10 is amended by revising the heading of paragraph (b)(3) and adding a heading to paragraph (b)(3)(i) to read as follows:

§ 1.403(b)–10 Miscellaneous provisions.

* * * * *

(b) * * *

(3) *Requirements for plan-to-plan transfers*—(i) *In general.* * * *

* * * * *

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2010–26979 Filed 10–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9340]

RIN 1545–BB64

Revised Regulations Concerning Section 403(b) Tax-Sheltered Annuity Contracts; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations (TD 9340) thatwere published in the **Federal Register** on Thursday, July 26, 2007 (72 FR41128) providing updated guidance on section 403(b) contracts of public schools and tax-exemptorganizations described in section 501(c)(3). These regulations will affect sponsors of section403(b) contracts, administrators, participants, and beneficiaries.

DATES: The correction is effective October 26, 2010, and is applicable on July 26, 2007.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, John Tolleris at(202) 622–6060; concerning the regulations as applied to church-related entities, Sherri Edelmanor Jason Levine at (202) 283–9634 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 403(b)of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9340) contain an error that may prove to bemisleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9340), which was thesubject of FR Doc. 07–3649, is corrected as follows:

On page 41138, column 2, in the preamble, under footnote number 11, line 26,the language "Rev. Rul. 66–254 (1966–2 CB. 125)" is removed.

LaNita Van Dyke,

Chief, Publications and Regulations Branch,Legal Processing Division,Associate Chief Counsel(Procedure and Administration).

[FR Doc. 2010–26980 Filed 10–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–0924]

Drawbridge Operation Regulations; Mystic River, Charlestown, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the S99 Alford Street Bridge across the Mystic River, mile 1.4, at Charlestown, Massachusetts. The deviation allows the bridge to remain in the closed position three days in November to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from 8 p.m. on November 12, 2010 through 4 a.m. on November 15, 2010.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–0924 and are available online at *http://www.regulations.gov,* inserting USCG–2010–0924 in the "Keyword" and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. John McDonald, Project Officer, First Coast Guard District, *john.w.mcdonald@uscg.mil,* or telephone (617) 223–8364. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

The S99 Alford Street Bridge, across the Mystic River at mile 1.4, at Charlestown, Massachusetts, has a vertical clearance in the closed position of 7 feet at mean high water and 16 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.609.

The owner of the bridge, the City of Boston, requested a temporary deviation from the regulations to facilitate scheduled bridge maintenance, replacing steel members and steel deck grid at the bridge.

Under this temporary deviation the S99 Alford Street Bridge may remain in the closed position from 8 p.m. on November 12, 2010 through 4 a.m. on November 15, 2010.

Vessels that can pass under the bridge in the closed position may do so at any time. A work barge will be located in the main navigation channel during the structural repairs to the bridge. The work barge will move out of the channel upon request by calling William Schurman, of SPS New England at 978–265–7263.

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

Dated: October 14, 2010.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2010–26984 Filed 10–25–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2008–0684; FRL–9215–2]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Particulate Matter Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a request submitted by the Ohio Environmental Protection Agency (Ohio EPA) on August 22, 2008, to revise the Ohio State Implementation Plan (SIP) under the Clean Air Act (CAA). The State has submitted revisions to twelve rules and rescinded one rule in Ohio Administrative Code (OAC) Chapter 3745–17, "Particulate Matter Standards." The revisions were submitted by Ohio EPA to satisfy the State's 5-year review requirements. The particulate matter (PM) standards contain the particulate emission control requirements that have been necessary to attain and maintain the 2006 National Ambient Air Quality Standards (NAAQS) for PM in the State.

EPA is approving the revisions to nine of the OAC 3745–17 rules. EPA is approving only a portion of Rule 7, while not acting on the portion providing a partial exemption from opacity limits for a lime kiln in Woodville, Ohio. We are conditionally approving Rule 11 based on a

commitment by Ohio to address EPA's concerns with the large item size exemptions. EPA is not acting on Rule 3, regarding opacity measurement methods. Lastly, EPA is approving the rescission of Rule 5 from the Ohio SIP.

DATES: This direct final rule will be effective December 27, 2010, unless EPA receives adverse comments by November 26, 2010. 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.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2008–0684, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: bortzer.jay@epa.gov.*
3. *Fax:* (312) 692–2054.
4. *Mail:* Jay Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Jay Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2008–0684. 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 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 the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886–6524 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background for this action?
II. What is EPA's analysis of the revision?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. What is the background for this action?

Ohio requested a revision to its SIP on August 22, 2008. Ohio seeks approval of its revision of OAC Chapter 3745–17 to clarify and amend its existing PM rules, in accordance with Chapter 119.032 of the Ohio Revised Code, which requires Ohio EPA to review and revise its rules every five years. The revisions include updating the limits for sources that have changed PM limits or have permanently shut down.

II. What is EPA's analysis of the revision?

Ohio submitted revisions to twelve rules and one rescinded rule within its PM rules, OAC 3745–17. EPA agrees with the revisions Ohio made to nine of its PM rules. EPA is approving the changes because the rules are not weakened by the revisions Ohio made. EPA is also taking no action on OAC 3745–17–03, which will be addressed later in separate rulemaking. For OAC 3745–17–07, EPA is taking no action on a portion and approving the rest of the rule. EPA is conditionally approving OAC 3745–17–11 on the condition that Ohio submits revised rule language within one year that resolves EPA concerns. EPA is approving the rescission of OAC 3745–17–05.

A. OAC 3745–17–01—Definitions

Ohio revised some of the definitions in Rule 1 along with the addition of new definitions. The new definitions are for "OEPA," "Ohio EPA," "$PM_{2.5}$," and "PM_{10}." Fine particulate matter ($PM_{2.5}$) has an aerodynamic diameter of 2.5 micrometers (μm) or smaller, while larger particulate matter with a diameter up to 10 μm is known as coarse particulate matter (PM_{10}). The State has replaced references to total suspended particulates with PM_{10} and deleted the definition for "total suspended particulates" from Rule 1. The definition of "total suspended particulates" is no longer needed because the term no longer appears in OAC Chapter 3745–17. Ohio also added incorporation by reference information in Rule 1 that references a variety of test methods, the Code of Federal Regulations, and other information. The additional definitions, addition of incorporations by reference, and deletion of a now unused definition clarify OAC Chapter 3745–17. EPA is approving the revisions to Rule 1.

B. OAC 3745–17–02—Ambient Air Quality Standards

The ambient air quality standards for PM in Rule 2 have been updated to reflect the current Federal standards for particulate matter as promulgated in October 2006. EPA considers the revisions to be approvable since the state standards are as stringent as the Federal standards. A comment was added to Rule 2 that refers readers to the "Incorporation by Reference" section in Rule 1 (OAC 3745—17–01(C)). Readers seeking test methods, engineering guides, Code of Federal Regulations, or other incorporated material are referenced to where the material is found. This comment that was also added to Rules 3, 7, 8, 12, and 13, will

assist people in finding the supplementary publications referenced in OAC Chapter 3745–17. EPA is approving the Rule 2 revisions because the air quality standards were made as strict as Federal standards and the incorporation by reference comments adds clarity.

C. OAC 3745–17–03—Measurement Methods and Procedures

In a separate submission, Ohio submitted revisions to OAC 3745–17–03 to allow large boiler sources a new compliance option using continuous emission monitoring data even if 1.1 percent of readings exceed current allowable levels. Those revisions are being evaluated in separate rulemaking; see the June 27, 2005 proposed rule at 70 FR 36901. Ohio's August 22, 2008, submission makes only relatively minor revisions to this rule. Therefore, EPA is not acting on these minor revisions in this rulemaking and instead will continue to address revisions to OAC 3745–17–03 in separate rulemaking.

D. OAC 3745–17–04—Compliance Time Schedules

Rule 4 was modified to reflect the altered compliance schedules for significantly modified sources and to remove references to permanently shutdown sources. The closed facilities are units at: The Ford Motor Company, Cleveland Castings Plant (Ford); International Mill Service, Incorporated; Standard Slag Company; and the Mingo Junction and Steubenville Wheeling-Pittsburg Steel Corporation facilities. The removal of references to permanently shutdown facilities allows readers to more easily determine the correct compliance schedule. The addition of specified compliance deadlines allows particulate matter limits compliance to proceed. The Rule 4 revisions are being approved by EPA.

E. OAC 3745–17–05—Non-Degradation Policy

Rule 5 prohibits significant and avoidable deterioration of air quality in area attaining the NAAQS. Ohio has found that Rule 5 is too vague to be enforceable, so that the rule did not protect air quality. Subsequent to the adoption of Rule 5, Ohio adopted and is implementing rules that impose new source review requirements for major sources, found at OAC 3745–31 (approved by EPA on January 10, 2003, 68 FR 1366), to prevent deterioration of the ambient air quality. Ohio has rules that provide specific emission limits for a variety of sources, including rules that restrict the emissions from new sources, such that the NAAQS will not be threatened. The specific emission limits in or resulting from Ohio's rules can be enforced. As Rule 5 has been superseded by more effective rules, EPA agrees that Rule 5 can be removed from the SIP and thus is approving the rescission.

F. OAC 3745–17–07—Control of Visible Particulate Emissions From Stationary Sources

EPA is taking no action on OAC 3745–17–07 (A)(3)(j). Section (A)(3)(j) provides startup and shutdown exemptions from opacity limits for the Martin Marietta Magnesia Specialties, Inc. facility in Woodville, Ohio. EPA is working with Ohio to resolve concerns on the exemption conditions in section (A)(3)(j). EPA will act on the startup and shutdown exemptions after the issues are resolved, so EPA is taking no action now on this section of Rule 7.

EPA is approving the minor wording changes in the rest of Rule 7 along with the previously mentioned incorporation by reference comment. The minor wording revisions may ease the readability and do not weaken the rule, so EPA is proceeding with approving those portions of Rule 7.

G. OAC 3745–17–08—Restriction of Emission of Fugitive Dust

Ohio removed the exemption of the AK Steel Corporation's Middletown Works from Rule 8. Consent decree conditions require upgraded pollution controls on the Middletown Works facility. The consent decree also caused the fugitive dust rule exemption to expire on May 22, 2006. Ohio removed the expired fugitive dust exemptions for three units at the Middletown Works facility from Rule 8. The number 3 blast furnace along with the number 15 and number 16 basic oxygen furnaces are no longer exempt from the fugitive dust emission control requirements in OAC 3745–17–07 and –08. As a result, the Middletown Works units are now subject to the requirement in OAC 3745–17–07(B)(1) to limit opacity to twenty percent as a three-minute average. The units are also subject to requirements in OAC 3745–17–08 for reasonably available control technology, most notably an outlet emissions limit in OAC 3745–17–08 (B)(3) of 0.030 grains of particulate per dry standard cubic foot of exhaust. The comment on incorporation by reference was added to Rule 8, too. The revisions clarify the rule as outdated limits are removed and the revised rule provides current incorporation by reference information. The removal of the exemption from fugitive dust emission limits for three Middletown Works units makes the units subject to emission limits, effectively strengthening the particulate emission limits for the three units. EPA is approving the revisions to Rule 8.

H. OAC 3745–17–09—Restrictions on Particulate Emissions and Odors From Incinerators

No changes were made to Rule 9 since it was approved by EPA on May 27, 1994, 59 FR 27464. Ohio requested approval of Rule 9, so EPA is approving the unrevised rule again. This is known as re-codifying the rule.

I. OAC 3745–17–10—Restrictions on Particulate Emissions From Fuel Burning Equipment

Minor wording changes were made to Rule 10. The wording changes help clarify the rule and therefore are being approved by EPA.

J. OAC 3745–17–11—Restrictions on Particulate Emissions From Industrial Processes

The most significant revision to OAC 3745–17–11 pertains to surface coating. Although the primary emissions of concern from surface coating are the volatile organic compound emissions that arise from solvent evaporation, OAC 3745–17–11 establishes a particulate emission limit for coating operations simply because OAC 3745–17–11 establishes generic emission limits for any process handling material such as coatings and objects being coated. However, testing of particulate emissions from coating operations is difficult, making it difficult to determine whether particular control measures provide for compliance. Therefore, Ohio exempted surface coating operations from the generic emission limits in OAC 3745–17–11 and subjected these sources instead to a set of rules requiring a specific set of work practices that will control these emissions. EPA agrees with the State that these work practice requirements provide a more effective means to requiring control of these operations than the generic emission limits in 3745–17–11.

EPA has concerns about one aspect of Ohio's revisions to OAC 3745–17–11, in which Ohio authorizes itself to exempt sources that are too large to meet the new work practice requirements. EPA is concerned that this provision grants "director's discretion" for the State to authorize exemptions that EPA might find problematic without providing any opportunity for EPA to object. However, on July 2, 2010, Bob Hodanbosi, Ohio EPA Air Pollution Control Division Chief, submitted a commitment by e-mail to Cheryl Newton, EPA Region 5

Air and Radiation Division Director, to amend the pertinent rule within one year of an EPA conditional approval of the rule. The amendment would provide that any exemption granted by the State must be submitted for EPA approval as a State Implementation Plan revision. This revision would address EPA's concern. Therefore, EPA is conditionally approving this rule, on the condition that Ohio makes the revision that they committed to make.

The revisions to OAC 3745–17–11 also grant an exemption from the rule's limits for jet engine testing. PM emissions resulting from this exemption are expected to be small given that a small number of engines will be tested at once and only for a limited time. Ohio stated that the maximum PM emissions rate resulting from this exemption will be 10 pounds per hour. EPA finds that this exemption will have de minimis impact, and finds this revision approvable. In summary, EPA is conditionally approving revisions to OAC 3745–17–11, conditioned on Ohio revising the rule further to provide that exemptions granted by the State shall be submitted to EPA for review.

K. OAC 3745–17–12—Additional Restrictions on Particulate Emissions From Specific Air Contaminant Sources in Cuyahoga County

The changes to Rule 12 are all for the Ford Motor Company, Cleveland Castings Plant facility, with one exception, the "Incorporation by Reference" comment mentioned earlier.

Several emission units at the Ford facility have been permanently shutdown. Thus, most of the revisions to Rule 12 involve removing references to the permanently shutdown units. Ohio revised control requirements and added alternative control requirements for some of the units that will ensure the operating Ford units remain controlled following the unit shutdowns and replacements.

The removed limits are not expected to harm air quality because the units have permanently shutdown. The other Rule 12 revisions accommodate the closed units. The updated control requirements reflect necessary changes to keep the operating units well controlled. Some control devices have been shutdown as portions of the Ford plant closed. In cases where a control device serves multiple units, exhaust from units remaining operational need to be rerouted to operating control devices. The Ohio revisions to Rule 12 keep the operating Ford units controlled while removing the permanently shutdown units and controls from the rule. EPA believes that the revisions will clarify the rule without harming air quality and therefore is approving the Rule 12 changes.

L. OAC 3745–17–13—Additional Restrictions on Particulate Emissions From Specific Air Contaminant Sources in Jefferson County

Ohio revised OAC 3745–17–13 to reflect numerous emission decreases and increases in Jefferson County. Most notably, Ohio removed the requirements for permanently shutdown facilities and units from Rule 13, thereby providing that these facilities must have zero emissions. One exception to this general characterization of Ohio's rule changes is that Wheeling-Pittsburg Steel must continue to control emissions from fugitive dust sources (roadways and storage piles) at its Steubenville facility despite this facility's shutdown status. The revised rule allows slightly more emissions from fugitive dust sources at Wheeling-Pittsburg Steel's Steubenville and Mingo Junction facilities. In addition, the revised rules provide slightly higher emission limits at some sources and slightly lower emission limits at other sources at the Mingo Junction facility.

Under section 110(l) of the CAA, EPA may not approve these rule revisions if the revisions would interfere with attainment of pertinent air quality standards. Ohio's submission provides detailed information on changes in the area's allowable emission since 1991, when Ohio submitted its attainment plan for PM_{10} for this area. However, some of the listed changes in allowable emissions are not attributable to rule changes in Ohio's 2008 submittal and instead are attributable to construction permits, most notably three permits: (1) A permit to consolidate boiler operations; (2) a permit to construct an electric arc furnace in Mingo Junction in conjunction with shutdown of three units in Steubenville (Blast Furnace #1 and boilers number 1 and 10) and three coke plants and a sinter plant in neighboring Follansbee, West Virginia; and (3) a permit to rebuild and expand the capacity of Blast Furnace number 5 in conjunction with the shutdown of Blast Furnace number 3. Ohio did not specify which increases and reductions should be considered to be associated with the rule revisions and which are associated with construction permits. Nevertheless, to evaluate the approvability of Ohio's revisions, EPA used allowable emission levels provided in Ohio's submission to examine the expected emission changes that appeared to be mandated by these rule changes for Jefferson County.

Clearly the most significant emission changes pursuant to Ohio's revised rules result from the shutdown of Jefferson County facilities, in particular the shutdown of the International Mill Service and Standard Slag facilities and most of the Wheeling-Pittsburgh Steel-Steubenville Works. Other changes allowed a relatively modest increase in allowable emissions from fugitive dust sources and a modest net increase in process emission limits. At the Steubenville Works, allowable emissions of fugitive dust (*e.g.,* roadway dust) increased from 1.35 to 1.72 pounds per hour, but the shutdown of the remainder of the facility resulted in a net allowable emission decrease of 21.80 pounds per hour. At the Wheeling-Pittsburgh Steel-Mingo Junction Works, the fugitive dust limit increased from 4.91 to 7.67 pounds per hour, and other limits were increased or decreased slightly, resulting in a net reduction at the facility of 14.32 pounds per hour. The net effect of the increases and decreases in emission limits at the Mingo Junction facility was a 5.25 pounds per hour reduction. Since the emission decreases in these revisions are substantially greater than the emission increases, and every facility is decreasing emissions as a result of this rule change, EPA is satisfied that these revisions will yield lower PM_{10} concentrations throughout Jefferson County, so that these revisions will not interfere with attainment or maintenance of the PM_{10} standards.

EPA must also examine whether the revisions might interfere with attainment of the $PM_{2.5}$ National Ambient Air Quality Standards, particularly because Jefferson County has been designated as not attaining the $PM_{2.5}$ standards. The emission limits in Rule 13 are PM_{10} limits, but fine particulate matter, $PM_{2.5}$, is a subset of PM_{10}. The particulate matter formerly emitted by units being shutdown contain as high or higher fractions of fine particulate matter than the units being allowed higher emissions. Therefore, the conclusion found for PM_{10} also applies for $PM_{2.5}$. EPA is satisfied that the revisions will yield lower $PM_{2.5}$ concentrations throughout Jefferson County, so that these revisions will not interfere with attainment or maintenance of the $PM_{2.5}$ standards.

Ohio's submission includes dispersion modeling indicating that the revised limits at each facility including the higher fugitive dust limits will not threaten the PM_{10} NAAQS. The modeling method used by the facility and State differs from the modeling method EPA recommends for this scenario. Nevertheless, the modeling

provides supportive evidence that the revisions to Ohio's rules will not interfere with attainment of applicable air quality standards or with any other requirement.

EPA agrees with the State's conclusion that the revisions to Rule 13 will not interfere with attainment of PM NAAQS. EPA is therefore approving the Rule 13 revisions.

M. OAC 3745–17–14—Contingency Plan Requirements for Cuyahoga and Jefferson Counties

Minor wording changes were made to Rule 14. This included replacing total suspended particulates with PM_{10}. Reference to the annual PM_{10} standard was removed as the EPA has revoked that standard. EPA is approving the Rule 14 changes because the remaining particulate standards will adequately protect human health.

III. What action is EPA taking?

EPA is approving revisions to the Ohio SIP. Ohio submitted revisions to OAC 3745–17. EPA is approving all of the submitted revisions to OAC 3745–17–01, –02, –04, –08, –09, –10, –12, –13, and –14. EPA is approving the rescission of OAC 3745–17–05 from the Ohio SIP. EPA is approving OAC 3745–17–07, except for OAC 3745–17–07 (A)(3)(j) that EPA is not taking action on. EPA is conditionally approving OAC 3745–17–11, based on commitment by Ohio to revise OAC 3745–17–11(A)(1)(l) to require all large item size exemptions to be approved by EPA as a SIP revision for the exemption to be valid. Ohio has committed to providing the revised rule language by November 25, 2011.

A. What does conditional approval mean?

Pursuant to section 110(k)(4) of the CAA, EPA may conditionally approve a portion of a SIP revision based on a commitment from a state to adopt specific, enforceable measures no later than twelve months from the date of final conditional approval. If it fails to commit to undertake the necessary changes, or fails to actually make the changes within the twelve month period, the conditional approval automatically converts to disapproval. EPA would subsequently publish a notice in the **Federal Register** providing notice and details of the disapproval. EPA is not required to separately propose a finding of disapproval. If a state submits final and effective rule revisions correcting the deficiencies within one year from this conditional approval becoming final and effective, EPA will publish a subsequent notice in the **Federal Register** to acknowledge conversion of the conditional approval to a full approval.

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 approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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 rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Particulate matter.

Dated: October 4, 2010.

Susan Hedman,

Regional Administrator, Region 5.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart KK—Ohio

■ 2. Section 52.1870 is amended by adding paragraph (c)(150) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(150) On August 22, 2008, Ohio submitted revisions to

Ohio Administrative Code Chapter 3745–17, Rules 3745–17–01 through 3745–112–14. The revisions contain particulate matter standards in the State of Ohio necessary to attain and maintain the 2006 24-hour $PM_{2.5}$, annual $PM_{2.5}$ and 24-hour PM_{10} NAAQS.

(i) Incorporation by reference.

(A) Ohio Administrative Code Rule 3745–17–01 Definitions: (A) and (B), Rule 3745–17–02 Ambient air quality standards, Rule 3745–17–04 Compliance time schedules, Rule 3745–17–07 Control of visible particulate emissions from stationary sources, Rule 3745–17–08 Restriction of emission of fugitive dust, Rule 3745–17–09 Restrictions on particulate emissions and odors from incinerators, Rule 3745–17–10 Restrictions on particulate emissions from fuel burning equipment, Rule 3745–17–12 Additional restrictions on particulate emissions from specific air contaminant sources in Cuyahoga county, Rule 3745–17–13 Additional restrictions on particulate emissions from specific air contaminant sources in Jefferson county, and Rule 3745–17–14 Contingency plan requirements for Cuyahoga and Jefferson counties. The rules became effective on February 1, 2008.

(B) January 22, 2008, "Director's Final Findings and Orders", signed by Chris Korleski, Director, Ohio Environmental Protection Agency.

(ii) Additional Information.

(A) Ohio Administrative Code Rule 3745–17–01 Definitions: (C), effective on February 1, 2008.

■ 3. Section 52.1890 is amended by adding paragraph (d) to read as follows:

§ 52.1890 Removed control measures.

* * * * *

(d) On August 22, 2008, Ohio requested that Ohio Administrative Code 3745–17–05 "Non-degradation Policy." be removed from the Ohio SIP. The rule was rescinded statewide on February 1, 2008.

■ 4. Section 52.1919 is amended by adding paragraph (c) to read as follows:

§ 52.1919 Identification of plan—conditional approval.

* * * * *

(c) On August 22, 2008, the Ohio Environmental Protection Agency submitted a revision to Ohio Administrative Code (OAC) 3745–17–11. The rule establishes a particulate emission limit for coating operations in lieu of generic emission limits based on the weight of processed materials. On July 2, 2010, Ohio submitted a commitment to amend OAC 3745–17–11 by November 25, 2011. The amendment would provide that any exemption granted by the state for sources too large to meet the coating work practice requirement must be submitted for EPA approval as a State Implementation Plan (SIP) revision. When EPA determines the state has met its commitment, OAC 3745–17–11 will be incorporated by reference into the SIP.

[FR Doc. 2010–26880 Filed 10–25–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0807; FRL–9209–1]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Ohio Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving amendments to the Ohio Administrative Code (OAC) relating to the consolidation of Ohio's Ambient Air Quality Standards (AAQS) into Ohio's State Implementation Plan (SIP) under the Clean Air Act. On April 8, 2009, and August 11, 2009, Ohio EPA adopted amendments to various rules in the OAC to consolidate the state's AAQS. On September 10, 2009, Ohio EPA requested from EPA approval of amendments to the OAC with the intent to consolidate Ohio's AAQS into a single rule to provide greater accessibility for the regulated community and to the citizens of Ohio. EPA is approving the request because the revisions clarify the state's rules and thus better serve the purpose of providing for meeting these standards.

DATES: This direct final rule will be effective December 27, 2010, unless EPA receives adverse comments by November 26, 2010. 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.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0807, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: bortzer.jay@epa.gov.*
3. *Fax:* (312) 692–2054.
4. *Mail:* Jay Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Jay Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2009–0807. 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 docket are listed in the *http://www.regulations.gov* index. Although

listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Melissa M. Barnhart, Environmental Scientist, at (312) 353–8647 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Melissa M. Barnhart, Environmental Scientist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8647, *barnhart.melissa@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background for this action?
II. Review of the Request.
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. What is the background for this action?

On April 8, 2009, and August 11, 2009, Ohio EPA adopted amendments to various rules in the OAC to consolidate the state's AAQS. Prior to April, 2009, Ohio's AAQS were found in several of the 35 chapters of the OAC that are dedicated to Air Pollution Control. The wide scattering of these standards in the various chapters often caused confusion among the regulated community, requiring them to perform extensive searches to find individual standards. The intent of this rulemaking effort is to consolidate Ohio's AAQS into a single rule to provide greater accessibility for the regulated community and to the citizens of Ohio.

II. Review of the Request

Ohio requests that EPA approve the reorganization of the AAQS as they apply to Ohio's SIP. Incorporating the air quality standards into Ohio's SIP helps assure that violations of the NAAQS are addressed. Consolidation of the various air quality standards into a single rule helps achieve that purpose by making the standards easier to find. Therefore, EPA is approving the following Ohio Administrative Code rules: 3745–17–03 "Measurement methods and procedures.", 3745–17–14 "Contingency plan requirements for Cuyahoga and Jefferson counties.", 3745–18–03 "Attainment dates and compliance time schedules.", 3745–23–01 "Definitions.", 3745–23–02 "Methods of measurement.", 3745–25–01 "Definitions.", 3745–25–02 "Ambient air quality standards.", 3745–25–03 "Air pollution emergencies and episode criteria.", 3745–25–04 "Air pollution emergency emission control action programs.", and 3745–25–05 "Air pollution emergency orders.".

III. What action is EPA taking?

EPA is approving amendments to the OAC relating to the consolidation of Ohio's AAQS into Ohio's SIP. We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective December 27, 2010 without further notice unless we receive relevant adverse written comments by November 26, 2010. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The 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. If we do not receive any comments, this action will be effective December 27, 2010.

IV. Statutory and Executive Order Reviews

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 27, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register** rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 17, 2010.

Susan Hedman,

Regional Administrator, Region 5.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart KK—Ohio

■ 2. Section 52.1870 is amended by adding paragraph (c)(151) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(151) On September 10, 2009, Ohio EPA submitted amendments to the OAC with the intent to consolidate Ohio's Ambient Air Quality Standards into a single rule to provide greater accessibility for the regulated community and to the citizens of Ohio. EPA is approving the request because the revisions clarify the state's rules and thus better serve the purpose of providing for meeting these standards.

(i) Incorporation by reference.

(A) Ohio Administrative Code Rule 3745–17–03 "Measurement methods and procedures.", effective April 18, 2009.

(B) Ohio Administrative Code Rule 3745–17–14 "Contingency plan requirements for Cuyahoga and Jefferson counties.", effective April 18, 2009.

(C) Ohio Administrative Code Rule 3745–18–03 "Attainment dates and compliance time schedules.", effective April 18, 2009.

(D) Ohio Administrative Code Rule 3745–23–01 "Definitions.", effective April 18, 2009.

(E) Ohio Administrative Code Rule 3745–23–02 "Methods of measurement.", effective April 18, 2009.

(F) Ohio Administrative Code Rule 3745–25–01 "Definitions.", effective April 18, 2009.

(G) Ohio Administrative Code Rule 3745–25–02 "Ambient air quality standards.", effective April 18, 2009.

(H) Ohio Administrative Code Rule 3745–25–03 "Air pollution emergencies and episode criteria.", effective August 21, 2009.

(I) Ohio Administrative Code Rule 3745–25–04 "Air pollution emergency emission control action programs.", effective April 18, 2009.

(J) Ohio Administrative Code Rule 3745–25–05 "Air pollution emergency orders.", effective April 18, 2009.

(K) April 8, 2009, "Director's Final Findings and Orders", signed by Chris Korleski, Director, Ohio Environmental Protection Agency.

(L) August 11, 2009, "Director's Final Findings and Orders", signed by Chris Korleski, Director, Ohio Environmental Protection Agency.

[FR Doc. 2010–26963 Filed 10–25–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2010–0074; 92220–1113–0000; ABC Code: C6]

RIN 1018–AX37

Endangered and Threatened Wildlife and Plants; Reinstatement of Protections for the Gray Wolf in the Northern Rocky Mountains in Compliance With a Court Order

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are issuing this final rule to comply with a court order that has the effect of reinstating the regulatory protections under the Endangered Species Act of 1973, as amended (ESA), for the gray wolf *(Canis lupus)* in most of the northern Rocky Mountains. Pursuant to the District of Montana court order dated August 5, 2010, this rule corrects the gray wolf listing for the northern half of Montana, the northern panhandle of Idaho, the eastern third of Washington and Oregon, and north-central Utah as endangered and reinstates the former special rules designating the gray wolf in the remainder of Montana and Idaho as nonessential experimental populations. Because ESA protections were not removed in Wyoming by our April 2, 2009 (74 FR 15123), final delisting rule, Wyoming is not impacted by this final rule.

DATES: This action is effective October 26, 2010. However, the court order had legal effect immediately upon its filing at 2:43 p.m. Mountain Daylight Time on August 5, 2010.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov.* It will also be available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, Office of the Western Gray Wolf Recovery Coordinator, 585 Shepard Way, Helena, Montana 59601. Call (406) 449–5225 to make arrangements.

FOR FURTHER INFORMATION CONTACT: For information on wolves in the northern Rocky Mountains, contact Edward E. Bangs, Western Gray Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, at our Helena office (*see* **ADDRESSES**) or telephone (406) 449–5225, extension 204. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay

Service at 1–800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

On April 2, 2009, we published a final rule to remove ESA protections across most of the concurrently designated northern Rocky Mountain (NRM) gray wolf Distinct Population Segment (DPS) (74 FR 15123). Additional background information on the NRM gray wolf population and on this decision, including previous Federal actions, can be found in our April 2, 2009, final rule.

Lawsuits challenging our final rule were filed in U.S. District Court for the District of Montana and U.S. District Court for the District of Wyoming. On August 5, 2010, the U.S. District Court for the District of Montana vacated and set aside our 2009 delisting rule *(Defenders of Wildlife et al.* v. *Salazar* et al., 9:09–cv–00077–DWM).

The decision reinstates Federal protections that were in place prior to our 2009 delisting. Therefore, wolves are listed as endangered throughout the former NRM DPS (43 FR 9607, March 9, 1978; 50 CFR 17.11(h)), except where they are classified as experimental populations (*i.e.,* southern Montana, Idaho south of Interstate 90, and all of Wyoming) (59 FR 60252, November 22, 1994; 59 FR 60266, November 22, 1994; 70 FR 1286, January 6, 2005; 73 FR 4720, January 28, 2008; 50 CFR 17.84(i) and (n)). Thus, take of wolves may be authorized only by an experimental population rule, a permit obtained under section 10 of the ESA, or if exempted by an incidental take statement within a biological opinion issued by the Service pursuant to section 7 of the ESA. We notified all State, Federal, and Tribal partners of the decision and its impact shortly after the order was released. We also took steps to ensure the public was aware of the decision.

This action is independent of any decision by the United States or any interveners in the case to appeal the August 5, 2010, Montana District Court ruling.

Administrative Procedure

This rulemaking is necessary to comply with the August 5, 2010, court order. Therefore, under these circumstances, the Director has determined, pursuant to 5 U.S.C. 553(b), that prior notice and opportunity for public comment are impractical and unnecessary. The Director has further determined, pursuant to 5 U.S.C. 553(d), that the agency has good cause to make this rule effective upon publication.

Effects of the Rule

As of the filing of the court order, delisted wolves in Washington, Oregon, Utah, the Idaho panhandle, and northern Montana were again listed as endangered (50 CFR 17.11(h)). Wolves in southern Montana and Idaho south of Interstate 90 are again listed as nonessential experimental populations under section 10(j) of the ESA (50 CFR 17.84(i) and (n)). Furthermore, the NRM gray wolf DPS established by our April 2, 2009, final rule is set aside. Wolves in Wyoming were not delisted by our 2009 final rule (74 FR 15123, April 2, 2009) and, thus, their listed status under the ESA is not impacted by this final decision. Wolves in Wyoming remain listed as a nonessential experimental population under section 10(j) of the ESA (50 CFR 17.84(i) and (n)). The maps in the rule portion of this document illustrate the boundaries of the nonessential experimental population areas.

This rule will not affect the status of the gray wolf in the NRM under State laws or suspend any other legal protections provided by State law. This rule will not affect the gray wolf's Appendix II status under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ In order to comply with the court order discussed above, we amend part 17, subchapter B of chapter I, title 50 of the CFR, as set forth below:

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 by revising the entry in the table at paragraph (h) for "Wolf, gray" as follows:

§ 17.11 [Amended]

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Wolf, gray	*Canis lupus*	Holarctic	U.S.A., conterminous (lower 48) States, except MN and where listed as an experimental population below; Mexico.	E	1, 6, 13, 15, 35.	17.95(a)	N/A
Do	do	do	U.S.A. (MN)	T	35	17.95(a)	17.40(d)
Do	do	do	U.S.A. (portions of ID and MT, WY—see § 17.84(i) and (n)).	XN	561, 562.	N/A	17.84(i). 17.84(n).
Do	do	do	U.S.A. (portions of AZ, NM, and TX—see § 17.84(k)).	XN	631	N/A	17.84(k)
*	*	*	*	*	*		*

■ 3. Amend § 17.84 by:

■ a. Revising paragraphs (i)(7)(i) and (i)(7)(ii) and adding new paragraph (i)(7)(iii); and

■ b. Revising the first sentence of paragraph (n)(1) and all of paragraphs (n)(9)(i) and (n)(9)(ii) and adding new paragraph (n)(9)(iii) to read as set forth below.

§ 17.84 Special rules—vertebrates.

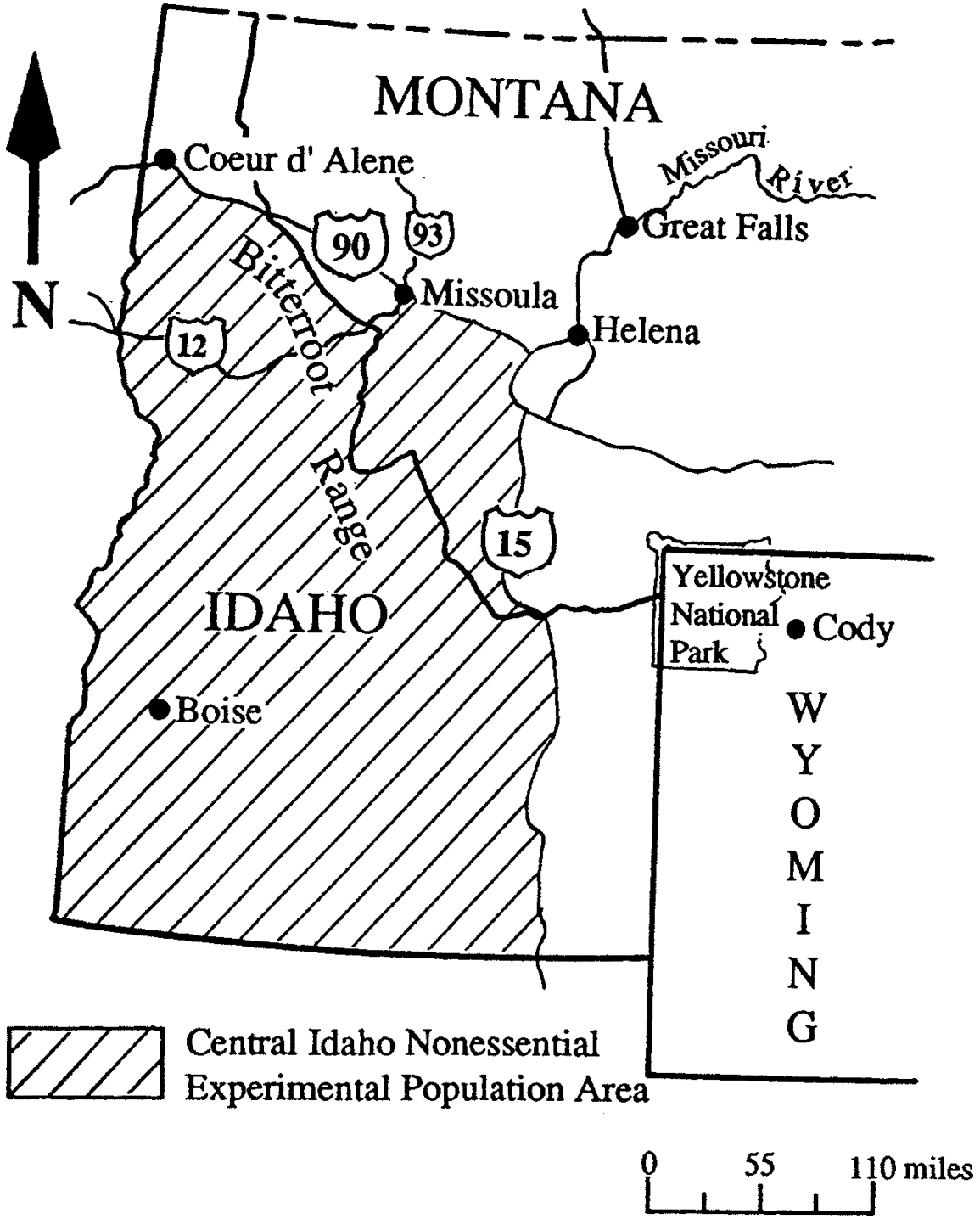
* * * * *

(i) * * *

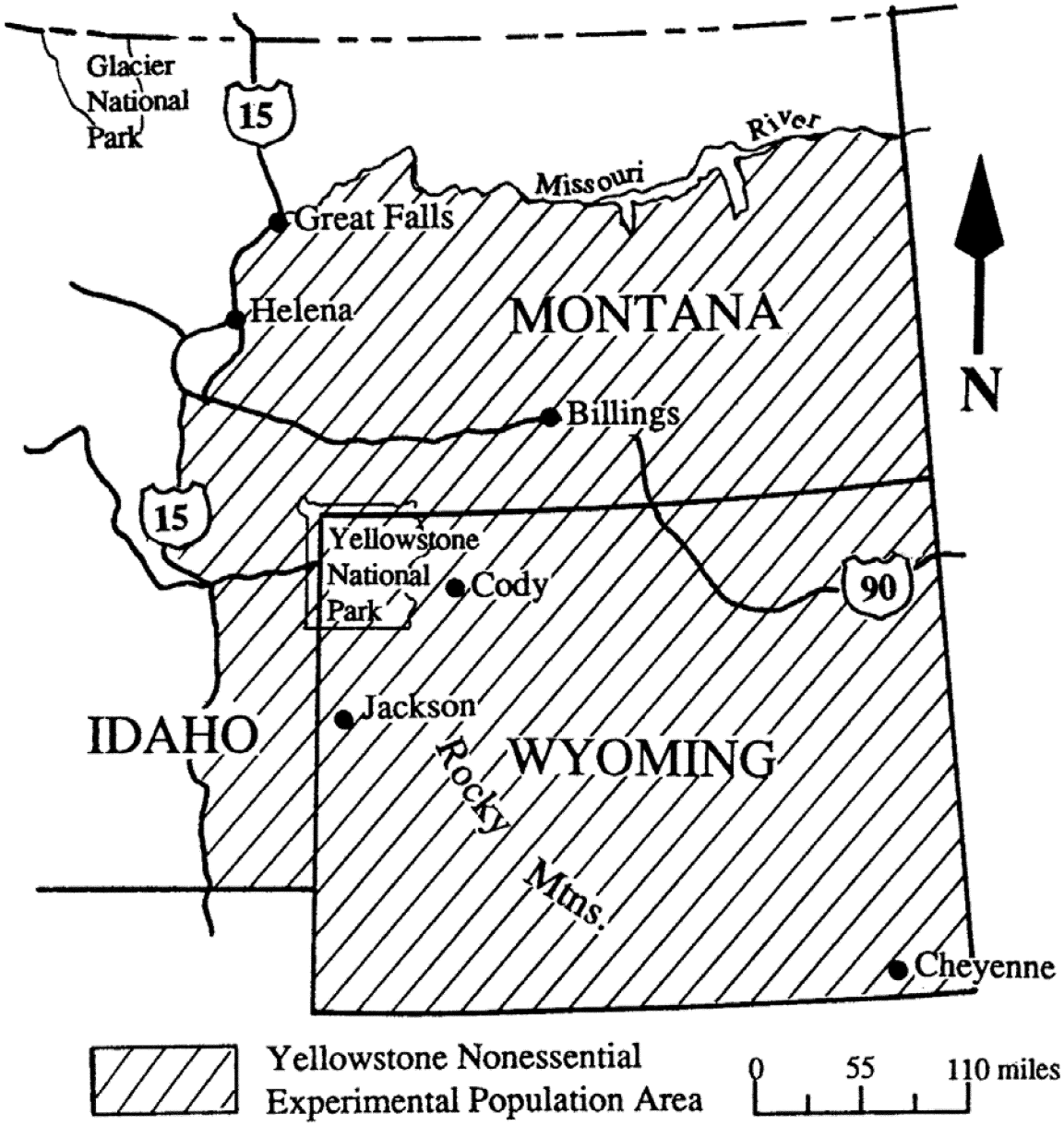
(7) * * *

(i) The central Idaho area is shown on the following map. The boundaries of the nonessential experimental population area will be those portions of Idaho that are south of Interstate Highway 90 and west of Interstate 15, and those portions of Montana south of Interstate 90, Highway 93 and 12 from Missoula, Montana, west of Interstate 15.

BILLING CODE 4310–55–P



(ii) The Yellowstone Management Area is shown on the following map. The boundaries of the nonessential experimental population area will be that portion of Idaho that is east of Interstate Highway 15; that portion of Montana that is east of Interstate Highway 15 and south of the Missouri River from Great Falls, Montana, to the eastern Montana border; and all of Wyoming.



(iii) All wolves found in the wild within the boundaries of this paragraph (i)(7) after the first releases will be considered nonessential experimental animals. In the conterminous United States, a wolf that is outside an experimental area (as defined in paragraph (i)(7) of this section) would be considered as endangered (or threatened if in Minnesota) unless it is marked or otherwise known to be an experimental animal; such a wolf may be captured for examination and genetic testing by the Service or Service-designated agency. Disposition of the captured animal may take any of the following courses:

(A) If the animal was not involved in conflicts with humans and is determined likely to be an experimental wolf, it will be returned to the reintroduction area.

(B) If the animal is determined likely to be an experimental wolf and was involved in conflicts with humans as identified in the management plan for the closest experimental area, it may be relocated, placed in captivity, or killed.

(C) If the animal is determined not likely to be an experimental animal, it will be managed according to any Service-approved plans for that area or will be marked and released near its point of capture.

(D) If the animal is determined not to be a wild gray wolf or if the Service or agencies designated by the Service determine the animal shows physical or behavioral evidence of hybridization with other canids, such as domestic dogs or coyotes, or of being an animal raised in captivity, it will be returned to captivity or killed.

* * * * *

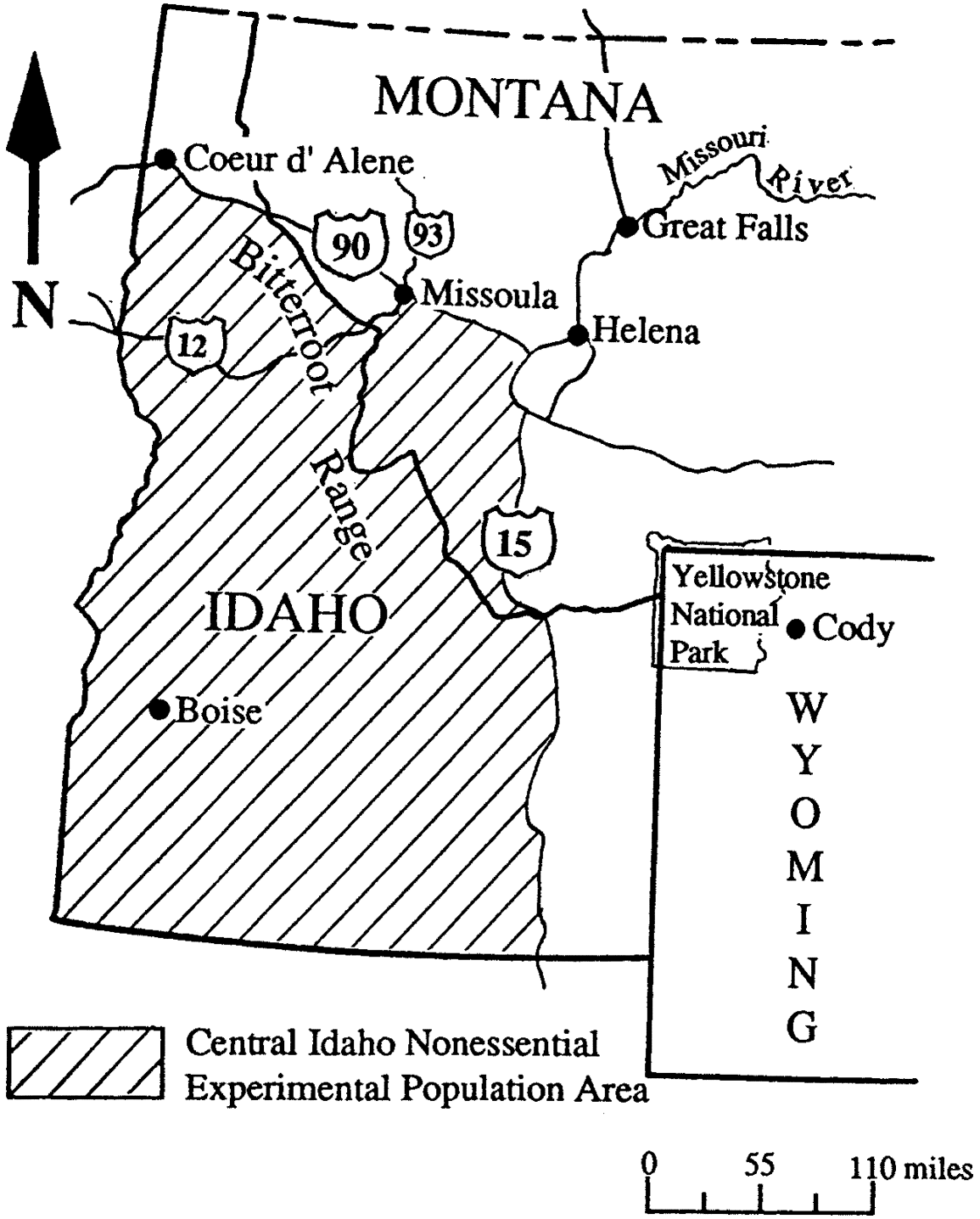
(n) * * *

(1) The gray wolves (wolf) identified in paragraphs (n)(9)(i) and (ii) of this section are nonessential experimental populations. * * *

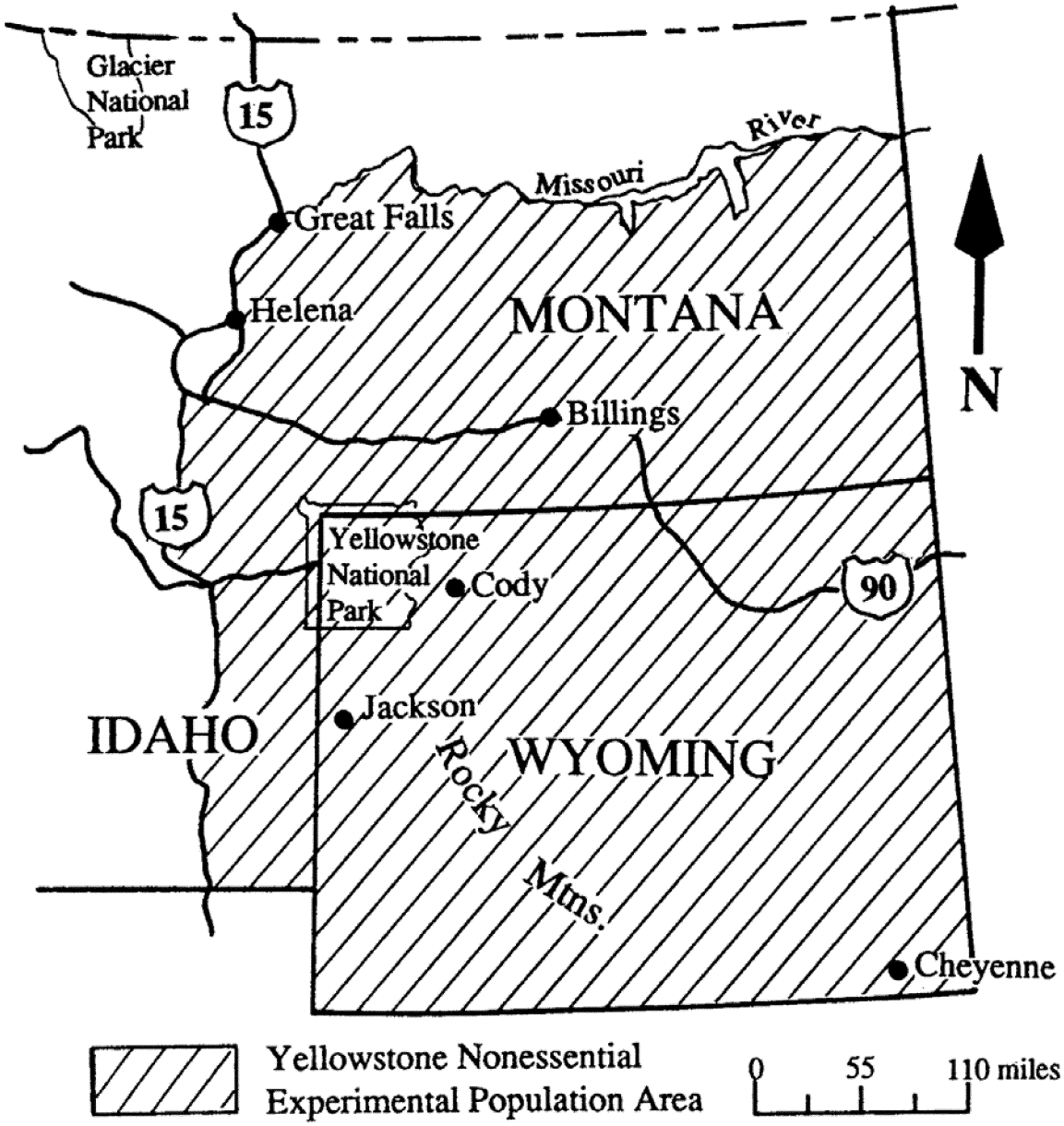
* * * * *

(9) * * *

(i) The central Idaho NEP area is shown on the following map. The boundaries of the NEP area are those portions of Idaho that are south of Interstate Highway 90 and west of Interstate 15, and those portions of Montana south of Interstate 90, Highways 93 and 12 from Missoula, Montana, west of Interstate 15.



(ii) The Yellowstone NEP is shown on the following map. The boundaries of the NEP area are that portion of Idaho that is east of Interstate Highway 15; that portion of Montana that is east of Interstate Highway 15 and south of the Missouri River from Great Falls, Montana, to the eastern Montana border; and all of Wyoming.



BILLING CODE 4310–55–C

(iii) All wolves found in the wild within the boundaries of these experimental areas are considered nonessential experimental animals.

* * * * *

Dated: October 7, 2010.

Daniel M. Ashe,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2010–26765 Filed 10–25–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XZ99

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

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

ACTION: Temporary rule; trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit for king mackerel in the northern Florida west coast subzone to 500 lb (227 kg) of king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the Gulf king mackerel resource.

DATES: This rule is effective 12:01 a.m., local time, October 26, 2010, until 12:01 a.m., local time, July 1, 2011, unless changed by further notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305, or e-mail: *susan.gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico (Gulf) only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the Gulf of Mexico eastern zone into northern and southern subzones, and established their separate commercial quotas. The northern Florida west coast subzone is located in Federal waters of the Gulf north of 26°19.8′ N lat. (a line directly west from the Lee/Collier County, FL boundary) and east of 87°31.1′ W long. (a line directly south from the Alabama/Florida boundary). The quota for the northern subzone is 168,750 lb (76,544 kg) (50 CFR 622.42(c)(1)(ii)).

In accordance with 50 CFR 622.44(a)(2)(ii)(B)(*2*), from the date that 75 percent of the northern Florida west coast subzone's quota has been harvested until a closure of the subzone has been effected or the fishing year ends, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 500 lb (227 kg) per day.

NMFS has determined that 75 percent of the quota for Gulf group king mackerel from the northern Florida west coast subzone has been reached. Accordingly, a 500-lb (227-kg) trip limit applies to vessels harvesting commercial quantities of king mackerel in or from the EEZ in the northern Florida west coast subzone effective 12:01 a.m., local time, October 26, 2010. The 500-lb (227-kg) trip limit will remain in effect until the northern Florida west coast subzone closes or until the end of the current fishing year (June 30, 2011), whichever occurs first.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds the need to immediately implement this commercial trip limit reduction constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the trip limit reduction.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the fishery resource because the capacity of the commercial fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: October 21, 2010.

Carrie Selberg,

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

[FR Doc. 2010–27081 Filed 10–21–10; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 900124–0127]

RIN 0648–XZ16

Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fisheries; Suspension of Minimum Atlantic Surfclam Size Limit for Fishing Year 2011

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

ACTION: Temporary rule; suspension of the Atlantic surfclam minimum size limit.

SUMMARY: NMFS suspends the minimum size limit for Atlantic surfclams for the 2011 fishing year. This action is taken under the authority of the implementing regulations for this fishery, which allow for the annual suspension of the minimum size limit based upon set criteria. The intended effect is to relieve the industry from a regulatory burden that is not necessary, as the majority of surfclams harvested are larger than the minimum size limit.

DATES: Effective January 1, 2011, through December 31, 2011.

ADDRESSES: Written inquiries may be sent to: Regional Administrator, National Marine Fisheries Service, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Anna Macan, Fishery Management Specialist, (978) 281–9165; fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Section 648.72(c) of the regulations implementing the Fishery Management Plan (FMP) for the Atlantic Surfclam and Ocean Quahog Fisheries authorizes the Administrator, Northeast Region, NMFS (Regional Administrator), to suspend annually, by publication of a notification in the **Federal Register,** the minimum size limit for Atlantic surfclams. This action may be taken unless discard, catch, and biological sampling data indicate that 30 percent of the Atlantic surfclam resource is smaller than 4.75 inches (120 mm) and the overall reduced size is not attributable to harvest from beds where growth of the individual clams has been reduced because of density-dependent factors.

At its June 2010 meeting, the Mid-Atlantic Fishery Management Council voted to recommend that the Regional Administrator suspend the minimum size limit for the 2011 fishing year. Commercial surfclam data for 2010 were analyzed to determine the percentage of surfclams that were smaller than the minimum size requirement. The analysis indicated that 8.10 percent of the overall commercial landings were composed of surfclams that were less than 4.75 inches (120 mm). Based on these data, the Regional Administrator adopts the Council's recommendation and suspends the minimum size limit for Atlantic surfclams from January 1 through December 31, 2011.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: October 21, 2010.

Carrie Selberg,

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

[FR Doc. 2010–27076 Filed 10–25–10; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 75, No. 206

Tuesday, October 26, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0322; Airspace Docket No. 10–ANE–105]

Establishment of Class E Airspace; Colebrook, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: This action withdraws the NPRM published in the **Federal Register** on July 19, 2010, which proposed to establish Class E airspace at Upper Valley Connecticut Hospital, Colebrook, NH. The NPRM is being withdrawn as a portion of the proposed airspace already exists. A new rulemaking will be forthcoming to correctly establish the new airspace.

DATES: Effective 901 UTC, October 26, 2010.

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 July 19, 2010, a NPRM was published in the **Federal Register** to establish Class E airspace at Colebrook, NH to accommodate special standard instrument approach procedures for Upper Valley Connecticut Hospital (74 FR 41772) Docket No.-2010–0322. After publication, the FAA found that the airspace description in the proposed rule incorrectly included existing controlled airspace 1,200 feet above the surface. To avoid confusion, this proposed rule is being withdrawn and will be established under another rulemaking.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Withdrawal

Accordingly, pursuant to the authority delegated to me, the Notice of Proposed Rulemaking, Airspace Docket No. 10–ANE–105, as published in the **Federal Register** on July 19, 2010 (75 FR 41772), is hereby withdrawn.

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

Issued in College Park, Georgia, on October 15, 2010.

Mark D. Ward,

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

[FR Doc. 2010–26944 Filed 10–25–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0921; Airspace Docket No. 10–ASO–33]

Proposed Amendment and Revocation of Class E Airspace, Vero Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E surface airspace, and airspace extending upward from 700 feet above the surface, and remove Class E airspace designated as an extension to Class D surface area at Vero Beach Municipal Airport, Vero Beach, FL. The Vero Beach Non-Directional Beacon (NDB) has been decommissioned and new Standard Instrument Approach Procedures (SIAPs) have been developed for the airport. This action would enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: 0901 UTC. Comments must be received on or before December 10, 2010.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2010–0921; Airspace Docket No. 10–ASO–33, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2010–0921; Airspace Docket No. 10–ASO–33) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0921; Airspace Docket No. 10–ASO–33." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace designated as surface area to remove any reference to the decommissioned Vero Beach NDB at Vero Beach Municipal Airport, Vero Beach, FL. This action would also add additional controlled Class E airspace extending upward from 700 feet above the surface to accommodate new SIAPs at the airport, and would remove Class E airspace designated as an extension to Class D surface area to eliminate controlled airspace not required for the new SIAPs developed for Vero Beach Municipal Airport. Class E airspace designated as surface areas, Class E airspace areas designated as an extension to a Class D surface area, and Class E airspace areas extending upward from 700 feet above the surface of the earth are published in Paragraph 6002, 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 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would 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 proposed 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 proposed regulation is within the scope of that authority as it would amend Class E airspace at Vero Beach Municipal Airport, Vero Beach, FL.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

PART 71—DESIGNATION OF CLASS A, B, C, D, AND CLASS 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, signed August 18, 2010, effective September 15, 2010, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ASO FL E2 Vero Beach, FL [AMENDED]

Vero Beach Municipal Airport, FL
(Lat. 27°39′20″ N., long. 80°25′05″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.2 mile radius of the Vero Beach Municipal 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.

* * * * *

Class E Airspace Areas Designated as an Extension to a Class D Surface Area.

* * * * *

ASO FL E4 Vero Beach, FL [REMOVE]

* * * * *

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

* * * * *

ASO FL E5 Vero Beach, FL [AMEND]

Vero Beach Municipal Airport, FL
(Lat. 27°39′20″ N., long. 80°25′05″ W.)

Vero Beach VORTAC
(Lat. 27°40′42″ N., long. 80°29′23″ W.)

St. Lucie County International Airport, FL
(Lat. 27°29′42″ N., long. 80°22′06″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Vero Beach Airport and within 4 miles north and 8 miles south of the Vero Beach VORTAC 296° radial, extending from the 6.7-mile radius to 16 miles northwest of the VORTAC and within a 7-mile radius of St. Lucie County International Airport.

Issued in College Park, Georgia, on October 12, 2010.

Mark D. Ward,

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

[FR Doc. 2010–26954 Filed 10–25–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0919; Airspace Docket No. 10–ANM–11]

Proposed Amendment to Class E Airspace; Rawlins, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Rawlins, WY. Decommissioning of the Sinclair

Directional Radio Beacon (NDB) at Rawlins MunicipalAirport/Harvey Field, has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before December 10, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2010–0919; Airspace Docket No. 10–ANM–11, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2010–0919 and Airspace Docket No. 10–ANM–11) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2010–0919 and Airspace Docket No. 10–ANM–11". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Area, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace at Rawlins Municipal Airport/Harvey Field, Rawlins, WY. The airspace would be reconfigured due to the decommissioning of the Sinclair NDB, and cancellation of the NDB approach. This action would enhance the safety and management of IFR operations at the airport.

Class E airspace designations 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 designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed 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 that this proposed rule, when promulgated, would 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, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Rawlins Municipal Airport/Harvey Field, Rawlins, WY.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 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 71.1 of the FAA Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 6002. Class E airspace designated as surface areas.

* * * * *

ANM WY E2 Rawlins, WY [Modified]

Rawlins Municipal Airport/Harvey Field, WY

(Lat. 41°48′20″ N., long. 107°12′00″ W.)

Within a 4.3-mile radius of the Rawlins Municipal/Harvey Field and within 4.3 miles north and 3 miles south of the 089° bearing from the Rawlins Municipal/Harvey Field extending from the 4.3-mile radius to 7 miles east of the 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 Seattle, Washington, on October 13, 2010.

Rob Henry,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–26950 Filed 10–25–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1047; Airspace Docket No. 10–ASO–37]

Proposed Amendment of Class E Airspace; Savannah, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Savannah, TN, as the Pinhook Non-Directional Beacon (NDB) has been decommissioned and new Standard Instrument Approach Procedures (SIAPs) have been developed at Savannah-Hardin County Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: 0901 UTC. Comments must be received on or before December 10, 2010.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2010–1047; Airspace Docket No. 10–ASO–37, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2010–1047; Airspace Docket No. 10–ASO–37) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–1047; Airspace Docket No. 10–ASO–37." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet above the surface to support new SIAPs developed at Savannah-Hardin County Airport, Savannah, TN. Airspace reconfiguration is necessary due to the decommissioning of the Pinhook NDB and cancellation of the NDB approach, and for continued safety and management of IFR operations at the airport.

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 designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would 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 proposed 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 proposed regulation is within the scope of that authority as it would amend Class E airspace at Savannah-Hardin County Airport, Savannah, TN.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

PART 71—DESIGNATION OF CLASS A, B, C, D, AND CLASS 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO TN E5 Savannah, TN [AMENDED]

Savannah-Hardin County Airport, TN
(Lat. 35°10′13″ N., long. 88°13′00″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Savannah-Hardin County Airport and within 3.7 miles each side of the 008° bearing from the airport extending from the 6.5-mile radius to 9.9 miles north of the Savannah-Hardin County Airport.

Issued in College Park, Georgia, on October 15, 2010.

Mark D. Ward,

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

[FR Doc. 2010–26958 Filed 10–25–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0321; Airspace Docket No. 10–ANE–104]

Proposed Establishment of Class E Airspace; Wolfeboro, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM), withdrawal.

SUMMARY: This action withdraws the NPRM published in the **Federal Register** on July 22, 2010 which proposed to establish Class E airspace at Huggins Hospital, Wolfeboro, NH. The NPRM is being withdrawn as a portion of the proposed airspace already exists. A new rulemaking will be forthcoming to correctly establish the new airspace.

DATES: Effective 0901 UTC, October 26, 2010.

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 July 22, 2010, a NPRM was published in the **Federal Register** to establish Class E airspace at Wolfeboro, NH to accommodate special standard instrument approach procedure for Huggins Hospital (75 FR 42631) Docket No. FAA–2010–0321. After publication the FAA found that the airspace description in the proposed rule incorrectly included existing controlled airspace 1,200 feet above the surface. To avoid confusion this proposed rule is being withdrawn and will be established under another rulemaking.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Withdrawal

Accordingly, pursuant to the authority delegated to me, the Notice of Proposed Rulemaking, Airspace Docket No. 10–ANE–104, as published in the **Federal Register** on July 22, 2010 (75 FR 42631) (FR Doc. 2010–0321), is hereby withdrawn.

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

Issued in College Park, Georgia, on October 15, 2010.

Mark D. Ward,

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

[FR Doc. 2010–26945 Filed 10–25–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0323; Airspace Docket No. 10–ANE–106]

Proposed Establishment of Class E Airspace; Lancaster, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM), withdrawal.

SUMMARY: This action withdraws the NPRM published in the **Federal Register** on July 22, 2010 which proposed to establish Class E airspace at Weeks Medical Center Heliport, Lancaster, NH. The NPRM is being withdrawn as a portion of the proposed airspace already exists. A new rulemaking will be forthcoming to correctly establish the new airspace.

DATES: Effective 0901 UTC, October 26, 2010.

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 July 22, 2010, a NPRM was published in the **Federal Register** to establish Class E airspace at Lancaster, NH to accommodate special standard instrument approach procedures for Weeks Medical Center Heliport. (75 FR 42630) Docket No. FAA–2010–0323. After publication the FAA found that the airspace description in the proposed rule incorrectly included existing controlled airspace 1,200 feet above the surface. To avoid confusion, this proposed rule is being withdrawn and will be established under another rulemaking.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Withdrawal

Accordingly, pursuant to the authority delegated to me, the Notice of

Proposed Rulemaking, Airspace Docket No. 10–ANE–106, as published in the **Federal Register** on July 22, 2010 (75 FR 42630) (FR Doc. 2010–0323), is hereby withdrawn.

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

Issued in College Park, Georgia, on October 15, 2010.

Mark D. Ward,

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

[FR Doc. 2010–26943 Filed 10–25–10; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AD23

Agricultural Commodity Definition

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is charged with proposing rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). The Dodd-Frank Act, which amends the Commodity Exchange Act ("CEA" or "Act"), includes provisions applicable to "a swap in an agricultural commodity (as defined by the [CFTC])." Neither Congress nor the CFTC has previously promulgated a definition of that term for purposes of the CEA or CFTC regulations. This notice reviews the statutory and regulatory history of the term "agricultural commodity" in the context of the CEA and Commission regulations and proposes a definition of that term for purposes of the CEA and Commission regulations.

DATES: Comments must be received on or before November 26, 2010. The Commission is not inclined to grant extensions of this comment period.

ADDRESSES: You may submit comments, identified by RIN number 3038–AD21, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail for Comments: agdefnprm@cftc.gov.* Include the RIN number 3038–AD21 in the subject line of the message.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in CFTC Regulation 145.9.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Donald Heitman, Senior Special Counsel, (202) 418–5041, *dheitman@cftc.gov,* or Ryne Miller, Attorney Advisor, (202) 418–5921, *rmiller@cftc.gov,* Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

Part I—Background

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act.[2] Title VII of the Dodd-Frank Act[3] amended the CEA[4] to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

The Dodd-Frank Act includes provisions applicable to "a swap in an agricultural commodity (as defined by the [CFTC])." Neither Congress nor the CFTC has previously promulgated a definition of that term for purposes of the CEA or CFTC regulations. This notice reviews the statutory and regulatory history of the term "agricultural commodity" in the context of the CEA and Commission regulations and proposes a definition of that term for purposes of the CEA and Commission regulations.

A. Statutory Framework and History—"Agricultural Commodity"

1. The Commodity Exchange Act

In developing a proposed definition of "agricultural commodity" for purposes of the CEA and CFTC regulations, the Commission first considered the historical development of federal commodities regulation in the United States. Before 1974, the Commodity Exchange Act, 7 U.S.C. 1 *et seq.,* gave the Commodity Exchange Authority[5] jurisdiction over only those commodities specifically enumerated in the Act. Starting with the 1936 Act, the CEA applied to certain transactions in commodities then being traded for future delivery on certain U.S. futures exchanges, including wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghum, mill feeds, butter, eggs, and Solanum tuberosum (Irish potatoes).[6] As the exchanges regulated under the CEA added futures contracts for additional commodities, all of which were agricultural in nature, subsequent amendments to the Act added those

[1] 17 CFR 145.9.

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov./LawRegulation/OTCDERIVATIVES/index.htm.*

[3] Pursuant to § 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

[4] 7 U.S.C. 1 *et seq.*

[5] The Commodity Exchange Authority was an agency of the United States Department of Agriculture and was established to administer the CEA. For a detailed history of the evolution of the various agencies charged with administering the CEA, *see http://www.archives.gov/research/guide-fed-records/groups/180.html.* The Commodity Exchange Authority was the predecessor of the CFTC.

[6] *See* Act of June 15, 1936, Public Law 74–675, 49 Stat. 1491 (1936), which, among other things, set out the original list of enumerated commodities and changed the name of the "Grain Futures Act" to the "Commodity Exchange Act." However, the CEA did not apply to all commodity futures markets then in existence, such as markets for coffee, cocoa, sugar, and metals.

additional commodities to the Act's list of enumerated commodities.[7] Thus, prior to 1974, the CEA provided authority exclusively for the regulation of futures transactions in those commodities enumerated in the statute, all of which were agricultural in nature.

With the enactment of the Commodity Futures Trading Commission Act of 1974 ("the 1974 Act"),[8] Congress overhauled the CEA and created the Commodity Futures Trading Commission, an independent regulatory agency with powers greater than those of its predecessor agency, the Commodity Exchange Authority. For the purposes of this Notice, the most significant change was that, while the Commodity Exchange Authority only regulated those commodities enumerated in the CEA, which were all agricultural in nature, the 1974 Act granted the CFTC exclusive jurisdiction over futures trading in all commodities traded for future delivery, including not only the enumerated commodities, but also "all other goods and articles * * * and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in."[9] For the first time, the CEA would apply to all U.S. futures exchanges and to the full range of commodities that were or could be traded for future delivery thereon, including many commodities that did not fall under the enumerated agricultural category—for example, coffee, sugar, cocoa, metals and energy products, as well as interest rates, currencies, and other financial commodities.[10]

2. The Commodity Futures Modernization Act

In 2000, the Commodity Futures Modernization Act of 2000 ("CFMA")[11] added certain exemptions for swaps[12] transactions to the CEA. One exemption appears in current CEA § 2(g).[13] With the § 2(g) swaps exemption, Congress for the first time made an explicit distinction between agricultural commodities and other commodity categories. The § 2(g) exemption explicitly excluded any "agreement, contract, or transaction" in an "agricultural commodity." Instead of providing a definition for agricultural commodity in this context, Congress used the term in conjunction with the definition of exempt commodity—defined as neither an agricultural commodity nor an excluded commodity.[14] Excluded commodities were in turn defined at current CEA § 1a(13) to include financial commodities such as interest rates, currencies, economic indexes, and other similar items. Thus, of the three operative terms, only agricultural commodity was not ascribed a formal definition.[15]

There is limited legislative history regarding the CFMA to explain Congress' intent in excluding "agricultural commodities" from the § 2(g) swaps exemption.[16] However, the legislative history of H.R. 4541 (106th Congress), the predecessor to the CFMA (H.R. 5660),[17] which included the same basic structure of excluded and exempt commodities, indicates that Congress did not intend that the term "agricultural commodity" be limited to those commodities enumerated in the definition of the term "commodity" in current CEA § 1a(4).[18] The House Committee on Agriculture stated the following:

> The Committee notes that the term "exempt commodity" means a commodity other than an "excluded commodity" or an "agricultural commodity." For purposes of this definition, the Committee intends "agricultural commodity" to include all agricultural commodities, whether or not such agricultural commodities are specifically enumerated in the definition of "commodity" in section 1a[4] of the CEA.[19]

Notably, the definition of exempt commodity, and its interplay with both agricultural and excluded commodities, did not change from H.R. 4541 to H.R. 5660, the final version of the CFMA as enacted into law.

3. The Dodd-Frank Act

The Dodd-Frank Act, when it becomes effective, will delete two references to "agricultural commodity" that were added to the CEA by the CFMA.[20] First, the Dodd-Frank Act will

[7] Wool tops were added in 1938. Commodity Exchange Act Amendment of 1938, Public Law 75–471, 52 Stat. 205 (1938). Fats and oils, cottonseed meal, cottonseed, peanuts, soybeans and soybean meal were added in 1940. Commodity Exchange Act Amendment of 1940, Public Law No. 76–818, 54 Stat. 1059 (1940). Livestock, livestock products, and frozen concentrated orange juice were added in 1968. Commodity Exchange Act Amendment of 1968, Public Law 90–258, 82 Stat. 26 (1968) (livestock and livestock products); Act of July 23, 1968, Public Law 90–418, 82 Stat. 413 (1968) (frozen concentrated orange juice). Trading in onion futures on United States exchanges was prohibited in 1958. Commodity Exchange Act Amendment of 1958, Public Law 85–839, 72 Stat. 1013 (1958).

[8] See Commodity Futures Trading Commission Act of 1974, Public Law 93–463, 88 Stat. 1389 (1974).

[9] Except, of course, onions, which were excluded in 1958. *See* cite in footnote 7, above.

[10] *See* the pre-Dodd-Frank CEA definition of "commodity," which had remained unchanged since the 1974 amendments: "The term "commodity" means wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, and all other goods and articles, except onions as provided in Public Law 85–839 (7 U.S.C. 13–1), and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in."

The agricultural commodities specifically identified in current CEA § 1a(4) are often referred to as the "enumerated" agricultural commodities. The Dodd-Frank Act redesignates current CEA § 1a(4) as new CEA § 1a(9) and adds "motion picture box office receipts (or any index, measure, value or data related to such receipts)" as a second commodity which, along with onions, is specifically excluded from the Act's definition of commodity.

[11] The CFMA was enacted into law as Appendix E to Public Law 106–554, the Consolidated Appropriations Act, 2001 (2000).

[12] Prior to the Dodd-Frank Act, the Commission had defined a "swap" as follows: "A swap is a privately negotiated exchange of one asset or cash flow for another asset or cash flow. In a commodity swap [including an agricultural swap], at least one of the assets or cash flows is related to the price of one or more commodities." (*See* 72 FR 66099, note 7 (November 27, 2007)). *See* new CEA § 1a(47) for the statutory definition of a "swap," as added to the CEA by § 721 of the Dodd-Frank Act.

[13] Current § 2(g) provides:

Excluded swap transactions

No provision of this Act (other than section 5a (to the extent provided in section 5a(g)), 5b, 5d, or 12(e)(2)) shall apply to or govern any agreement, contract, or transaction in a commodity other than an agricultural commodity if the agreement, contract, or transaction is—

(1) Entered into only between persons that are eligible contract participants at the time they enter into the agreement, contract, or transaction;

(2) subject to individual negotiation by the parties; and

(3) not executed or traded on a trading facility.

CEA § 2(g), 7 U.S.C. § 2(g). Current CEA § 2(g) was added to the CEA by § 105(b) of the CFMA, enacted as Appendix E to Public Law 106–554.

[14] "The term 'exempt commodity' means a commodity that is not an excluded commodity or an agricultural commodity." Current CEA § 1a(14).

[15] Another swap exemption was provided in current CEA § 2(h), which affects transactions in exempt commodities. Current CEA § 2(h) was added to the CEA by § 106 of the CFMA. Also, current CEA § 2(d) contains a swap exemption for transactions in excluded commodities. Current CEA § 2(d) was added to the CEA by § 103 of the CFMA.

[16] H.R. 5660, the final version of the CFMA, which was enacted into law as an appendix to Public Law 106–554, the Consolidated Appropriations Act, 2001, was not accompanied by congressional committee reports.

[17] H.R. 4541, also titled the Commodity Futures Modernization Act of 2000, was reported by all three committees of jurisdiction (Agriculture, Commerce, and Banking and Financial Services) in the House of Representatives and was passed by the House on October 19, 2000 by a vote of 377 yeas to 4 nays. On December 14, 2000, H.R. 5660 was introduced and contained major provisions of the House-passed version of H.R. 4541.

[18] *See* footnote 10 above.

[19] H.R. Rep. No. 106–711, Part 1, at 33 (June 29, 2000).

[20] Two other references to agricultural commodities that were added to the CEA by the CFMA will remain in the CEA, but are not relevant to defining an agricultural commodity. CEA § 5c(c) provides that a designated contract market must seek prior Commission approval for any rule amendment that would make material changes in

Continued

delete the current CEA § 2(g) swaps exemption.[21] Second, the Dodd-Frank Act will eliminate a provision, found in current CEA § 5a(b)(2)(F), that deals with the permissibility of trading agricultural commodities on a derivatives transaction execution facility ("DTEF"). The Dodd-Frank Act repeals current CEA § 5a[22] (which provides for the registration and regulation of DTEFs).[23]

The Dodd-Frank Act also contains several new provisions relating to agricultural commodities. Section 721(a)(21) of the Dodd-Frank Act adds a new § 1a(47) to the CEA that defines the term "swap." As part of the definition, clause (iii) of § 1a(47)(A) provides that a swap includes "any agreement, contract, or transaction commonly known as * * * an agricultural swap * * *."[24] In addition, the Dodd-Frank Act's definition of swap includes commodity options, other than exchange-traded options on futures, thus requiring off-exchange options on agricultural commodities to be regulated as swaps.[25]

Section 723(c)(3)(A) of the Dodd-Frank Act, which is a free-standing provision that does not amend the CEA, contains a general rule that, except as provided in § 723(c)(3)(B), "no person shall offer to enter into, enter into, or confirm the execution of, any swap in an agricultural commodity (as defined by the [CFTC])." Section 723(c)(3)(B) provides that a swap in an agricultural commodity may be permitted pursuant to the Commission's exemptive authority under CEA § 4(c), "or any rule, regulation, or order issued thereunder (including any rule, regulation, or order in effect as of the date of enactment of this Act) by the [CFTC] to allow swaps under such terms and conditions as the Commission shall prescribe."

Section 733 of the Dodd-Frank Act adds a new § 5h to the CEA that governs the registration and regulation of swap execution facilities. New CEA § 5h(b)(2) provides that a swap execution facility "may not list for trading or confirm the execution of any swap in an agricultural commodity (as defined by the Commission) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe."

Section 737 of the Dodd-Frank Act amends CEA § 4a to direct the Commission to adopt position limits for futures, exchange-traded options, and swaps that are economically equivalent to futures and exchange-traded options within 180 days of the date of enactment of the Dodd-Frank Act for exempt commodities and within 270 days of the date of enactment of the Dodd-Frank Act for agricultural commodities.

B. Regulatory Framework

1. "Agricultural Commodity" in Current Regulations

The term agricultural commodity appears in the Commission's regulations in multiple places, the most relevant of which are the rules for swaps and options.

a. Part 35 Swaps Exemption

Regarding the pre Dodd-Frank Act swaps rules, Part 35 of the Commission's regulations provides a broad-based exemption for certain swap agreements. Adopted by the Commission under its § 4(c) exemptive authority in 1993,[26] Part 35 allows for swaps to transact bilaterally if certain conditions are met.[27] As mentioned above, the CFMA swaps exemption, current CEA §§ 2(d), 2(g) and 2(h), provided an even broader exemption for excluded and exempt commodities than that provided by Part 35. As a result, only swap transactions in agricultural commodities still rely on the exemption found in Part 35. With the exception of three outstanding § 4(c) exemptions related to cleared agricultural basis and calendar swaps,[28] Part 35 is the sole authority under which market participants may transact agricultural swaps that are not options—until such

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any futures contract in an enumerated agricultural commodity, if the rule amendment applies to contracts and delivery months which have been listed for trading and have open interest. CEA § 4q requires the Commission to consider procedures to encourage bona fide hedging on contract markets by domestic agricultural producers.

Title IV of the CFMA included an additional reference to "agricultural commodity" that was not an amendment to the CEA. The Legal Certainty for Bank Products Act, enacted as Title IV of the CFMA, includes a definition of "covered swap agreement" that incorporates a reference to "a commodity other than an agricultural commodity enumerated in section 1a(4)." Section 725(g) of the Dodd-Frank Act deletes all references to "covered swap agreement," including the reference to agricultural commodities, from the Legal Certainty for Bank Products Act.

[21] *See* § 723(a)(1)(A) of the Dodd-Frank Act. That provision of the Dodd-Frank Act will also delete current CEA § 2(h) regarding swaps in exempt commodities. Current CEA § 2(h) does not explicitly mention agricultural commodities but, as noted above, exempt commodities are defined as those that are neither agricultural nor excluded commodities.

[22] *See* § 734(a) of the Dodd-Frank Act.

[23] In addition, CEA § 5(e)(2), which was added to the CEA by the CFMA, provides that the Commission, through notice and comment rulemaking, may allow futures and options in agricultural commodities to trade on DTEFs. Once the Dodd-Frank Act repeals the authority for DTEFs, § 5(e)(2) will no longer have any practical effect.

[24] *See* new CEA § 1a(47)(A)(iii)(XX) as added by § 721(a)(21) of the Dodd-Frank Act.

[25] *See* new CEA § 1a(47)(A)(i) and new CEA § 1a(47)(B)(i) as added by § 721(a)(21) of the Dodd-Frank Act:

* * * SWAP.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'swap' means any agreement, contract, or transaction—

(i) That is * * * [an] option of any kind that is for the purchase or sale * * * [of] commodities * * *.

(B) EXCLUSIONS.—The term 'swap' does not include—

(i) any contract of sale of a commodity for future delivery (or option on such a contract) * * *.

[26] *See* 58 FR 5587 (Jan. 22, 1993). Note that because Part 35 was implemented pursuant to a § 4(c) exemption, agricultural swaps that rely on Part 35 for their legal authority will continue to be permitted under the Dodd-Frank language whereby existing agricultural swaps provisions adopted pursuant to § 4(c), including Part 35, are grandfathered (*See* Dodd-Frank § 723(c)(3)(B)).

[27] The requirements are: (1) The swap agreements are entered into solely between eligible swap participants; (2) the swap agreements are not part of a fungible class of agreements that are standardized as to their material economic terms; (3) the creditworthiness of any party having an actual or potential obligation under the swap agreement must be a material consideration in entering into or determining the terms of the swap agreement, including pricing, cost, or credit enhancement terms; and (4) the swap agreement is not entered into and traded on or through a multilateral transaction execution facility. *See id.* at 5590–5591; *see also* 17 CFR 35.2(a)–(d).

[28] Part 35, at § 35.2(d), also provides that "any person may apply to the Commission for exemption from any of the provisions of the Act (except 2(a)(1)(B) [liability of principal for act of agent]) for other arrangements or facilities, on such terms and conditions as the Commission deems appropriate, including but not limited to, the applicability of other regulatory regimes." *See* 17 CFR 35.2(d). The Commission has granted three such exemptions from Part 35, which have in each instance been styled as § 4(c) exemptive orders. *See:*

Order: (1) Pursuant to Section 4(c) of the Commodity Exchange Act (a) Permitting Eligible Swap Participants To Submit for Clearing and ICE Clear U.S., Inc. and Futures Commission Merchants To Clear Certain Over-The- Counter Agricultural Swaps and (b) Determining Certain Floor Brokers and Traders To Be Eligible Swap Participants; and (2) Pursuant to Section 4d of the Commodity Exchange Act, Permitting Certain Customer Positions in the Foregoing Swaps and Associated Property To Be Commingled With Other Property Held in Segregated Accounts, 73 FR 77015 (Dec. 18, 2008);

Order (1) Pursuant to Section 4(c) of the Commodity Exchange Act, Permitting the Chicago Mercantile Exchange to Clear Certain Over-the-Counter Agricultural Swaps and (2) Pursuant to Section 4d of the Commodity Exchange Act, Permitting Customer Positions in Such Cleared-Only Contracts and Associated Funds To Be Commingled With Other Positions and Funds Held in Customer Segregated Accounts, 74 FR 12316 (March 24, 2009); and

Order (1) Pursuant to Section 4(c) of the Commodity Exchange Act, Permitting the Kansas City Board of Trade Clearing Corporation To Clear Over-the-Counter Wheat Calendar Swaps and (2) Pursuant to Section 4d of the Commodity Exchange Act, Permitting Customer Positions in Such Cleared-Only Swaps and Associated Funds To Be Commingled With Other Positions and Funds Held in Customer Segregated Accounts, 75 FR 34983 (June 21, 2010).

time as the Commission issues other or different rules and regulations for agricultural swaps transactions.[29]

b. Part 32 and Options

The Commission maintains plenary authority over commodity options pursuant to CEA § 4c(b). It has used that authority to, among other things, issue Part 32 of the Commission's regulations, which includes a general ban on off-exchange options.[30] However, Part 32 allows for off-exchange option transactions under certain conditions, including allowing off-exchange options on agricultural commodities in two instances.[31]

Rule 32.13 establishes rules for trading off-exchange options on the "enumerated" agricultural commodities ("agricultural trade options" or "ATOs") whereby ATOs may only be sold by an Agricultural Trade Option Merchant ("ATOM"), who must first register with the Commission as such pursuant to CFTC rule 3.13. Since its 1998 adoption and one amendment in 1999,[32] the ATOM registration scheme has attracted only one registrant, which registrant has since withdrawn its ATOM registration. Accordingly, ATOs currently may only be transacted pursuant to an exemptive provision found at § 32.13(g)(1). The exemption at § 32.13(g)(1) allows ATOs to be sold when: (1) The option is offered to a commercial ("a producer, processor, or commercial user of, or a merchant handling" the underlying commodity); (2) the commercial enters the transaction solely for purposes related to its business as such; and (3) each party to the option contract has a net worth of not less than $10 million.

In either case (whether transacted pursuant to the ATOM registration scheme or accomplished via the ATO exemption at § 32.13(g)), the phrase "agricultural trade option" refers specifically to an off-exchange option on an enumerated agricultural commodity.

In addition to the § 32.13(g) ATO exemption, Part 32 includes, at § 32.4, a basic trade option exemption applicable to options on commodities other than the enumerated agricultural commodities. The terms of the § 32.4 exemption are essentially the same as those of the § 32.13(g) exemption with one significant difference. Under § 32.4, the option must be offered to a producer, processor, or commercial user of, or a merchant handling, the commodity, who enters into the commodity option transaction solely for purposes related to its business as such. However, § 32.4 does not include any net worth requirement. Because the term "agricultural commodity" in the Act refers to more than just the enumerated commodities, the Commission recognizes that certain options authorized under § 32.4 (*e.g.* off-exchange options on coffee, sugar, cocoa, and other agricultural products that do not appear in the enumerated commodity list) will be considered to be swaps in an agricultural commodity—and subject to any Commission rules that specifically address agricultural swaps.

c. Other Regulations

The definition of agricultural commodity will also apply to any other Commission regulation that references agricultural commodity and is not specifically limited to the enumerated agricultural commodities.[33] However, the definition is not anticipated to have any significant substantive impact outside of the Part 35 swaps rules, the Part 32 options rules, and the position limit rulemaking that will address agricultural commodities (*see* discussion in next section).

2. "Agricultural Commodity" in New CFTC Regulations

The definition of agricultural commodity will also be necessary in order to provide context for certain rulemakings under the Dodd-Frank Act. For example, if the Commission proceeds with an agricultural swaps rulemaking, the definition will identify the scope of commodities that will be subject to it.[34] Any such rulemaking would provide rules and regulations governing the trading of swaps in an agricultural commodity. The definition will similarly provide a basis for the Commission's planned rulemaking addressing speculative position limits on agricultural commodities,[35] and by reverse implication, speculative position limits on exempt commodities (defined as a commodity that is not an excluded commodity or an agricultural commodity)—*i.e.,* once a definition of agricultural commodity is adopted, any commodity that does not fall within that definition, or the definition of excluded commodity, will be considered an exempt commodity.[36]

Similarly, defining an agricultural commodity could clarify those swaps that are eligible for the exemptions in current CEA § 2(g) and 2(h) (which are not available to swaps in agricultural commodities). As noted above, the Dodd-Frank Act provides for the eventual repeal of current CEA § 2(g) and § 2(h). However, if the definition of an agricultural commodity is made effective prior to the repeal of those provisions, it would provide greater certainty as to the proper scope of those provisions during the interim.

Part II—Explanation of the Definition

A. Terms of the Proposed Definition

This notice of proposed rulemaking proposes to add the following definition to section 1.3, the Definitions section, of the Commission's regulations:

As used in the Act and CFTC regulations, the term "agricultural commodity" means:

(1) The following commodities specifically enumerated in the definition of a "commodity" found in section 1a of the Act: Wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, but not onions;

(2) All other commodities that are, or once were, or are derived from, living organisms, including plant, animal and aquatic life, which are generally fungible, within their respective classes, and are used primarily for human food, shelter, animal feed, or natural fiber;

(3) Tobacco, products of horticulture, and such other commodities used or consumed by animals or humans as the Commission may by rule, regulation, or order designate after notice and opportunity for hearing; and

(4) Commodity-based contracts based wholly or principally on a single underlying agricultural commodity.

B. Explaining the Definition

Category One—Enumerated Agricultural Commodities

Category one includes the "enumerated agricultural commodities"

[29] *See* Agricultural Swaps, Advance Notice of Proposed Rulemaking and Request for Comment, 75 FR 59666 (September 28, 2010) (the "Agricultural Swaps ANPRM").

[30] *See* Commission regulation 32.11, 17 CFR 32.11.

[31] Note that Part 32 was not issued under the Commission's § 4(c) exemptive authority. After the effective date of the Dodd-Frank Act, options on agricultural commodities will also fall under the Dodd-Frank Act's provisions governing the trading of swaps (and, specifically, agricultural swaps) since options on commodities will fall within the CEA's definition of a swap. Accordingly, it is important to identify what options on agricultural commodities are currently being traded pursuant to Part 32.

[32] 63 FR 18821 (April 16, 1998); and 64 FR 68011 (December 6, 1999), respectively.

[33] For example, *see* current Commission regulation 150.5(e)(3) (17 CFR 150.5(e)(3)), which applies to exchange-set speculative position limits for, among other things, the "international soft agricultural products." Section 150.5 may be amended when the Commission adopts position limits for agricultural commodities pursuant to § 737(a) of the Dodd-Frank Act.

[34] *See* §§ 723(c)(3) and 733 of the Dodd-Frank Act and the Agricultural Swaps ANPRM.

[35] *See* § 737(a) of the Dodd-Frank Act.

[36] *Id.*

specified in current § 1a(4) of the Act (renumbered as § 1a(9) under the Dodd-Frank Act). While there is considerable overlap between categories one and two, category one includes some commodities that would not qualify under category two. For example, "fats and oils" would include plant-based oils, such as tung oil and linseed oil, which are used solely for industrial purposes (and thus would not fall within category two). Section 1a(4)'s reference to "oils" would not, however, extend to petroleum products.[37]

Category Two: Operative Definition of Agricultural Commodities

As a general matter, category 2 seeks to draw a line between products derived from living organisms that are used for human food, shelter, animal feed or natural fiber (covered by the definition) and products that are produced through processing plant or animal-based inputs to create products largely used as industrial inputs (outside the definition). In that context, some of the terms used in describing the second category require further clarification, particularly the terms, "generally fungible," "used primarily," "human food" and "natural fiber."

"*Generally fungible*"—means substitutable or interchangeable within general classes. For example, apples, coffee beans, and cheese are generally fungible within general classes, even though there are various grades and types, and so they would be agricultural commodities. On the other hand, commodities that have been processed and have taken on a unique identity would not be generally fungible. Thus, while flax or mohair are generally fungible natural fibers, lace and linen garments made from flax, or sweaters made from mohair, are not generally fungible and would not be agricultural commodities under category two.

"*Used primarily*"—means any amount of usage over 50%. If 50% of the peaches harvested, plus one, are used for human food, then peaches fall within category two.

"*Human food*"—includes drink. Thus fruit juice, wine and beer are "food" for purposes of the definition of "agricultural commodity."

"*Natural fiber*"—means any naturally occurring fiber that is capable of being spun into a yarn or made into a fabric by bonding or by interlacing in a variety of methods including weaving, knitting, braiding, felting, twisting, or webbing, and which is the basic structural element of textile products.

Based on the foregoing, therefore, category two would include such products as: Fruits and fruit juices; vegetables and edible vegetable products; edible products of enumerated commodities, such as wheat flour and corn meal; poultry; milk and milk products, including cheese, nonfat dry milk and dry whey; distiller's dried grain; eggs; cocoa beans, cocoa butter and cocoa; coffee beans and ground coffee; sugarcane, sugar beets, beet pulp (used as animal feed), raw sugar, molasses and refined sugar; honey; beer and wine; shrimp; and silk, flax and mohair.

Category two would also include stud lumber, plywood, strand board and structural panels because they are derived from living organisms (trees), are generally fungible (*e.g.,* random length 2 x 4s and 4 x 8 standard sheets of plywood) and are used primarily for human shelter—*i.e.,* in the construction of dwellings. Category two would not, however, include industrial inputs such as wood pulp, paper or cardboard, nor would it include raw rubber, turpentine or rosin. Although derived from living organisms—trees—and generally fungible, none of these products are used primarily for human food, shelter, animal feed or natural fibers. On the other hand, maple syrup and maple sugar, also derived from trees, would be "agricultural commodities." Rayon, which is a fiber derived from trees or other plants, falls out of category two because it is not a natural fiber—*i.e.,* it must be chemically processed from cellulose before it becomes fiber.

Category two would include high fructose corn syrup, but not corn-based products such as polylactic acid (a corn derivative used in biodegradable packaging), butanol (a chemical derived from cornstarch and used in plasticizers, resins, and brake fluid) or other plant-based industrial products. Category two would include pure ethanol, which is derived from living organisms (corn and other plants), is generally fungible, and may be used for human food (as an ingredient of alcoholic beverages). However, it would not include denatured ethanol, which is used for fuel and for other industrial uses, because denatured ethanol cannot be used for human food. Likewise, neither would Category 2 include other plant or animal based renewable fuels, such as methane or biodiesel. Fertilizer and other agricultural chemicals, even though they are used almost exclusively in agriculture, would not fall within the definition because they would not fit into the food, shelter, animal feed or natural fiber category.

Category Three—Other Agricultural Commodities

Category three would include commodities that do not readily fit into the first two categories, but would nevertheless be widely recognized as commodities of an agricultural nature. Such commodities would include, for example, tobacco, products of horticulture (*e.g.,* ornamental plants), and such other commodities used or consumed by animals or humans as the Commission may by rule, regulation or order designate after notice and opportunity for hearing. The Commission would determine the status of any such other commodities for purposes of the Act and CFTC regulations on a case-by-case basis as questions arise in the context of specific markets or transactions.

Category Four—Commodity-Based Contracts

The term, "agricultural commodity," also covers contracts that are based wholly or principally on a single underlying agricultural commodity. Such contracts do not necessarily involve the potential for physical delivery of the underlying agricultural commodity—for example basis swaps, calendar swaps or crop yield swaps. The commodity-based contracts category would also include an index based wholly or principally on a single underlying agricultural commodity. Thus, for example, the Minneapolis Grain Exchange ("MGE") wheat, corn and soybean price index contracts[38] would be considered agricultural commodities. Also, any index made up of more than 50% of any single agricultural commodity, since it is based principally on a single underlying agricultural commodity, would be considered a commodity-based contract for purposes of including it within the agricultural commodity definition.

For purposes of the commodity-based contract category, the soybean complex

[37] Petroleum products clearly would not fall within the enumerated commodities. "These itemized commodities are agricultural in nature." Philip McBride Johnson, Commodities Regulation, § 1.01, p. 3 (1982). The Commission has never even considered treating petroleum products as agricultural commodities. Nor would petroleum products fall within the second category. Even though they could be viewed as derived from living organisms—albeit organisms that lived millions of years ago—such products would not qualify under the "used primarily for human food, shelter, animal feed or natural fiber" standard of category two.

[38] The MGE agricultural index products are currently available for corn, soybeans, and various types of wheat. These index products are financially settled to a spot index of country origin pricing as calculated by a firm called Data Transmission Network ("DTN"). Cash settlement is based upon the simple average of the spot prices published on the last three trading days of the settlement month.

would be considered a single commodity, so that an index based on the prices of soybeans, soybean meal and soybean oil would be an agricultural commodity under this provision. Likewise, for purposes of this provision, wheat would be considered a single commodity, so that an index based on the prices of Chicago Board of Trade ("CBT") soft red winter wheat, Kansas City Board of Trade ("KCBT") hard red winter wheat and MGE hard red spring wheat would be an agricultural commodity under the commodity-based contract provision.

On the other hand, a contract based on an index of the prices of multiple agricultural commodities would not be based wholly or principally on a single agricultural commodity and would not fall within the commodity-based contract category. Thus, for example, under the commodity-based contract provision, a swap contract based on a price index of equal parts wheat, corn and soybeans, or even a swap based on a price index of 50% corn and 50% wheat, would not be based wholly or principally on a single underlying agricultural commodity and so would not fall within the agricultural commodity definition. Therefore, such index-based swaps would not be subject to special rules (if any) that might be adopted for agricultural commodity swaps.[39]

The definition of an "excluded commodity" in current CEA § 1a(13)(iii)[40] could be read to include any index of agricultural commodities. That definition provides that "excluded commodity" means, among other things, "any economic or commercial index based on prices, rates, values, or levels that are not within the control of any party to the relevant contract, agreement, or transaction." However, such a reading would frustrate the requirement in Dodd-Frank that swaps in agricultural commodities be permitted only pursuant to a § 4(c) order of the Commission. For example, a swap contract based on a price index of solely wheat should reasonably be considered as a swap in agricultural commodity. Applying a mechanical interpretation of the definition of excluded commodity could permit "gaming" by allowing an index based principally, or even overwhelmingly, on one agricultural commodity to evade the limitations on trading agricultural swaps that are found in the Dodd-Frank Act. For this reason, the definition proposed herein would include an index based wholly or principally on a single underlying agricultural commodity.

Onions

Onions present a unique case in that onions are the only agricultural product specifically excluded from the enumerated commodities list in current § 1a(4). Also, Public Law 85–839 prohibits the trading of onion futures on any board of trade in the United States.[41] Nothing in the definition proposed herein affects the prohibition on onion futures trading.

In defining an agricultural commodity, given the foregoing statutory history, as well as the Act's grammatical construction, it would appear that "agricultural commodity" is a subset of "commodity" and, since onions are excluded from the definition of "commodity," onions cannot be considered an "agricultural commodity." However, under the Dodd-Frank Act, the definition of "swap" in new § 1a(47) of the CEA is not limited to transactions based upon "commodities" as defined in current § 1a(4) of the Act. Therefore, under the CEA as amended by Dodd-Frank, a swap may be based upon an item that is not defined as a "commodity." Thus, onion swaps would seem to be permissible, but would not be considered to be swaps in an "agricultural commodity" under the definition proposed herein.

C. Effects of Applying the Definition

It is also important to consider the uses to which the definition will be put—*i.e.,* what would be the practical effect of a commodity being classified as an "agricultural commodity" under the definition proposed herein? One effect is that the commodity would be covered by any rules the Commission ultimately adopts for agricultural swaps. If, based on the comments received on the Agricultural Swaps ANPRM,[42] it is determined that agricultural swaps should be treated the same as other physical commodity swaps, the definition will have no effect in the agricultural swaps context.

The other significant effect of a commodity being classified as an "agricultural commodity" is that the commodity would be subject to the speculative position limits for agricultural commodities,[43] rather than the speculative limits for exempt commodities. Again, the classification of a given commodity as "agricultural" vs. "exempt" should have no practical effect on the commodity or how it is traded in the speculative limits context because: (1) The definition will only apply to commodities that are the subject of actual swaps or futures trading; and (2) the speculative limits for any such commodities will be based not on any general across-the-board definition or principle, but on the individual characteristics of each commodity, its swaps/futures market and its underlying cash market.

Also, as noted above, during the interim period until §§ 2(g) and 2(h) are repealed, any commodities falling within the new "agricultural commodity" definition could not legally be traded pursuant to either section (although Part 35 would still be available to commodities/contracts meeting its requirements).

Part III—Request for Comments Regarding the Proposed Definition

The Commission requests comments on any aspect of the agricultural commodity definition proposed herein, and also on the following specific questions:

(1) Are there any commodities that *do not* fit within the terms of the definition proposed herein, but which nevertheless *should be* considered to be "agricultural commodities" for purposes of the CEA and Commission regulations? If so, why, and what undesirable effects, if any, might result from omitting such commodities from the definition?

(2) Are there any commodities that *do* fit within the terms of the definition proposed herein, but which nevertheless *should not be* considered to be "agricultural commodities" for purposes of the CEA and Commission regulations? If so, why, and what undesirable effects, if any, might result from including such commodities in the definition?

(3) Does the definition's proposed treatment of commodity-based contracts, including index contracts, for purposes of the agricultural commodity definition constitute an appropriate mechanism for classifying such contracts? If not, what other treatment would be a better alternative?

(4) Are biofuels, such as methane and biodiesel, appropriately excluded from the agricultural commodity definition? If not, why should such products be included in the definition and what undesirable effects, if any, might result from omitting them from the definition?

(5) Under the proposed definition, lumber, plywood and other products of

[39] *See* the Agricultural Swaps ANPRM.

[40] New § 1a(19)(iii) as renumbered under the Dodd-Frank Act.

[41] 7 U.S.C. 13–1.

[42] *See* Agricultural Swaps, Advance Notice of Proposed Rulemaking and Request for Comment, 75 FR 59666 (September 28, 2010).

[43] The Commission is required to adopt speculative position limits for agricultural commodities within 270 days of the adoption of the Dodd-Frank Act.

trees used in human shelter would fall within the agricultural commodity definition, whereas products of trees used as industrial inputs, such as wood pulp, paper, raw rubber and turpentine, would fall outside the definition. Does this formulation draw an appropriate dividing line between the products of trees that are covered by the agricultural commodity definition and those that are not?

(6) As noted above, if the definition of an agricultural commodity is made effective upon the publication of a final rule, it would provide clarity as to what swaps are or are not eligible for the exemptions found in current CEA §§ 2(g) and 2(h) until the point at which their repeal by the Dodd-Frank Act becomes effective. Is there any reason *not* to make the definition of agricultural commodity effective upon the publication of a final rule? Are there swaps currently being transacted under § 2(g) or § 2(h) that would be considered transactions in an agricultural commodity (and thus potentially, temporarily illegal) under the definition proposed herein? If so, should the effective date of the definition be postponed until the repeal of current CEA §§ 2(g) and 2(h), for all purposes other than for the setting of speculative position limits, which will become effective prior to the repeal?

Part IV—Related Matters

A. Paperwork Reduction Act

The proposed rule will not impose any new recordkeeping or information collection requirements, or other collections of information that require approval of the Office of Management and Budget under the Paperwork Reduction Act.[44] The Commission invites public comment on the accuracy of its estimate that no additional recordkeeping or information collection requirements or changes to existing collection requirements would result from the rules proposed herein.

B. Cost Benefit Analysis

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before issuing new regulations under the Act. Section 15(a) does not require the Commission to quantify the costs and benefits of new regulations or to determine whether the benefits of adopted regulations outweigh their costs. Rather, section 15(a) requires the Commission to consider the costs and benefits of the subject regulations in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of the market for listed derivatives; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, not withstanding its costs, a particular regulation is necessary or appropriate to protect the public interest.

Defining an agricultural commodity for purposes of the CEA would seem to have limited immediate practical effects. However, the definition will be necessary for later substantive rulemakings, such as setting speculative position limits for exempt and agricultural commodities under § 737 of the Dodd-Frank Act and determining the permissibility of trading agricultural swaps under § 723(c)(3) and § 733 of the Dodd-Frank Act. Accordingly, this analysis will focus on the prospective costs/benefits of defining "agricultural commodity."

As noted above, § 737(a) of the Dodd-Frank Act amends CEA § 4a(a) to direct the Commission to adopt speculative position limits for futures, exchange-traded options, and swaps that are economically equivalent to futures and exchange-traded options within 180 days of the date of enactment of the Dodd-Frank Act for exempt commodities and within 270 days of the date of enactment of the Dodd-Frank Act for agricultural commodities. Under CEA § 4a(a)(3), the Commission in setting position limits must balance the goals of: (1) Diminishing, eliminating, or preventing excessive speculation; (2) deterring and preventing market manipulation, squeezes, and corners; (3) ensuring sufficient liquidity for bona fide hedgers; and (4) ensuring that the price discovery function of the underlying market is not disrupted. If speculative position limits for exempt and agricultural commodities are set at an inappropriate level, it could have the consequence of not achieving the optimum blend of these important goals and could be detrimental to the competitiveness and financial integrity of these markets.

As noted above, § 723(c)(3) of the Dodd-Frank Act contains a general rule that "no person shall offer to enter into, or confirm the execution of, any swap in an agricultural commodity (as defined by the [CFTC])." Section 723(c)(3) contains an exception to that general rule that provides that a swap in an agricultural commodity may be permitted pursuant to the Commission's exemptive authority under CEA § 4(c), "or any rule, regulation, or order issued thereunder (including any rule, regulation, or order in effect as of the date of enactment of this Act) by the [CFTC] to allow swaps under such terms and conditions as the Commission shall prescribe."

Also as noted above, § 733 of the Dodd-Frank Act adds a new § 5h to the CEA that governs the registration and regulation of swap execution facilities. New CEA § 5h(b)(2) provides that a swap execution facility "may not list for trading or confirm the execution of any swap in an agricultural commodity (as defined by the Commission) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe."

Both § 723 and § 733 require the Commission to define an agricultural commodity if agricultural swaps (beyond those currently allowed under CEA § 4(c) exemptions) are to be traded. If the Commission decides to promulgate a rule permitting additional types of agricultural swaps to trade, such a rule could enhance price discovery and improve risk management for the agricultural commodities involved.

The Commission invites public comments on its cost-benefit considerations. Commenters also are invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposal with their comment letters.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[45] requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact. The rules proposed by the Commission provide a definition that will largely be used in future rulemakings and which, by itself, imposes no significant new regulatory requirements. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 1

Definitions, Agriculture, Agricultural commodity.

In consideration of the foregoing, and pursuant to the authority contained in

[44] 44 U.S.C. 3501 *et seq.*

[45] 5 U.S.C. 601 *et seq.*

the Commodity Exchange Act and, in particular, sections 2(a)(1), 5h, and 8a thereof, 7 U.S.C. 2, 7b–3, and 12a, and pursuant to the authority contained in section 723(c)(3) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010), the Commission hereby proposes to amend Chapter 1 of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a–6p, 7, 7a, 7b, 7b–3, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23 and 24, unless otherwise noted.

2. Section 1.3 is amended by adding paragraph (zz) to read as follows:

§ 1.3 Definitions.

* * * * *

(zz) *Agricultural commodity.* As used in the Act and CFTC regulations, this term means:

(1) The following commodities specifically enumerated in the definition of a "commodity" found in section 1a of the Act:Wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, but not onions;

(2) All other commodities that are, or once were, or are derived from, living organisms, including plant, animal and aquatic life, which are generally fungible, within their respective classes, and are used primarily for human food, shelter, animal feed or natural fiber;

(3) Tobacco, products of horticulture, and such other commodities used or consumed by animals or humans as the Commission may by rule, regulation or order designate after notice and opportunity for hearing; and

(4) Commodity-based contracts based wholly or principally on a single underlying agricultural commodity.

Issued in Washington, DC, on October 19, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

Statement of Chairman Gary Gensler

Agriculture Commodity Definition

October 19, 2010

I support the proposal to publish for comment a definition of the term, "agricultural commodity." This is necessary as the Dodd-Frank Act includes two provisions that apply to swaps in an agricultural commodity, as defined by the CFTC. First, the definition will be used to fulfill the Dodd-Frank Act's requirement that swaps in an "agricultural commodity" be prohibited unless permitted under the Commission's general exemptive authority. An Advance Notice of Proposed Rulemaking seeking comment on the appropriate conditions, restrictions or protections to be included in any rules governing agricultural swaps is currently out for comment. Second, the Dodd-Frank Act directs the Commission to adopt speculative position limits for "agricultural commodities" within 270 days of the enactment of Dodd-Frank.

I believe the proposed agricultural commodity definition draws a good line between agricultural and non-agricultural commodities, though I am very interested to hear the public's views on this definition.

[FR Doc. 2010–26951 Filed 10–25–10; 8:45 am]

BILLING CODE P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[RM2011–1; Order No. 552]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of temporary waiver request.

SUMMARY: The Commission is establishing a docket to address a recent Postal Service request for approval of a temporary waiver of rules requiring it to provide periodic reports on service performance for certain market dominant postal services. The Postal Service's request reflects the expectation that a transition period likely would be needed before full compliance with new reporting rules could be accomplished. This notice informs the public about the Postal Service's interest in obtaining a temporary waiver and invites comments that will inform the Commission's decision on the request.

DATES: *Comments Due:* October 29, 2010.

Reply Comments Due: November 15, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for information on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 or *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: On October 1, 2010, the Postal Service filed a request for temporary waivers from periodic reporting of service performance measurement for various market dominant postal services, or components of postal services, pursuant to Commission Order No. 465.[1]

Order No. 465 established a process for the Postal Service to achieve full compliance with all periodic service performance reporting requirements by the filing date of the FY 2011 Annual Compliance Report. Order No. 465 at 18–24. As part of the process, the Commission directed the Postal Service to seek temporary waivers where it cannot immediately comply with specific reporting requirements. As a condition of granting any waiver, the Commission directed the Postal Service to develop and present implementation plans addressing each reporting requirement for which the Postal Service cannot provide the required information. The "plans at a minimum should provide an explanation of why a reporting requirement cannot be complied with, the steps necessary to come into compliance, and a timeline of events necessary to achieve compliance. Interim milestones shall be included in the plans where applicable such that both the Postal Service and the Commission can evaluate progress being made." *Id.* at 23.

In the instant Request, the Postal Service seeks temporary waivers for First-Class Mail Flats at the district level, non-retail First-Class Mail Parcels, all categories of Standard Mail, Outside County Periodicals, non-retail Media Mail, Library Mail, Bound Printed Matter Parcels, and Stamp Fulfillment

[1] United States Postal Service Request for Temporary Waivers from Periodic Reporting of Service Performance Measurement, October 1, 2010 (Request); *see also* Order Establishing Final Rules Concerning Periodic Reporting of Service Performance Measurements and Customer Satisfaction, May 25, 2010, at 22–24 (Order No. 465).

Services. Request at 1. The Postal Service also discusses what measurements it will report in the interim.

The Commission establishes Docket No. RM2011–1 for consideration of matters related to the proposed semi-permanent exception from periodic reporting of service performance measurement identified in the Postal Service's Request.

Interested persons may submit comments on whether the Postal Service's Request is consistent with the policies of 39 U.S.C. 3652(a)(2) and with the directions given in Order No. 465. Interested persons also may comment on interim measurement proposals. Comments are due no later than October 29, 2010. Reply comments are due no later than November 15, 2010. The Postal Service's Request can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Emmett Rand Costich to serve as Public Representative in the captioned proceedings.

It is ordered:

1. The Commission establishes Docket No. RM2011–1 for consideration of matters raised by the Postal Service's Request.

2. Comments by interested persons in these proceedings are due no later than October 29, 2010.

3. Reply comments by interested persons in these proceedings are due no later than November 15, 2010.

4. Pursuant to 39 U.S.C. 505, Emmett Rand Costich is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

5. The Secretary shall arrange for the publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–26835 Filed 10–25–10; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2008–0684; FRL–9215–3]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Particulate Matter Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request submitted by the Ohio Environmental Protection Agency on August 22, 2008, to revise the Ohio State Implementation Plan under the Clean Air Act. The State has submitted revisions to twelve rules and rescinded one rule in Ohio Administrative Code (OAC) Chapter 3745–17, "Particulate Matter Standards." The revisions were submitted by Ohio EPA to satisfy the State's 5-year review requirements. The particulate matter (PM) standards contain the particulate emission control requirements that have been necessary to attain and maintain the 2006 National Ambient Air Quality Standards for PM in the State.

EPA is proposing to approve the revisions to nine of the OAC 3745–17 rules. EPA proposes approving only a portion of Rule 7, while not acting on the portion providing a partial exemption from opacity limits for a lime kiln in Woodville, Ohio. We are proposing to conditionally approve Rule 11 based on a commitment by Ohio to address EPA's concerns with the large item size exemptions. EPA is not acting on Rule 3, regarding opacity measurement methods. Lastly, EPA is proposing to approve the rescission of Rule 5 from the Ohio SIP.

DATES: Comments must be received on or before November 26, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2008–0684, by one of the following methods:

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

2. *E-mail: bortzer.jay@epa.gov.*

3. *Fax:* (312) 692–2054.

4. *Mail:* Jay Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Jay Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal 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.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP 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 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: October 4, 2010.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2010–26883 Filed 10–25–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0807; FRL–9209–2]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Ohio Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve amendments to the Ohio Administrative Code (OAC) relating to the consolidation of Ohio's Ambient Air Quality Standards (AAQS) into Ohio's State Implementation Plan (SIP) under the Clean Air Act. On April 8, 2009, and August 11, 2009, Ohio EPA adopted amendments to various rules in the

OAC to consolidate the state's AAQS. On September 10, 2009, Ohio EPA requested from EPA approval of amendments to OAC with the intent to consolidate Ohio's AAQS into a single rule to provide greater accessibility for the regulated community and to the citizens of Ohio. EPA is proposing to approve the request because the revisions clarify the state's rules and thus better serve the purpose of providing for meeting these standards.

DATES: Comments must be received on or before November 26, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0807, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: bortzer.jay@epa.gov.*
3. *Fax:* (312) 692–2054.
4. *Mail:* Jay Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Jay Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal 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.

FOR FURTHER INFORMATION CONTACT: Melissa M. Barnhart, Environmental Scientist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8647, *barnhart.melissa@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register,** EPA is approving the State's SIP 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 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: September 17, 2010.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2010–26964 Filed 10–25–10; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2553

RIN 3045–AA52

Retired and Senior Volunteer Program Amendments

AGENCY: Corporation for National and Community Service.

ACTION: Notice of proposed rule with request for comments.

SUMMARY: This proposed rule sets forth a competitive process for selecting grant recipients for the Retired and Service Volunteer Program ("RSVP"), including performance measurement requirements, as required by the Domestic Volunteer Service Act (DVSA), as amended by the Edward M. Kennedy Serve America Act (Serve America Act) of April 21, 2009.

DATES: Submit comments on or before December 27, 2010.

ADDRESSES: You may submit and read comments through the Federal government's one-stop rulemaking Web site at *http://www.regulations.gov.* You may also mail or deliver your comments to Amy Borgstrom, Docket Manager, Corporation for National and Community Service, 1201 New York Ave., NW., Washington, DC 20525. Members of the public may review copies of all communications received on this rulemaking at the Corporation's Washington, DC headquarters.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, Docket Manager, Corporation for National and Community Service, (202) 606–6930, TDD (202) 606–3472. Persons with visual impairments may request this document in an alternate format.

SUPPLEMENTARY INFORMATION:

I. Invitation to Comment

We invite you to submit comments about these proposed regulations. To ensure that your comments have maximum value in helping us develop the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each comment addresses and to arrange your comments in the same order as the proposed regulations. During and after the comment period, you may inspect all public comments about these proposed regulations on *http://www.regulations.gov* or by contacting the Docket Manager listed in this notice.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact Amy Borgstrom, Docket Manager, Corporation for National and Community Service, *aborgstrom@cns.gov,* TDD (202) 606–3472.

II. Background

On April 21, 2009, President Obama signed into law the Edward M. Kennedy Serve America Act (Serve America Act) (Pub. L. 111–13). The Serve America Act reauthorizes and expands national service programs administered by the Corporation for National and Community Service ("the Corporation") by amending the National and Community Service Act of 1990 (NCSA) and the Domestic Volunteer Service Act of 1973 (DVSA).

The Serve America Act amended the DVSA by requiring the Corporation to develop a competitive process for selecting grant recipients for the Retired and Senior Volunteer Program ("RSVP") beginning in fiscal year 2013. Section 201(e) of the DVSA requires that the Corporation promulgate regulations within 18 months of the enactment of the Serve America Act establishing the competitive grantmaking process for the Retired and Senior Volunteer Program. The competitive process, as directed by statute, will include the use of peer review panels with expertise in senior service and aging, site visits as

appropriate, and evaluations of existing grantees. The amended statute requires that, beginning in fiscal year 2013, RSVP grants be awarded for a period of 3 years, with an option for renewal of 3 years if the grantee meets the performances measures established in its grant award, as well as complying with the terms and conditions of the grant.

III. Proposed Rule

The current competitive process for selecting RSVP grantees only occurs when there is new money above the appropriated base funding for RSVP grants. The future competitive process for selecting RSVP grantees will include the same elements specified in the amended DVSA that have been used for previous competitive processes. The elements specified in the amended DVSA are discussed below.

A. Peer review panels [DVSA sec. 201(e)(2)(B)(i); 45 CFR 2553.71(b)]: As of 2013, RSVP grant applications will be reviewed by blended peer review panels that will include members with specialized expertise in senior service and aging, as well as Corporation staff, who will offer their expert opinions concerning each application. The use of blended peer review panels is well established at the Corporation and is currently part of the process of selecting grantees for other programs such as AmeriCorps and Learn and Serve America. The Corporation also has considerable experience in using outside reviewers with expertise in senior service and aging on selection panels for Senior Corps grants, including RSVP. The Corporation's existing processes for announcing peer review opportunities, registering potential reviewers, selecting reviewers for particular competitions, managing review panels, and considering peer review opinions in making the final selection of grantees will be adapted to meet the requirements for RSVP grant competitions.

B. Site inspections [DVSA sec. 201(e)(2)(B)(ii); 45 CFR 2553.71(b)]: As appropriate, on-going RSVP grant projects or proposed project sites may be visited by Corporation representatives as part of the competitive selection process. While such site visits would normally not be needed, circumstances could arise during the grantee selection process where on-site observations or meetings might be helpful, for example, in clarifying aspects of an application or validating the capacity of an organization to administer a Federal grant.

C. Performance Measures, Outcomes, and Other Criteria [DVSA sections 201(e)(2)(B)(v) and 201(g); 45 CFR 2553.12(l) and Subpart J]: As a part of the competitive process, the Corporation will develop performance measures, outcomes, and other criteria that will be used in the evaluation of applicants. The performance measures will be established in the Notification of Funding Availability and may be different than those incorporated in current grants. These performance measures, outcomes, and criteria will reflect the different needs of rural and urban communities. These performance measures, outcomes, and criteria will be used in conducting the competitive process and in developing assessment reports as described in paragraph D, below. Performance measures will be published in the Notification of Funding Availability.

Pursuant to section 201 (g)(2)(A) & (B) of the Serve America Act, prior to Fiscal Year 2014, that is, the first year after initiation of the competitive process, the performance measures, outcomes, and other criteria established for the process may not be updated or modified, except when the Corporation determines that a performance measure, outcome, or criterion has become operationally problematic. In such cases, after consulting with RSVP project directors, sponsor executives, and others as appropriate, and notifying the authorizing committees, the Corporation may eliminate that performance measure, outcome, or criterion, or modify it.

D. Assessments of existing RSVP projects [DVSA sections 201(f) and (g); 45 CFR 2553(f)]: All existing RSVP grants will receive a report from the Corporation in a standardized format that assesses program strengths and weaknesses in a way that can assist the grantee with program improvement. The Corporation has set up a mechanism for consulting with RSVP project directors during the development and implementation of the assessment process. This report will guide the Corporation's training and technical assistance for the project. The standardized report will, in addition to assessing the program's strengths and weaknesses, include—

- An assessment of the extent to which the grantee meets or exceeds the performance measures, outcomes, and other criteria established for its grant;
- An assessment of whether the program has adequately addressed the needs of the population and community it serves;
- An assessment of the project's efforts to collaborate with other community organizations, units of government, and entities providing services to seniors;
- An assessment of the project's compliance with requirements for appropriate use of Federal funds, based on use of a protocol for fiscal management;
- An assessment of whether the project is in conformity with eligibility, outreach, enrollment, and other RSVP programmatic requirements.

To the maximum extent practicable, the report for each project will take into account input received from individuals who are knowledgeable about RSVP, including current or former employees of the Corporation and representatives of the communities served by RSVP volunteers.

To the maximum extent practicable, the process of assessing existing RSVP grants will begin in Fiscal Year 2010 and run through Fiscal Year 2012, with the objective of completing the assessment and resulting training and technical assistance prior to conducting the initial cycle of grant competitions in Fiscal Year 2013.

E. Maintenance of volunteers and geographic service areas [DVSA sec. 201(e)(2)(B)(iv)]: The Corporation will ensure that (a) grants awarded as a result of the competitive selection process beginning in Fiscal Year 2013 are for at least the same number of volunteers annually as were supported for the service area during the previous grant cycle and (b) maintain a similar program distribution as was maintained during the previous grant cycle. In addition, the Corporation will minimize any disruption to RSVP volunteers that might result from implementing the competitive process of grantee selection.

F. Program Termination [DVSA sec. 201(g)(3); 45 CFR 2553.31]: Until 2013, the Corporation will continue to initiate termination or denial of an application for refunding in the event that a grantee does not meet one or more of the performance measures, outcomes, and other criteria established as described above. Any such termination or denial of refunding will follow the notification and due process currently followed in such cases, in accordance with Section 412 of the DVSA, as implemented by 45 CFR part 1206 Grants and Contracts—Suspension and Termination and Denial of Application for Refunding, except that after initiation of competition in FY 2013, the provisions governing denial of refunding will not apply to a grant that has been competed in accordance with 45 CFR 2553.71, and where the grantee has also completed its optional three-year renewal term.

G. Technical Assistance [DVSA sec. 201(h) and (j); 45 CFR 2553.71(f)]: The Corporation will develop procedures for providing technical assistance, including regular monitoring visits, to assist grantees in meeting the established performance measures, outcomes, and criteria. One component of such technical assistance, which was launched in October 2009, is an online resource guide available at *http://www.nationalserviceresources.org/rsvp-online-resource-guide.* The Corporation updates this online guide from time to time with examples of high-performing RSVP projects and other information.

H. Grant Extension for Purpose of New Competition [DVSA sec. 201(i); 2553.71(e)]: To minimize disruption to volunteers and services, if a grantee fails to meet one or more of the established performance measures, outcomes, and other criteria, the Corporation will continue to fund the current grantee for up to 12 months if the competition for a replacement sponsor has not resulted in a replacement sponsor. During those 12 months, the Corporation will conduct a new competition to serve the geographic area served by the current grantee and reach out to other potential sponsors. The current grantee will be eligible for the new competition and, during the 12-month period, the Corporation may continue to provide training and technical assistance in meeting established performance measures.

All provisions of part 2553 not modified by the amendments described below will remain in effect, including the provision in § 2553.72 (a) that a "Corporation grant may be awarded to fund up to 90 percent of the total project cost in the first year, 80 percent in the second year, and 70 percent in the third and succeeding years." Thus, the Corporation will continue to require that a current grantee applying for a new grant must contribute from non-Corporation funds at least 30 percent of the total project cost. A new applicant, on the other hand, will be required to contribute 10 percent in the first year of the grant, 20 percent in the second year, and 30 percent in the third and succeeding years.

IV. Effective Dates

The Corporation intends to make any final rule based on this proposed rule effective on the date that the final rule is published in the **Federal Register.**

V. Non-Regulatory Issues

Executive Order 12866

Under Executive Order 12866, the Chief Executive Officer must determine whether this regulatory action is "significant" and therefore subject to the requirements of the Executive Order and review by OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments, or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) create novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The Chief Executive Officer has determined that this regulatory action, while not economically significant, is significant because Congress is requiring re-competition for the RSVP program for the first time.

Regulatory Flexibility Act

The Corporation has determined that the regulatory action will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, the Corporation has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 6.)

Paperwork Reduction Act of 1995

Under the procedures established by the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rulemaking would not establish any new information collection requirements.

List of Subjects in 45 CFR Part 2553

Aged, Grant programs—social programs, Volunteers.

For the reasons set forth in the preamble, the Corporation for National and Community Service proposes to amend 45 CFR part 2553 as follows:

PART 2553—THE RETIRED AND SENIOR VOLUNTEER PROGRAM

1. The authority citation for part 2553 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.*

2. Amend § 2553.12 by removing the alphabetical paragraph designations and adding a definition for "performance measures" in alphabetical order to read as follows:

§ 2553.12 Definitions.

* * * * *

Performance measures. Indicators intended to help determine the impact of an RSVP project on the community, including the volunteers. Performance measures currently include, but are not limited to, the following performance indicators:

(1) *Output indicator.* The amount or units of service that RSVP volunteers have completed, or the number of people the project has served. An output indicator does not provide information on benefits or other changes in the lives of the volunteers or the people served.

(2) *Outcome indicator.* Specifies a change that has occurred in the lives of the people served or the volunteers. It is an observable and measurable indication of whether or not a project is making progress toward its outcome target.

* * * * *

3. Amend § 2553.23 by adding new paragraphs (i) and (j) to read as follows:

§ 2553.23 What are a sponsor's program responsibilities?

* * * * *

(i) Minimize any disruption to RSVP volunteers when one sponsor is replaced by another as a result of relinquishment, denial of refunding, or recompetition of a grant.

(j) Make every effort to meet such performance measures as may be established for the RSVP project by mutual agreement.

4. Amend § 2553.31 by revising paragraph (c) to read as follows:

§ 2553.31 What are the rules on suspension, termination and denial of refunding of grants?

* * * * *

(c) Beginning in FY 2013, the procedures for suspension and termination of RSVP grants, which are specified in 45 CFR part 1206, shall continue to apply, but the procedures in part 1206 applicable to denial of

refunding of an RSVP grantee shall not apply to any grant awarded through the competitive process described in § 2553.71 of this part.

5. Revise § 2553.71 to read as follows:

§ 2553.71 What is the process for application and award of a grant?

As funds become available, the Corporation solicits applications for RSVP grants from eligible organizations through a competitive process.

(a) *What are the application requirements for an RSVP grant?* An applicant must:

(1) Submit required information determined by the Corporation.

(2) Demonstrate compliance with any applicable requirements specified in the Notice of Funding Availability or Notice of Funding Opportunity.

(b) *What process does the Corporation use to select new RSVP grantees?* (1) The Corporation reviews and determines the merits of an application by its responsiveness to published guidelines and to the overall purpose and objectives of the program. In conducting its review, the Corporation considers the input and opinions of those serving on a peer review panel, including members with expertise in senior service and aging, and may conduct inspections at the applicant's site, as appropriate.

(2) The selection process includes:

(i) Determining whether an application complies with the application requirements, such as deadlines, eligibility, and programmatic requirements, including performance measurement requirements;

(ii) Applying published selection criteria, as stated in the applicable Notice of Funding Availability or Notice of Funding Opportunity, to assess the quality of the application;

(iii) Applying any applicable priorities or preferences, as stated in the applicable Notice of Funding Availability or Notice of Funding Opportunity;

(iv) Ensuring innovation and geographic, demographic, and programmatic diversity across the Corporation's RSVP grantee portfolio.

(v) Identifying the applications that most completely respond to the published guidelines and offer the highest probability of successfully carrying out the overall purpose and objectives of the program.

(c) *How is a grant awarded?* (1) Subject to the availability of funds, the award will be documented by a Notice of Grant Award (NGA).

(2) The Corporation and the sponsoring organization are parties to the NGA. The NGA will document the sponsor's commitment to fulfill specific programmatic objectives and financial obligations. It will document the extent of the Corporation's obligation to provide assistance to the sponsor.

(d) *What happens if the Corporation rejects an application?* The Corporation will return to the applicant an application that is not approved for funding, informing the applicant of the Corporation's decision.

(e) *For what period of time does the Corporation award a grant?* The Corporation awards a RSVP grant for a specified period that is 3 years in duration with an option for a grant renewal of 3 years, if the grantee's performance and compliance with grant terms and conditions are satisfactory. The Corporation will use the Denial of Refunding procedures set forth in 45 CFR part 1206 to deny funding to a grantee when the Corporation determines that the grant should not be renewed for an additional 3 years.

(f) *What assistance in preparation for competitive award of all RSVP grants will the Corporation provide to sponsors who have previously received a grant and whose grants are expiring in fiscal year 2011, 2012, or 2013?* (1) For each grant expiring in fiscal years 2011, 2012, or 2013, the Corporation will evaluate the grant, to the maximum extent practicable, in fiscal years 2010, 2011, and 2012, respectively.

(2) The evaluation will give particular attention to the different needs of rural and urban projects, including those serving Native American communities, and will evaluate the extent to which the sponsor meets or exceeds performance measures, outcomes, and other criteria established by the Corporation.

(3) To the maximum extent practicable, the Corporation will ensure that each evaluation is conducted by a review team made up of trained individuals who are knowledgeable about RSVP, including current or former employees of the Corporation and representatives of communities served by RSVP volunteers, who will provide their input and opinions concerning each grant.

(4) The Corporation will use the evaluation findings as the basis for providing recommendations for program improvement, and for the provision of training and technical assistance.

(5) The evaluation will assess:

(i) The project's strengths and areas in need of improvement;

(ii) Whether the project has adequately addressed population and community-wide needs;

(iii) The efforts of the project to collaborate with other community-based organizations, units of government, and entities providing services to seniors, taking into account barriers to such collaboration that such program may encounter;

(iv) The project's compliance with the program requirements for the appropriate use of Federal funds as embodied in a a protocol for fiscal management;

(v) To what extent the project is in conformity with the eligibility, outreach, enrollment, and other requirements for RSVP projects; and

(vi) The extent to which the project is achieving other measures of performance developed by the Corporation, in consultation with the review team.

6. Add a new subpart J to read as follows:

Subpart J—Performance Measurement

Sec.
2553.100 What is the purpose of this subpart?
2553.101 What is the purpose of performance measurement?
2553.102 What performance measurement information must be part of an application for funding under RSVP?
2553.103 Who develops the performance measures?
2553.104 What performance measures must be submitted to the Corporation and how are these submitted?
2553.105 How are performance measures approved and documented?
2553.106 How does a sponsor report performance measures to the Corporation?
2553.107 What must a sponsor do if it cannot meet its performance measures?
2553.108 When may a sponsor change a project's performance measures?
2553.109 What happens if a sponsor fails to meet the performance measures included in the Notice of Grant Award (NGA)?

Subpart J—Performance Measurement

§ 2553.100 What is the purpose of this subpart?

This subpart sets forth the minimum performance measurement requirements for Corporation-funded Retired and Senior Volunteer Program (RSVP) projects. This subpart does not apply to Non-Corporation-funded RSVP projects as discussed in Subpart K.

§ 2553.101 What is the purpose of performance measurement?

The purpose of performance measurement is to strengthen the RSVP project and foster continuous improvement. Reporting on performance measures is used by the Corporation as part of assessing the impact of the project on the community and on the accomplishment of the objectives established in the

Corporation's Strategic Plan. In addition, as part of the competitive process, performance measures are used to assess how an applicant for a grant approaches the design of volunteer activities and the measurement of their impact on community needs.

§ 2553.102 What performance measurement information must be part of an application for funding under RSVP?

An application to the Corporation for funding under RSVP must contain:

(a) Performance measures.

(b) Estimated performance data for the project years covered by the application.

(c) Actual performance data, where available, for the preceding completed project year.

§ 2553.103 Who develops the performance measures?

(a) An applicant is responsible for developing its own project-specific performance measures.

(b) In addition, the Corporation may establish performance measures that will apply to all Corporation-sponsored RSVP projects, which sponsors will be responsible for meeting.

§ 2553.104 What performance measures must be submitted to the Corporation and how are these submitted?

(a) An applicant for Corporation funds is required to submit at least one of each of the following types of performance measures as part of their application. The Corporation will provide standard forms.

(1) Output indicators.

(2) Outcome indicators.

(b) An applicant must also submit any uniform performance measures the Corporation may establish for all applications.

(c) The Corporation may specify additional requirements relating to performance measures on an annual basis in program guidance and related materials.

§ 2553.105 How are performance measures approved and documented?

(a) The Corporation reviews and approves performance measures for all applicants that apply for funding from the Corporation.

(b) An applicant must follow Corporation-provided guidance and formats provided when submitting performance measures.

(c) Final performance measures, as negotiated between the applicant and the Corporation, will be documented in the Notice of Grant Award (NGA).

§ 2553.106 How does a sponsor report performance measures to the Corporation?

(a) The Corporation will set specific reporting requirements, including frequency and deadlines, concerning performance measures established in the grant award. A sponsor is required to report on the actual results that occurred when implementing the grant and to regularly measure the project's performance.

(b) At a minimum, a sponsor is required to report on outputs at the end of year one and outputs and outcomes at the end of years two and three. A sponsor may choose to exceed these minimum requirements and report results earlier.

§ 2553.107 What must a sponsor do if it cannot meet its performance measures?

Whenever a sponsor finds it is not on track to meet its performance measures, it must develop a plan to get back on track or submit a request to the Corporation to amend its performance measures. The request must include all of the following:

(a) Why the project is not on track to meet its performance requirements;

(b) How the project has been tracking performance measures;

(c) Evidence of corrective steps taken;

(d) Any new proposed performance measures; and

(e) A plan to ensure that the project will meet the new proposed measure(s).

§ 2553.108 When may a sponsor change a project's performance measures?

Performance measures may be changed only if the Corporation approves the sponsor's request to do so.

§ 2553.109 What happens if a sponsor fails to meet the performance measures included in the Notice of Grant Award (NGA)?

If a sponsor fails to meet a target performance measure established in the NGA, the Corporation will negotiate a period of no more than one year for meeting the performance measure. At that point, if the sponsor still fails to meet the performance measure, the Corporation may take one or more of the following actions:

(a) Reduce the amount of the grant;

(b) Suspend, terminate, or deny refunding of the grant, in accordance with the provisions of § 2553.31 of this part;

(c) Take this information into account in assessing any application from the organization for a new grant or augmentation of an existing grant under any program administered by the Corporation;

(d) Amend the terms of any Corporation grant to the organization; or

(e) Take other actions that the Corporation deems appropriate.

Dated: October 20, 2010.

Wilsie Y. Minor,

Acting General Counsel.

[FR Doc. 2010–26960 Filed 10–25–10; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

[Docket No. FWS–R9–MB–2010–0082; 91200–1231–9BPP–L2]

RIN 1018–AX30

Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2011 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) proposes migratory bird subsistence harvest regulations in Alaska for the 2011 season. These regulations will enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. This rulemaking proposes region-specific regulations that go into effect on April 2, 2011, and expire on August 31, 2011.

DATES: We will accept comments received or postmarked on or before December 27, 2010. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by December 10, 2010.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R9–MB–2010–0082.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R9–MB–2010–0082; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://*

www.regulations.gov. This generally means that we will post any personal information you provide us (*see* the Public Comment Procedures section below for more information).

FOR FURTHER INFORMATION CONTACT: Fred Armstrong, (907) 786–3887, or Donna Dewhurst, (907) 786–3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

To ensure that any final action resulting from this proposed rule will be as accurate and as effective as possible, we request that you send relevant information for our consideration. The comments that will be most useful and likely to influence our decisions are those that you support by quantitative information or studies and those that include citations to, and analyses of, the applicable laws and regulations. Please make your comments as specific as possible and explain the basis for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

You must submit your comments and materials concerning this proposed rule by one of the methods listed above in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in **ADDRESSES**. If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information, such as your address, telephone number, or e-mail address—will be posted on the Web site. Please note that comments submitted to this Web site are not immediately viewable. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission.

If you mail or hand-carry a hardcopy comment directly to us that includes personal information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. To ensure that the electronic docket for this rulemaking is complete and all comments we receive are publicly available, we will post all hardcopy comments on *http://www.regulations.gov.*

In addition, comments and materials we receive, as well as supporting documentation used in preparing this proposed rule, will be available for public inspection in two ways:

(1) You can view them on *http://www.regulations.gov.* In the Enter Keyword or ID box, enter FWS–R9–MB–2010–0082, which is the docket number for this rulemaking.

(2) You can make an appointment, during normal business hours, to view the comments and materials in person at the Division of Migratory Bird Management, U.S. Fish and Wildlife Service; 4501 N. Fairfax Drive, Room 4107, Arlington, VA 22203–1610.

Public Availability of Comments

As stated above in more detail, 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.

Why is this rulemaking necessary?

This rulemaking is necessary because, by law, the migratory bird harvest season is closed unless opened by the Secretary of the Interior, and the regulations governing subsistence harvest of migratory birds in Alaska are subject to public review and annual approval. This rule proposes regulations for the taking of migratory birds for subsistence uses in Alaska during the spring and summer of 2011. This rule proposes a list of migratory bird season openings and closures in Alaska by region.

How do I find the history of these regulations?

Background information, including past events leading to this rulemaking, accomplishments since the Migratory Bird Treaties with Canada and Mexico were amended, and a history addressing conservation issues can be found in the following **Federal Register** documents:

Date	**Federal Register** Citation
August 16, 2002	67 FR 53511
July 21, 2003	68 FR 43010
April 2, 2004	69 FR 17318
April 8, 2005	70 FR 18244
February 28, 2006	71 FR 10404
April 11, 2007	72 FR 18318
March 14, 2008	73 FR 13788
May 19, 2009	74 FR 23336
April 13, 2010	75 FR 18764

These documents, which are all final rules setting forth the annual harvest regulations, are available at *http://alaska.fws.gov/ambcc/regulations.htm.*

What is the process for issuing regulations for the subsistence harvest of migratory birds in Alaska?

The U.S. Fish and Wildlife Service (Service or we) proposes migratory bird subsistence harvest regulations in Alaska for the 2011 season. These regulations enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives.

We opened the process to establish regulations for the 2011 spring and summer subsistence harvest of migratory birds in Alaska in a proposed rule published in the **Federal Register** on June 10, 2010 (75 FR 32872). While that proposed rule dealt primarily with the regulatory process for hunting migratory birds for all purposes throughout the United States, we also discussed the background and history of Alaska subsistence regulations, explained the annual process for their establishment, and requested proposals for the 2011 season. The rulemaking processes for both types of migratory bird harvest are related, and the June 10, 2010 proposed rule explained the connection between the two.

The Alaska Migratory Bird Co-management Council (Co-management Council) held a meeting in April 2010 to develop recommendations for changes that would take effect during the 2011 harvest season. These recommendations were presented first to the Flyway Councils and then to the Service Regulations Committee at the committee's meeting on July 28 and 29, 2010.

Who is eligible to hunt under these regulations?

Eligibility to harvest under the regulations established in 2003 was limited to permanent residents, regardless of race, in villages located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, and in areas north and west of the Alaska Range (50 CFR 92.5). These geographical restrictions opened the initial subsistence migratory bird harvest to about 13 percent of Alaska residents. High populated areas such as Anchorage, the Matanuska-Susitna and Fairbanks North Star boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, and Southeast

Alaska were excluded from eligible subsistence harvest areas.

Based on petitions requesting inclusion in the harvest, in 2004, we added 13 additional communities based on criteria set forth in 50 CFR 92.5(c). These communities were Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, Chistochina, Tatitlek, Chenega, Port Graham, Nanwalek, Tyonek, and Hoonah, with a combined population of 2,766. In 2005, we added three additional communities for glaucous-winged gull egg gathering only, based on petitions requesting inclusion. These southeastern communities were Craig, Hydaburg, and Yakutat, with a combined population of 2,459.

In 2007, we enacted the Alaska Department of Fish and Game's request to expand the Fairbanks North Star Borough excluded area to include the Central Interior area. This action excluded the following communities from participation in this harvest: Big Delta/Fort Greely, Healy, McKinley Park/Village, and Ferry, with a combined population of 2,812. These removed communities reduced the percentage of the State population included in the subsistence harvest to 13 percent.

How will the service ensure that the subsistence harvest will not raise overall migratory bird harvest or threaten the conservation of endangered and threatened species?

We have monitored subsistence harvest for the past 25 years through the use of annual household surveys in the most heavily used subsistence harvest areas, such as the Yukon–Kuskokwim Delta. In recent years, more intensive surveys combined with outreach efforts focused on species identification have been added to improve the accuracy of information gathered from regions still reporting some subsistence harvest of listed or candidate species.

Spectacled and Steller's Eiders

Spectacled eiders *(Somateria fischeri)* and the Alaska-breeding population of Steller's eiders *(Polysticta stelleri)* are listed as threatened species; their migration and breeding distribution overlap with where the spring and summer subsistence migratory bird hunt is open in Alaska. Both species are closed to hunting, although harvest surveys and Service documentation indicate both species have been taken in several regions of Alaska.

The Service has dual goals and responsibilities for authorizing a subsistence harvest while protecting migratory birds and threatened species. Although these goals continue to be challenging, they are not irreconcilable, providing sufficient recognition is given to the need to protect threatened species, measures to remedy documented threats are implemented, and the subsistence community and other conservation partners commit to working together. With these dual goals in mind, the Service, working with partners, developed measures in 2009 to further reduce the potential for shooting mortality or injury of closed species. These conservation measures included: (1) Increased waterfowl hunter outreach and community awareness partnering with the North Slope Migratory Bird Task Force; (2) continued enforcement of the migratory bird regulations that are protective of listed eiders; and (3) in-season Service verification of the harvest to detect Steller's eider mortality.

This proposed rule continues to focus on the North Slope from Barrow through Point Hope because Steller's eiders from the listed Alaska breeding population, are known to breed and migrate there. The proposed regulations address several ongoing eider management needs by continuing to restrict hunting to times of day with sufficient daylight to improve a hunter's ability to distinguish between species and minimize shooting species closed for harvest; clarifying for subsistence users that Service law enforcement personnel have authority to verify species of birds possessed by hunters; clarifying that it is illegal to possess any bird closed to harvest; and describing how the Service's existing authority of emergency closure would be implemented, if necessary, to protect Steller's eiders. These proposed regulations, implemented in accordance with the Endangered Species Act consultation, are considered the principal means by which the threat from shooting mortality of threatened eiders will be reduced. In addition, the emergency closure authority provides another level of assurance if an unexpected amount of Steller's eider shooting mortality occurs (50 CFR 92.21 and 50 CFR 92.32).

In-season harvest monitoring information will be used to independently evaluate harvest survey reports, as well as evaluate the efficacy of regulations, conservation measures, and outreach efforts. On the North Slope in 2009 and 2010, no Steller's eider harvest was reported, and no Steller's eiders were found shot during in-season verification of the subsistence harvest. However, 2009 was a non-nesting year for Steller's eiders on the North Slope, and in 2010, only one active nest was found in the Barrow area. Based on these relative successes, the Service will continue the same regulations for the 2011 season. The 2010 conservation measures will also be continued, although there will be some modification of the amount of effort and emphasis each will receive. Specifically, as local communities develop greater responsibility for taking actions to ensure Steller's and spectacled eider conservation and recovery, and hunters demonstrate greater compliance with hunting regulations, the Service's Office of Law Enforcement plans to continue to monitor the threat of unlawful harvest of eiders on the North Slope and maintain a presence in Barrow as needed.

The longstanding general emergency closure provision at 50 CFR 92.21 specifies that the harvest may be closed or temporarily suspended upon finding that a continuation of the regulation allowing the harvest would pose an imminent threat to the conservation of any migratory bird population. With regard to Steller's eiders, the regulation at 50 CFR 92.32, carried over from the past two years, would clarify that we will take action under 50 CFR 92.21 as is necessary to prevent further take of Steller's eiders, and that action could include temporary or long-term closures of the harvest in all or a portion of the geographic area open to harvest. If mortality of threatened eiders occurs, we will evaluate each mortality event by criteria such as cause, quantity, sex, age, location, and date. We will consult with the Co-management Council when we are considering an emergency closure. If we determine that an emergency closure is necessary, we will design it to minimize its impact on the subsistence harvest.

Yellow-Billed Loon and Kittlitz's Murrelet

Yellow-billed loon (*Gavia adamsii*) and Kittlitz's murrelet (*Brachyramphus brevirostris)* are listed as candidate species for listing under the Endangered Species Act of 1973, as emended (16 U.S.C. 1531 *et seq.*). Their migration and breeding distribution overlaps with where the spring and summer migratory bird hunt is open in Alaska. Both species are closed to hunting, and there is no evidence Kittlitz's murrelets are harvested. On the other hand, harvest surveys have indicated that harvest of yellow-billed loons on the North Slope and St. Lawrence Island does occur. Most of the yellow-billed loons reported harvested on the North Slope were found to be entangled loons salvaged from subsistence fishing nets as described below. The Service will

continue outreach efforts in both areas in 2011, engaging partners to improve harvest estimates and decrease take of yellow-billed loons.

Consistent with the request of the North Slope Borough Fish and Game Management Committee and the recommendation of the Co-management Council, this proposed rule would continue into 2011 the provisions originally established in 2005 to allow subsistence use of yellow-billed loons (*Gavia adamsii*) inadvertently entangled in subsistence fishing (gill) nets on the North Slope. Yellow-billed loons are culturally important for the Inupiat Eskimo of the North Slope for use in traditional dance regalia. A maximum of 20 yellow-billed loons may be caught in 2011 under this provision. This provision does not authorize intentional harvest of yellow-billed loons, but allows use of those loons inadvertently entangled during normal subsistence fishing activities. Service support of this proposal is contingent upon the North Slope Region representative collaborating with the Service and Co-management Council to design and implement a scientifically defensible survey to estimate entanglement of yellow-billed loons by North Slope subsistence fishers starting in 2011. Additional information is needed relative to species and number entangled in subsistence nets, distribution of harvest across the North Slope Region, age of birds entangled (*adult* vs. *young-of-year*), and time of harvest. These data will allow the Service to better assess the potential effects of harvest on this species. Currently, individual reporting to the North Slope Borough Department of Wildlife is required by the end of each season. In 2009, two yellow-billed loons were reported entangled and found dead in fishing nets, while two others were released from fishing nets by the North Slope Borough staff.

Endangered Species Act Consideration

Prior to issuance of annual spring and summer subsistence regulations, we will consult under section 7 of the Endangered Species Act of 1973, as amended (Act), to ensure that the 2011 subsistence harvest is not likely to jeopardize the continued existence of any species designated as endangered or threatened, or modify or destroy its critical habitats, and that the regulations are consistent with conservation programs for those species. Consultation under section 7 of the Act for the annual subsistence take regulations may cause us to change these regulations. Our biological opinion resulting from the section 7 consultation is a public document available from either person listed under **FOR FURTHER INFORMATION CONTACT**.

What is different in the region-specific regulations for 2011?

We are proposing no changes from the 2010 region-specific regulations.

Statutory Authority

We derive our authority to issue these regulations from the Migratory Bird Treaty Act of 1918, 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with the treaties with Canada, Mexico, Japan, and Russia, to "issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds."

Required Determinations

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. The rule legalizes a pre-existing subsistence activity, and the resources harvested will be consumed by the harvesters or persons within their local community.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, *etc.*

Small Business Regulatory Enforcement Fairness Act

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

(a) Will not have an annual effect on the economy of $100 million or more. It will legalize and regulate a traditional subsistence activity. It will not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns. The commodities being regulated under this rule are migratory birds. This rule deals with legalizing the subsistence harvest of migratory birds and, as such, does not involve commodities traded in the marketplace. A small economic benefit from this rule derives from the sale of equipment and ammunition to carry out subsistence hunting. Most, if not all, businesses that sell hunting equipment in rural Alaska would qualify as small businesses. We have no reason to believe that this rule will lead to a disproportionate distribution of benefits.

(b) Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This rule does not deal with traded commodities and, therefore, does not have an impact on prices for consumers.

(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. This rule deals with the harvesting of wildlife for personal consumption. It does not regulate the marketplace in any way to generate effects on the economy or the ability of businesses to compete.

Unfunded Mandates Reform Act

We have determined and certified under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required. Participation on regional management bodies and the Co-management Council will require travel expenses for some Alaska Native organizations and local governments. In addition, they will assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than $300,000 per year. In a Notice of Decision (65 FR 16405; March 28, 2000), we identified 12 partner organizations (Alaska Native nonprofits and local governments) to administer the regional programs. The Alaska Department of Fish and Game will also incur expenses for travel to Co-management Council and regional management body meetings. In addition, the State of Alaska will be required to provide technical staff support to each of the regional management bodies and to the Co-management Council. Expenses for the State's involvement may exceed $100,000 per year, but should not exceed $150,000 per year. When funding permits, we make annual grant agreements available to the partner organizations and the Alaska Department of Fish and Game to help offset their expenses.

Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, this rule does not have significant takings implications. This rule is not specific to particular land ownership, but applies to the harvesting of migratory bird resources throughout Alaska. 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 Assessment. We discuss effects of this rule on the State of Alaska in the Unfunded Mandates Reform Act section above. We worked with the State of Alaska to develop these regulations. Therefore, a Federalism Assessment is not required.

Civil Justice Reform (Executive Order 12988)

The Department, in promulgating this rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Government-to-Government Relations With Native American Tribal Governments

Because eligibility to hunt under these regulations is not limited to tribal members, but rather extends to all indigenous inhabitants of the subsistence harvest areas, we are not required to engage in formal consultation with tribes. However, in keeping with the spirit of the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), and Executive Order 13175 (65 FR 67249; November 6, 2000), concerning consultation and coordination with Indian Tribal Governments, we conducted meetings with the affected tribes and tribal nonprofit organizations to discuss the changes in the regulations and determine possible effects on tribes or trust resources, and have determined that there are no significant effects. The rule will legally recognize the subsistence harvest of migratory birds and their eggs for indigenous inhabitants including tribal members.

In 1998, we began a public involvement process to determine how to structure management bodies in order to provide the most effective and efficient involvement of subsistence users. We began by publishing in the **Federal Register** stating that we intended to establish management bodies to implement the spring and summer subsistence harvest (63 FR 49707, September 17, 1998). We held meetings with the Alaska Department of Fish and Game and the Native Migratory Bird Working Group to provide information regarding the amended treaties and to listen to the needs of subsistence users. The Native Migratory Bird Working Group was a consortium of Alaska Natives formed by the Rural Alaska Community Action Program to represent Alaska Native subsistence hunters of migratory birds during the treaty negotiations. We held forums in Nome, Kotzebue, Fort Yukon, Allakaket, Naknek, Bethel, Dillingham, Barrow, and Copper Center. We led additional briefings and discussions at the annual meeting of the Association of Village Council Presidents in Hooper Bay and for the Central Council of Tlingit & Haida Indian Tribes in Juneau.

On March 28, 2000, we published in the **Federal Register** (65 FR 16405) a Notice of Decision entitled, "Establishment of Management Bodies in Alaska To Develop Recommendations Related to the Spring/Summer Subsistence Harvest of Migratory Birds." This notice described the way in which management bodies would be established and organized. Based on the wide range of views expressed on the options document, the decision incorporated key aspects of two of the modules. The decision established one Statewide management body consisting of 1 Federal member, 1 State member, and 7–12 Alaska Native members, with all components serving as equals.

Paperwork Reduction Act

This rule has been examined under the Paperwork Reduction Act of 1995 and does not contain any new collections of information that require Office of Management and Budget approval. OMB has approved our collection of information associated with the voluntary annual household surveys used to determine levels of subsistence take. The OMB control number is 1018–0124, which expires April 30, 2013. 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.

National Environmental Policy Act Consideration

The annual regulations and options were considered in the environmental assessment, "Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the 2011 Spring/Summer Harvest," October 18, 2010. Copies are available from the person listed under **FOR FURTHER INFORMATION CONTACT** or at *http://www.regulations.gov.*

Energy Supply, Distribution, or Use (Executive Order 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This is not a significant regulatory action under this Executive Order; it would allow only for traditional subsistence harvest and would improve conservation of migratory birds by allowing effective

regulation of this harvest. Further, this rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action under Executive Order 13211, and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 92

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Subsistence, Treaties, Wildlife.

For the reasons set out in the preamble, we propose to amend title 50, chapter I, subchapter G, of the Code of Federal Regulations as follows:

PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA

1. The authority citation for part 92 continues to read as follows:

Authority: 16 U.S.C. 703–712.

Subpart D—Annual Regulations Governing Subsistence Harvest

2. In subpart D, add § 92.31 to read as follows:

§ 92.31 Region-specific regulations.

The 2011 season dates for the eligible subsistence harvest areas are as follows:

(a) *Aleutian/Pribilof Islands Region.*

(1) Northern Unit (Pribilof Islands):

(i) Season: April 2–June 30.

(ii) Closure: July 1–August 31.

(2) Central Unit (Aleut Region's eastern boundary on the Alaska Peninsula westward to and including Unalaska Island):

(i) Season: April 2–June 15 and July 16–August 31.

(ii) Closure: June 16–July 15.

(iii) Special Black Brant Season Closure: August 16–August 31, only in Izembek and Moffet lagoons.

(iv) Special Tundra Swan Closure: All hunting and egg gathering closed in units 9(D) and 10.

(3) Western Unit (Umnak Island west to and including Attu Island):

(i) Season: April 2–July 15 and August 16–August 31.

(ii) Closure: July 16–August 15.

(b) *Yukon/Kuskokwim Delta Region.*

(1) Season: April 2–August 31.

(2) Closure: 30-day closure dates to be announced by the Service's Alaska Regional Director or his designee, after consultation with local subsistence users, field biologists, and the Association of Village Council President's Waterfowl Conservation Committee. This 30-day period will occur between June 1 and August 15 of each year. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations and posted in village post offices and stores.

(3) Special Black Brant and Cackling Goose Season Hunting Closure: From the period when egg laying begins until young birds are fledged. Closure dates to be announced by the Service's Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council President's Waterfowl Conservation Committee. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations and posted in village post offices and stores.

(c) *Bristol Bay Region.*

(1) Season: April 2–June 14 and July 16–August 31 (general season); April 2–July 15 for seabird egg gathering only.

(2) Closure: June 15–July 15 (general season); July 16–August 31 (seabird egg gathering).

(d) *Bering Strait/Norton Sound Region.*

(1) Stebbins/St. Michael Area (Point Romanof to Canal Point):

(i) Season: April 15–June 14 and July 16–August 31.

(ii) Closure: June 15–July 15.

(2) Remainder of the region:

(i) Season: April 2–June 14 and July 16–August 31 for waterfowl; April 2–July 19 and August 21–August 31 for all other birds.

(ii) Closure: June 15–July 15 for waterfowl; July 20–August 20 for all other birds.

(e) *Kodiak Archipelago Region,* except for the Kodiak Island roaded area, which is closed to the harvesting of migratory birds and their eggs. The closed area consists of all lands and waters (including exposed tidelands) east of a line extending from Crag Point in the north to the west end of Saltery Cove in the south and all lands and water south of a line extending from Termination Point along the north side of Cascade Lake extending to Anton Larson Bay. Waters adjacent to the closed area are closed to harvest within 500 feet from the water's edge. The offshore islands are open to harvest.

(1) Season: April 2–June 30 and July 31–August 31 for seabirds; April 2–June 20 and July 22–August 31 for all other birds.

(2) Closure: July 1–July 30 for seabirds; June 21–July 21 for all other birds.

(f) *Northwest Arctic Region.*

(1) Season: April 2–June 9 and August 15–August 31 (hunting in general); waterfowl egg gathering May 20–June 9 only; seabird egg gathering May 20–July 12 only; hunting molting/non-nesting waterfowl July 1–July 31 only.

(2) Closure: June 10–August 14, except for the taking of seabird eggs and molting/non-nesting waterfowl as provided in paragraph (f)(1) of this section.

(g) *North Slope Region.*

(1) Southern Unit (Southwestern North Slope regional boundary east to Peard Bay, everything west of the longitude line 158°30′ W and south of the latitude line 70°45′ N to the west bank of the Ikpikpuk River, and everything south of the latitude line 69°45′ N between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 2–June 29 and July 30–August 31 for seabirds; April 2–June 19 and July 20–August 31 for all other birds.

(ii) Closure: June 30–July 29 for seabirds; June 20–July 19 for all other birds.

(iii) Special Black Brant Hunting Opening: From June 20–July 5. The open area would consist of the coastline, from mean high water line outward to include open water, from Nokotlek Point east to longitude line 158°30′ W. This includes Peard Bay, Kugrua Bay, and Wainwright Inlet, but not the Kuk and Kugrua river drainages.

(2) Northern Unit (At Peard Bay, everything east of the longitude line 158°30′ W and north of the latitude line 70°45′ N to west bank of the Ikpikpuk River, and everything north of the latitude line 69°45′ N between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 6–June 6 and July 7–August 31 for king and common eiders; April 2–June 15 and July 16–August 31 for all other birds.

(ii) Closure: June 7–July 6 for king and common eiders; June 16–July 15 for all other birds.

(3) Eastern Unit (East of eastern bank of the Sagavanirktok River):

(i) Season: April 2–June 19 and July 20–August 31.

(ii) Closure: June 20–July 19.

(4) All Units: yellow-billed loons. Annually, up to 20 yellow-billed loons total for the region may be inadvertently entangled in subsistence fishing nets in the North Slope Region and kept for subsistence use.

(5) North Coastal Zone (Cape Thompson north to Point Hope and east along the Arctic Ocean coastline around Point Barrow to Ross Point, including Iko Bay, and 5 miles inland).

(i) Migratory bird hunting is permitted from one-half hour before sunrise until sunset, during August.

(ii) No person may at any time, by any means, or in any manner, possess or have in custody any migratory bird or part thereof, taken in violation of subpart C and D of this part.

(iii) Upon request from a Service law enforcement officer, hunters taking,

attempting to take, or transporting migratory birds taken during the subsistence harvest season must present them to the officer for species identification.

(h) *Interior Region.*

(1) Season: April 2–June 14 and July 16–August 31; egg gathering May 1–June 14 only.

(2) Closure: June 15–July 15.

(i) *Upper Copper River Region* (Harvest Area: Units 11 and 13) (Eligible communities: Gulkana, Chitina, Tazlina, Copper Center, Gakona, Mentasta Lake, Chistochina and Cantwell).

(1) Season: April 15–May 26 and June 27–August 31.

(2) Closure: May 27–June 26.

(3) The Copper River Basin communities listed above also documented traditional use harvesting birds in Unit 12, making them eligible to hunt in this unit using the seasons specified in paragraph (h) of this section.

(j) *Gulf of Alaska Region.*

(1) Prince William Sound Area (Harvest area: Unit 6 [D]), (Eligible Chugach communities: Chenega Bay, Tatitlek).

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(2) Kachemak Bay Area (Harvest area: Unit 15[C] South of a line connecting the tip of Homer Spit to the mouth of Fox River) (Eligible Chugach Communities: Port Graham, Nanwalek).

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(k) *Cook Inlet* (Harvest area: portions of Unit 16[B] as specified below) (Eligible communities: Tyonek only).

(1) Season: April 2–May 31—That portion of Unit 16(B) south of the Skwentna River and west of the Yentna River, and August 1–31—That portion of Unit 16(B) south of the Beluga River, Beluga Lake, and the Triumvirate Glacier.

(2) Closure: June 1–July 31.

(l) *Southeast Alaska.*

(1) Community of Hoonah (Harvest area: National Forest lands in Icy Strait and Cross Sound, including Middle Pass Rock near the Inian Islands, Table Rock in Cross Sound, and other traditional locations on the coast of Yakobi Island. The land and waters of Glacier Bay National Park remain closed to all subsistence harvesting (50 CFR Part 100.3(a)).

(i) Season: glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(2) Communities of Craig and Hydaburg (Harvest area: small islands and adjacent shoreline of western Prince of Wales Island from Point Baker to Cape Chacon, but also including Coronation and Warren islands).

(i) Season: glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(3) Community of Yakutat (Harvest area: Icy Bay (Icy Cape to Point Riou), and coastal lands and islands bordering the Gulf of Alaska from Point Manby southeast to Dry Bay).

(i) Season: glaucous-winged gull egg gathering: May 15–June 30.

(ii) Closure: July 1–August 31.

3. In subpart D, add § 92.32 to read as follows:

§ 92.32 Emergency regulations to protect Steller's eiders.

Upon finding that continuation of these subsistence regulations would pose an imminent threat to the conservation of threatened Steller's eiders *(Polysticta stelleri),* the U.S. Fish and Wildlife Service Alaska Regional Director, in consultation with the Co-management Council, will immediately under § 92.21 take action as is necessary to prevent further take. Regulation changes implemented could range from a temporary closure of duck hunting in a small geographic area to large-scale regional or State-wide long-term closures of all subsistence migratory bird hunting. These closures or temporary suspensions will remain in effect until the Regional Director, in consultation with the Co-management Council, determines that the potential for additional Steller's eiders to be taken no longer exists.

Dated: October 7, 2010.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–27016 Filed 10–25–10; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 75, No. 206

Tuesday, October 26, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

EXECUTIVE OFFICE OF THE PRESIDENT

National Commission on Fiscal Responsibility and Reform

NCFRR Meeting Change From November 10 to November 30

ACTION: Notice of meeting schedule change.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Commission on Fiscal Responsibility and Reform, authorized by Executive Order 13531, dated February 18, 2010, announces the following change to its 2010 meeting schedule:

Date Change: The meeting originally scheduled for Wednesday, November 10, originally announced in the **Federal Register** on Tuesday, May 11, 75 FR 26185, DOCID fr11my10–37, will now be held on Tuesday, November 30. Below is the Commission's meeting schedule for the remainder of the calendar year:

Time and Date: Tuesday, November 30, 9:30 a.m.–12:30 p.m. EST.

Wednesday, December 1, 9:30 a.m.–12:30 p.m. EST.

Place: The meetings will be held in Washington, DC at locations to be determined and announced. The meeting address will be made publicly available approximately two weeks prior to each meeting on the Commission's Web site at *http://www.fiscalcommission.gov.*

Public Access: The meetings will be open to the public, but seating will be limited by the space available on a first come, first served basis.

Purpose: This notice announces changes to the remaining meeting schedule of the National Commission on Fiscal Responsibility and Reform (Commission). At these meetings the Commission will discuss the Nation's long-term fiscal challenges. A more complete agenda and any meeting materials will be made publicly available prior to each meeting at *http://www.fiscalcommission.gov.* Also, each meeting will be available via simultaneous Web cast at *http://www.whitehouse.gov/live.*

Contact Person for Additional Information: Please contact Conor McKay for any additional information about a specific meeting at 202–233–3000, or by e-mail at *cmckay@fc.eop.gov.*

Public Comment: If you would like to submit written comments for distribution prior to the meeting, your comments should be received by the Commission no later than 10 days prior to the meeting concerned. The preferred written comment format is MS Word submitted to *commission@fc.eop.gov.*

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, please inform the DFO at *cmckay@fc.eop.gov* as soon as possible.

Dated: October 22, 2010.

Conor McKay,

Chief of Staff of the Commission.

[FR Doc. 2010–27184 Filed 10–25–10; 8:45 am]

BILLING CODE 3160–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 21, 2010.

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.

Farm Service Agency

Title: Application for Payment of Amounts Due Persons Who Have Died, Disappeared or Declared Incompetent.

OMB Control Number: 0560–0026.

Summary of Collection: Representatives or survivors of producers who die, disappear, or are declared incompetent must be afforded a method of obtaining any payment intended for the producer. 7 CFR part 707 provides that form, FSA–325, be used as the form of application for person desiring to claim such payments. It is necessary to collect information recorded on FSA–325 in order to determine whether representatives or survivors of a producer are entitled to receive payments earned by a producer who dies, disappears, or is declared incompetent before receiving the payments due.

Need and Use of the Information: FSA will collect information to determine if the survivors have rights to the existing payments or to the unpaid portions of the producer's payments. Survivors must show proof of death, disappearance, or incompetency.

Description of Respondents: Individuals or households.

Number of Respondents: 2,000.

Frequency of Responses: Reporting: Other (when necessary).

Total Burden Hours: 3,000.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–27065 Filed 10–25–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Information Collection for Determining Eligibility for Free and Reduced Price Meals

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed information collection for determining eligibility for free and reduced price meals and free milk in schools. 7 CFR part 245 contains information on Federal requirements regarding the determination and verification of eligibility for free and reduced price meals. The current approval for the information collection burden associated with 7 CFR part 245, OMB Number 0584–0026, expires on March 31, 2013. This proposed collection is a revision of the currently approved collection.

DATES: Written comments must be submitted by December 27, 2010.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) 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; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of 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.

Comments may be sent to: Lynn Rodgers-Kuperman, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 638, Alexandria, Virginia 22302. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically. All written comment(s) will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Lynn Rodgers-Kuperman at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Title: Determining Eligibility for Free and Reduced Price Meals.

OMB Number: 0584–0026.

Expiration Date: March 31, 2013.

Type of Request: Revision of a currently approved collection.

Abstract: The Richard B. Russell National School Lunch Act, authorizes the National School Lunch Program. All schools participating in the National School Lunch Program, OMB Number 0584–0006, Expiration May 31, 2012, or School Breakfast Program, OMB Number 0584–0012, Expiration May 31, 2012, must make free and reduced price meals available to eligible children, and all schools and institutions participating in the free milk option of the School Milk Program must make free milk available for eligible children. Pursuant to 7 CFR Part 245, Determining Eligibility for Free and Reduced Price Meals, and Free milk in schools, School Food Authorities to report information related to verification activities to State agencies annually using Form FNS—742. This information collection asks for information about eligibility for free and reduced price meals and verification procedures employed by participating schools. The purpose of this submission to OMB is to obtain approval for the revised information collection burden resulting from minor changes to the Form FNS–742 report. This minor change will result in an increase in the annual reporting burden for the Form FNS–742, from 10,429 hours to 12,167 hours, which is a total increase of 1,738 hours. However, there are no changes in record keeping burden.

Respondents: The respondents are School Food Authorities.

Estimated Number of Respondents: 20,858 SFAs.

Estimated Responses per Respondent: 1.

Estimate Total Annual Responses: 20,858.

Estimated Hours per Response: .5833.

Estimated Annual Burden Hours: 12,167.

See the table below for change in estimated annual burden using FNS—742.

Respondent	Estimated number respondent	Responses annually per respondent	Total annual responses (Col. bxc)	Estimated avg. number of hours per response	Estimated total hours (Col. dxe)
School Food Authorities	20,858	1.00	20,858	0.5833	12,167
Total Reporting Burden	20,858		20,858		12,167

Dated: October 14, 2010.

Julia Paradis,

Administrator.

[FR Doc. 2010–27061 Filed 10–25–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Flathead National Forest—Swan Lake Ranger District, Montana; Wild Cramer Forest Health and Fuels Reduction Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) for the Wild Cramer Forest Health and Fuels Reduction Project to harvest timber, reduce hazardous forest fuels, prescribe burn, and reconstruct and construct permanent roads within the project area. The project area is approximately 10 miles southwest of Kalispell, Flathead County, Montana. The project area consists of a total of 30,727 acres, encompasses the Blacktail Mountain Ski Area and contains the following drainages: Wild Bill, Truman, Emmons, Patrick, Cramer, Bierney, and Stoner Creeks. The location of the project area is Township 26 and 27 North, and Range 21, 21½, and 22 West.

DATES: Comments concerning the scope of the analysis must be received by December 1, 2010. The draft environmental impact statement (DEIS) is expected in September 2011. No date has yet been determined for filing the final environmental impact statement (FEIS).

ADDRESSES: Send written comments to Wild Cramer Project, Swan Lake District Ranger, 200 Ranger Station Road, Bigfork, MT 59911. Comments may also be sent via e-mail to *comments-northern-flathead-swan-lake@fs.fed.us* with "Wild Cramer Project" in the subject line and must be submitted in MSWord (*.doc) or rich text format (*.rtf), or via facsimile to (406) 387–3889.

FOR FURTHER INFORMATION CONTACT: Michele Draggoo, Planning Team Leader, Hungry Horse/Glacier View Ranger District, 10 Hungry Horse Drive, P.O. Box 190340, Montana 59919, e-mail *mdraggoo@fs.fed.us*, or phone (406) 387–3827. The project description can be accessed on the Web at: *http://www.fs.fed.us/r1/flathead/nepa/nepa.*

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 Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need for the Wild Cramer Forest Health and Fuels Reduction Project is to: (1) Improve and/or maintain the general health, resiliency, and sustainability of forested stands within the project area; (2) reduce the risk of insect epidemics and severe disease infestations within the project area; (3) reduce forest fuels build-up on National Forest System lands adjacent to public and private lands within the project area; (4) provide a safer environment for the public and firefighters should a wildfire occur within the area; (5) increase the probability of stopping wildfires on National Forest System lands before they burn onto private lands; (6) provide forest products to the local timber industry, contributing to short-term timber supply and providing for long-term sustainability of timber on National Forest System lands; and (7) address forest health issues within the Blacktail Mountain Ski Area permit boundary and provide more desirable forest vegetative conditions for existing and future recreational skiing experiences.

Proposed Action

The Forest Service proposes to harvest timber through application of a variety of harvest methods, including regeneration harvest (clearcut with reserves, seed tree with reserves, and shelterwood with reserves) on 3,489 acres and intermediate harvest (commercial and non-commercial thin and sanitation) on 1,511 acres for a total commercial harvest on approximately 5,000 acres of forestland. In addition, an estimated 3,700 acres of sapling thinning and 362 acres of prescribed ecosystem burning are proposed. Use of existing and construction of temporary and permanent (specified) roads would be needed to access timber harvest areas. An estimated 13 miles of specified road and 14 miles of temporary road would be constructed, some of which will be on existing, historic templates. An additional 166 miles of existing National Forest System roads would receive either road reconstruction or pre-haul maintenance. Best Management Practices would be applied to all temporary roads constructed and roads temporarily opened, as well as all system roads used in association with this project for access and product removal. Planting conifer seedlings would also be included in this project.

Possible Alternatives

Alternative A is the No-Action Alternative in which none of the proposed activities would be implemented. Alternative B, the Proposed Action described above, was developed by the Interdisciplinary Team to respond to the purpose and need for action and to comply with the Flathead Forest Plan. At least one additional action alternative will be developed which will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values. All proposed activities are outside the boundaries of any roadless area or any areas considered for inclusion to the National Wilderness System as recommended by the Flathead National Forest Plan or by any past or present legislative wilderness proposals.

Responsible Official

The Responsible Official is Chip Weber, Forest Supervisor, Flathead National Forest, 650 Wolfpack Way, Kalispell, Montana 59901. The Forest Supervisor will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the final EIS, and applicable laws, regulations, and policies. The decision and rationale for the decision will be documented in a Record of Decision.

Nature of the Decision To Be Made

The DEIS for the Wild Cramer Forest Health and Fuels Reduction Project will evaluate site-specific issues, consider management alternatives, and analyze the potential effects of the proposed action and alternatives. The scope of the project is limited to decisions concerning activities within the project area that meet the Purpose and Need, as well as desired conditions. The DEIS will provide the Responsible Official with the information needed to decide which actions, if any, to approve. This EIS will tier to the Flathead National Forest Land and Resource Management Plan and EIS of January 1986, and its subsequent amendments, which provide overall guidance for land management activities on the Flathead National Forest.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. Public participation will be solicited by notifying in person

and/or by mail known interested and affected publics. Notification of the proposed Wild Cramer Project and request for comments will be distributed to landowners who have property within a one mile radius of the project boundary (approximately 500 entities), as well as other interested parties. A field trip is being offered as part of the scoping process. News releases will be used to give the general public notice.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: September 20, 2010.

Chip Weber,

Forest Supervisor.

[FR Doc. 2010–26998 Filed 10–25–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Nevada and Placer Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Nevada and Placer Counties Resource Advisory Committee (RAC) will meet in Auburn, California. 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 meeting is to discuss projects submitted for funding and the expenditure of Title II funds benefiting National Forest System lands in Nevada and Placer Counties.

DATES: The meeting will be held Friday, November 5, 2010 at 10 a.m.

ADDRESSES: The meeting will be held at the Placer County Water Agency office, 144 Ferguson Rd., Auburn, CA.

FOR FURTHER INFORMATION CONTACT: Ann Westling, Committee Coordinator, USDA, Tahoe National Forest, 631 Coyote St., Nevada City, CA 95959, (530) 478–6205, E-Mail: *awestling@fs.fed.us.*

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: Agenda items to be covered include: (1) Welcome and Introductions; (2) Review of RAC Operating Guidelines; (3) Discussion of Proposed Projects; (4) Vote on Proposed Projects; and (5) Comments from the Public. The meeting is open to the public and the public will have an opportunity to comment at the meeting.

Dated: October 18, 2010.

Jeanne Pinch-Tulley,

Fire Management Officer and Acting Forest Supervisor.

[FR Doc. 2010–26728 Filed 10–25–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Pike & San Isabel Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Pike & San Isabel Resource Advisory Committee will meet in Pueblo, Colorado. 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 meeting is to determine the project evaluation process and discuss proposals.

DATES: The meeting will be held on November 30, 2010, and will begin at 8 a.m.

ADDRESSES: The meeting will be held at the Supervior's Office of the Pike & San Isabel National Forests, Cimarron and Comanche National Grasslands (PSICC) at 2840 Kachina Dr., Pueblo, Colorado. Written comments should be sent to Barbara Timock, PSICC, 2840 Kachina Dr., Pueblo, CO 81008. Comments may also be sent via e-mail to *btimock@fs.fed.us,* or via facsimile to 719–553–1416.

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 PSICC, 2840 Kachina Dr., Pueblo, CO 81008. Visitors are encouraged to call ahead to 719–553–1415 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Barbara Timock, RAC coordinator, USDA, Pike & San Isabel National Forests, 2840 Kachina Dr., Pueblo, CO 81008; (719) 553–1415; E-mail *btimock@fs.fed.us.*

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: In preparation for the November 30 meeting, the PSI–RAC will convene a conference call some time 14 days prior to the meeting to cover administrative procedures. No decisions will be made during this call and the RAC will report out November 30. The November 30 meeting is open to the public. The following business will be conducted: (1) Determine project evaluation and selection process, (2) Project proposal review, (3) Project selection and recommendations, (4) Public Comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by November 20, 2010 will have the opportunity to address the Committee at those sessions.

Dated: October 20, 2010.

John F. Peterson,

Acting Forest Supervisor.

[FR Doc. 2010–27000 Filed 10–25–10; 8:45 am]

BILLING CODE 3410–11–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement ("CAFTA–DR Agreement")

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA–DR Agreement.

DATES: *Effective Date:* October 26, 2010.

SUMMARY: The Committee for the Implementation of Textile Agreements ("CITA") has determined that certain woven flannel fabric of polyester, rayon and acrylic, as specified below, is not available in commercial quantities in a timely manner in the CAFTA–DR countries. The product will be added to

the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3651.

FOR FURTHER INFORMATION ON-LINE: *http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf* under "Approved Requests," Reference number: 149.2010.09.22.Fabric.ElderManufacturingCo.

SUPPLEMENTARY INFORMATION:

Authority: The CAFTA–DR Agreement; Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act ("CAFTA–DR Implementation Act"), Pub. L. 109–53; the Statement of Administrative Action, accompanying the CAFTA–DR Implementation Act; and Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

Background

The CAFTA–DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA–DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA–DR Agreement provides that this list may be modified pursuant to Article 3.25(4)–(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. *See* Annex 3.25 of the CAFTA–DR Agreement; *see also* section 203(o)(4)(C) of the CAFTA–DR Implementation Act.

The CAFTA–DR Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA–DR Implementation Act for modifying the Annex 3.25 list. Pursuant to this authority, on September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list of products determined to be not commercially available in the territory of any Party to CAFTA–DR (Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement, 73 FR 53200) ("CITA's procedures").

On September 22, 2010, the Chairman of CITA received a Request for a Commercial Availability Determination ("Request") from Elder Manufacturing Company, Inc. for certain woven flannel fabrics of polyester, rayon, and acrylic. On September 24, 2010, in accordance with CITA's procedures, CITA notified interested parties of the Request, which was posted on the dedicated Web site for CAFTA–DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply ("Response") must be submitted by October 6, 2010, and any Rebuttal Comments to a Response ("Rebuttal") must be submitted by October 13, 2010, in accordance with Sections 6 and 7 of CITA's procedures. No interested entity submitted a Response to the Request advising CITA of its objection to the Request and its ability to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA–DR Implementation Act, and Section 8(c)(2) of CITA's procedures, as no interested entity submitted a Response objecting to the Request and demonstrating its ability to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA–DR Agreement.

The subject product has been added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated Web site for CAFTA–DR Commercial Availability proceedings.

Specifications: Certain Woven Flannel Fabric

HTS Subheading: 5515.11.0040
Fiber Content: 50% Polyester, 25% Rayon, 25% Acrylic
Yarn Size(s): 2/47 x 2/47 to 2/50 x 2/50
Thread Count (warp): 32 to 33 cm
Thread Count (weft): 25.5 to 26.5 picks/cm
Weave Type: Four harness twill
Fabric Weight: 210–225 grams per square meter
Fabric Width: 148–152 cm
Coloration: Piece dyed, then over dyed (single uniform color)
Finishing Processes: (CRF) Finish softeners, singed, semi-decated, sheared

Janet E. Heinzen,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2010–27078 Filed 10–25–10; 8:45 am]

BILLING CODE 3510–DS–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the South Dakota Advisory Committee to the Commission will convene by conference call at 1 p.m. (MT) on Wednesday, November 10, 2010. The purpose of this meeting is to provide a brief overview of recent Commission and regional activities, discuss civil rights issues in the State, receive update on subcommittee to organize a "working group" to address law enforcement issues in Mellette County. The Committee will also discuss current progress on excise taxation of members of the Sisseton-Wahpeton Oyate Tribe. This meeting is available to the public through the following toll-free call-in and conference ID numbers: 1–800–516–9896; conference ID 8334. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Evelyn Bohor of the Rocky Mountain Regional Office and TTY/TDD (303) 866–1049 by noon on November 5.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by December 10, 2010. The address is: U.S. Commission on Civil Rights, Rocky Mountain Regional Office, 999–18th Street, Suite 1380 South, Denver, CO 80202. Comments may be e-mailed to *ebohor@usccr.gov.* Records generated by this meeting may be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact

the Rocky Mountain Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, October 21, 2010.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2010–26996 Filed 10–25–10; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Native American Tribal Insignia Database

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 27, 2010.

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

- *E-mail: InformationCollection@uspto.gov.* Include "0651–0048 comment" in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Sharon Marsh, Deputy Commissioner for Trademark Examination Policy, Office of the Commissioner for Trademarks, United States Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313–1451, by telephone at 571–272–8900, or by e-mail to *Sharon.Marsh@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Trademark Law Treaty Implementation Act of 1998 (Pub. L. 105–330, § 302, 112 Stat. 3071) required the United States Patent and Trademark Office (USPTO) to study issues surrounding the protection of the official insignia of federally- and State-recognized Native American tribes under trademark law. The USPTO conducted the study and presented a report to the House and Senate Judiciary Committees on November 30, 1999. One of the recommendations made in the report was that the USPTO create and maintain an accurate and comprehensive database containing the official insignia of all federally- and State-recognized Native American tribes. In accordance with this recommendation, the Senate Committee on Appropriations directed the USPTO to create this database.

The USPTO database of official tribal insignias assists trademark attorneys in their examination of applications for trademark registration. Additionally, the database provides evidence of what a federally- or State-recognized Native American tribe considers to be its official insignia. The database serves as a reference for examining attorneys when determining the registrability of a mark that may falsely suggest a connection to the official insignia of a Native American tribe. The database is also available to the public on the USPTO Web site.

Tribes are not required to request that their official insignia be included in the database. The entry of an official insignia into the database does not confer any rights to the tribe that submitted the insignia, and entry is not the legal equivalent of registering the insignia as a trademark under 15 U.S.C. 1051 *et seq.* The inclusion of an official tribal insignia in the database does not create any legal presumption of validity or priority, does not carry any of the benefits of Federal trademark registration, and is not a determination as to whether a particular insignia would be refused registration as a trademark pursuant to 15 U.S.C. 1051 *et seq.*

Requests from federally-recognized tribes to enter an official insignia into the database must be submitted in writing and include: (1) A depiction of the insignia, including the name of the tribe and the address for correspondence; (2) a copy of the tribal resolution adopting the insignia in question as the official insignia of the tribe; and (3) a statement, signed by an official with authority to bind the tribe, confirming that the insignia included with the request is identical to the official insignia adopted by the tribal resolution.

Requests from State-recognized tribes must also be in writing and include each of the three items described above that are submitted by federally-recognized tribes. Additionally, requests from State-recognized tribes must include either: (a) A document issued by a State official that evidences the State's determination that the entity is a Native American tribe; or (b) a citation to a State statute designating the entity as a Native American tribe. The USPTO enters insignia that have been properly submitted by federally- or State-recognized Native American tribes into the database and does not investigate whether the insignia is actually the official insignia of the tribe making the request.

This collection includes the information needed by the USPTO to enter an official insignia for a federally- or State-recognized Native American tribe into a database of such insignia. No forms are associated with this collection.

II. Method of Collection

By mail, facsimile, or hand delivery to the USPTO.

III. Data

OMB Number: 0651–0048.

Form Number(s): None.

Type of Review: Revision of a currently approved collection.

Affected Public: Tribal governments.

Estimated Number of Respondents: 8 responses per year.

Estimated Time per Response: The USPTO estimates that a federally- or State-recognized Native American tribe will require an average of 30 minutes (0.5 hours) to complete a request to record an official insignia, including time to prepare the appropriate documents and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 5. hours.

Estimated Total Annual Respondent Cost Burden: $325. The USPTO expects that the information in this collection will be prepared by both paraprofessionals and administrative staff. The estimated rate of $65 per hour used in this submission is an average of the paraprofessional rate of $100 per hour and the administrative rate of $30 per hour. Using this rate of $65 per hour, the USPTO estimates that the respondent cost burden for submitting the information in this collection will be $325 per year.

Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
Request to Record an Official Insignia of a Federally-Recognized Tribe	30	5	3
Request to Record an Official Insignia of a State-Recognized Tribe	30	3	2
Totals		8	5

Estimated Total Annual Non-hour Respondent Cost Burden: $8. There are no capital start-up, maintenance, or recordkeeping costs associated with this information collection. There are also no filing fees for submitting a tribal insignia for recording. However, this collection does have annual (non-hour) costs in the form of postage costs.

Customers may incur postage costs when submitting the information in this collection to the USPTO by mail. The USPTO estimates that the average first-class postage cost for a submission mailed through the U.S. Postal Service will be $1.05 and that up to 8 submissions will be mailed to the USPTO per year. Therefore, the total non-hour respondent cost burden for this collection in the form of postage costs is approximately $8 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.,* the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 20, 2010.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2010–26975 Filed 10–25–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 61–2010]

Foreign-Trade Zone 102—St. Louis, MO; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the St. Louis County Port Authority, grantee of FTZ 102, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/09; correction 74 FR 3987, 1/22/09). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 19, 2010.

FTZ 102 was approved by the Board on April 27, 1984 (Board Order 251, 49 FR 19540, 5/8/84), and expanded on March 3, 1987 (Board Order 344, 52 FR 7915, 3/13/87) and on January 30, 2009 (Board Order 1604, 74 FR 6364, 2/9/09).

The current zone project includes the following sites: *Site 1* (11.13 acres)—Metro International Trade Services, LLC, warehouse, 3901 Union Boulevard, St. Louis; *Site 2* (492.086 acres)—NorthPark industrial park located at the northeast corner of Interstates 70 and 170 in the municipalities of Berkeley, Ferguson and Kinloch; and, *Site 3*—consisting of three parcels located at and adjacent to the Lambert-St. Louis International Airport: Hazelwood Commerce Center (Site 3A—169.76 acres) located on Commerce Center Drive in Hazelwood; Lindbergh Distribution Center (Site 3B—25.848 acres) located at 5801 N. Lindbergh Boulevard in Hazelwood; and, Airport Property No. 1 (Site 3C—75.99 acres) located at 5620 Banshee Road in St. Louis.

The grantee's proposed service area under the ASF would be the City of St. Louis and St. Louis County, Missouri. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the St. Louis Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project under the ASF as follows: renumber the parcels of Site 3 (Site 3A would become Site 3; Site 3B would become Site 4; and, Site 3C would become Site 5); Sites 2, 3, 4 and 5 would become "magnet" sites; and, Site 1 would become a "usage-driven" site. The ASF allows for the possible exemption of one magnet site from the "sunset" time limits that generally apply to sites under the ASF, and the applicant proposes that Site 2 be so exempted. Because the ASF only pertains to establishing or reorganizing a general-purpose zone, the application would have no impact on FTZ 102's authorized subzones.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 27, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 10, 2011.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further

information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: October 19, 2010.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2010–27079 Filed 10–25–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of Comment Period for Revised Management Plans for the following National Estuarine Research Reserves: North Inlet-Winyah Bay, SC and San Francisco Bay, CA.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce is announcing a thirty day comment period for the revised management plans of the North Inlet-Winyah Bay, SC National Estuarine Research Reserve and the San Francisco Bay, CA National Estuarine Research Reserve.

The revised management plan for the North Inlet-Winyah Bay, SC National Estuarine Research Reserve outlines the administrative structure; the education, training, stewardship, and research programs of the reserve; and the plans for future land acquisition and facility development to support reserve operations. The goals described in this plan are designed to provide a framework that supports program integration based on priority issues defined by the reserve. The objectives described in this plan are designed to address the most critical coastal issues in North Inlet-Winyah Bay such as impacts from coastal and watershed development, climate events on coastal ecosystems and human communities, and invasive species impacts on habitat loss and biodiversity. Since the last approved management plan in 1992, the reserve has become fully staffed; added a Coastal Training Program that delivers science-based information to key decision makers; and added significant monitoring of emergent marsh vegetation, invasive species, water quality, and bird populations. In addition to programmatic and staffing advances, the reserve upgraded its headquarters building with a 4500 square foot structure to support research, stewardship, and the coastal training programs that includes six offices, a monitoring lab, and library. In cooperation with the Belle W. Baruch Foundation, a 12,500 square foot education facility was developed to support reserve educational programs and includes interpretive exhibits, aquaria, classrooms, and education staff offices, as well as an outdoor classroom. This plan can be accessed for review at *http://www.northinlet.sc.edu.*

The revised management plan for the San Francisco Bay National Estuarine Research Reserve outlines a framework of overarching goals and program specific objectives that will guide the education, training, research, and developing stewardship programs of the reserve; describes land acquisition and boundary expansion; as well as outlines plans for facility use and development to support reserve operations. The goals and objectives put forth in this plan focus programmatic efforts on four critical issues that affect the reserve's ability to conserve ecological communities in support of the Bay's growing population: climate change, species interactions, water quality, and habitat restoration. Broadly, the goals for each of these issues include increasing knowledge, understanding effects, and improving the ability of partners and stakeholders to respond to these issues. The goals described in this plan are designed to provide a framework that supports program integration for collaborative management of the San Francisco Bay Reserve.

Since the last approved management plan in 2003, the reserve has a full complement of core staff; established a research lab, fully operational System-wide Monitoring Program, and Graduate Research Fellowship Program; added a Coastal Training Program that delivers science-based information to key decision makers; developed education programs focused on sharing estuarine research with non-academic audiences; and constructed facilities to support essential functions of the reserve at its headquarters on the Romberg Tiburon Center campus of San Francisco State University. These facilities include office space for staff, classroom space, laboratory, and meeting facilities. The reserve has also constructed facilities and interpretive exhibits at its components sites, China Camp State Park and Rush Ranch Open Space Preserve, that support on-site research and educational programs. This plan can be accessed for review at *http://www.sfbaynerr.org.*

FOR FURTHER INFORMATION CONTACT: Alison Krepp at (301) 563–7105 or Laurie McGilvray at (301) 563–1158 of NOAA's National Ocean Service, Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, 10th floor, Silver Spring, MD 20910.

Dated: October 8, 2010.

Donna Wieting,

Acting Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–27068 Filed 10–25–10; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Withdrawal of Notice for Preparation of an Environmental Impact Statement for the Pine Mountain Dam & Lake Project, AR

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: The Little Rock District of the U.S. Army Corps of Engineers (Corps) is withdrawing its intent to prepare an Environmental Impact Statement (EIS) for the Pine Mountain Dam & Lake Project, AR. The original Notice of Intent (NOI) was published in the **Federal Register** on September 25, 2009 (74 FR 48934). The River Valley Regional Water District, sponsor of the study, has recently requested the study be suspended until a later date (to be determined).

FOR FURTHER INFORMATION CONTACT: Ms. Dana Coburn, Chief, Environmental Branch, Planning and Environmental Division, P.O. Box 867, Little Rock, Arkansas 72203–0867, Telephone 501–324–5601, e-mail: *Dana.O.Coburn@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The Pine Mountain Dam project was authorized for construction by Congress in 1965. Additional studies and a preliminary draft EIS were prepared in the 1970s. In 1980, prior to public review of the EIS, the local sponsor decided not to continue sponsoring the project. In 2000, the River Valley Regional Water District identified themselves as a willing sponsor and requested that the Corps of Engineers reevaluate the project. The proposed Pine Mountain

Dam, Arkansas, General Reevaluation Report was undertaken by USACE, Little Rock District under the direction of the U.S. Congress. The study would have consisted of major hydraulics and hydrologic investigations, economic analyses, alternative development and related analyses in conjunction with the EIS.

Glen A. Masset,

Colonel, EN, Commanding.

[FR Doc. 2010–27062 Filed 10–25–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive or Partially-Exclusive Licensing of Invention Concerning Obstetrics Simulation and Training Method System

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Announcement is made of the availability for licensing of the invention set forth in U.S. Patent Application Serial No. 12/670,250, entitled "Obstetrics Simulation and Training Method and System," filed January 22, 2010. Foreign rights are also available for licensing (PCT/US2008/076725). The United States Government, as represented by the Secretary of the Army, has rights to this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research and Technology Applications (ORTA), (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention relates generally to an obstetrics simulation system. An embodiment of the invention provides an obstetrics simulation system compromising an articulating maternal birthing simulator that is a full size and full body female having an intubeable airway with a chest rise component, a forearm having a medication receiving component, and/or a fetal heart sound component. Additionally, the maternal birthing simulator includes a head descent and cervical dilation monitor, a placenta positionable in at least two locations, two or more removable dilating cervices, and/or postpartum vulval suturing inserts.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2010–27064 Filed 10–25–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice Is Given of the Names of Members of a Performance Review Board for the Department of the Air Force

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Air Force.

DATES: *Effective Date:* November 15, 2010.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The board(s) shall review and evaluate the initial appraisal of senior executives performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the 2010 Performance Review Board for the U.S. Air Force are:

1. Board President—Gen Hoffman, Commander, Air Force Materiel Command.
2. Ms. Roby, Acting Assistant Secretary of Defense, Network and Information Integration.
3. Ms. Earle, Assistant Deputy Chief of Staff for Manpower and Personnel.
4. Mrs. Westgate, Assistant Deputy Chief of Staff for Strategic Plans and Programs.
5. Mr. Beyland, Assistant Deputy Chief of Staff for Manpower and Personnel.
6. Mr. Williams, Director, Defense Contract Management Agency.
7. Mr. Murphy, Director, Intelligence Development.
8. Mr. Sciabica, Executive Director, Air Force Research Laboratory.
9. Ms. Puckett, Director, Installations and Logistics.
10. Ms. Sisson, Director, Resources and Analysis.

Additionally, all career status Air Force Tier 3 SES members not included in the above list are eligible to serve on the 2010 Performance Review Board and are hereby nominated for inclusion on an ad hoc basis in the event of absence(s).

FOR FURTHER INFORMATION CONTACT: Please direct any written comments or requests for information to Ms. Pereuna Johnson, Chief, Sustainment Division, Senior Executive Management, AF/DPSS, 1040 Air Force Pentagon, Washington, DC 20330–1040 (PH: 703–695–7677; or via e-mail at *pereuna.johnson@pentagon.af.mil.*

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2010–26934 Filed 10–25–10; 8:45 am]

BILLING CODE 5001–10–P

ELECTION ASSISTANCE COMMISSION

Federal Advisory Committee Act; Standards Board Charter Renewal

AGENCY: Election Assistance Commission.

ACTION: Notice of charter renewal.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), the purpose of this notice is to announce that the Election Assistance Commission (EAC) has renewed the charter for the Standards Board for a two-year period through October 18, 2012. The Standards Board is a federal advisory committee under the Federal Advisory Committee Act.

DATES: Renewed through October 18, 2012.

ADDRESSES: Election Assistance Commission, 1201 New York Avenue, NW., Suite 300, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Gineen M. Bresso, Designated Federal Officer, at (202) 566–3100. E-mail: *standardsboard@eac.gov.*

SUPPLEMENTARY INFORMATION: The Standards Board is a Federal advisory committee created by statute whose mission is to advise the EAC through review of the voluntary voting systems guidelines; through review of voluntary guidance; and review of best practices recommendations. In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the renewal of the Standards Board charter.

Gineen M. Bresso,

Commissioner, U.S. Election Assistance Commission.

[FR Doc. 2010–27091 Filed 10–25–10; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Department of Energy (DOE).

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. 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: Thursday, November 4, 2010, 6 p.m.–8 p.m.

ADDRESSES: Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: Joel Bradburne, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–3822, *Joel.Bradburne@lex.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda
- Approval of September Minutes
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaisons' Comments
- Ohio University Update
- Administrative Issues:
  - Subcommittee Updates
  - Recommendation on Public Tour
  - Motions
- Second reading of amendment to the Operating Procedures
- Public Comments
- Final Comments
- Adjourn

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its 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 Joel Bradburne in advance of the meeting at the phone number listed above. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Issued at Washington, DC, on October 14, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–26444 Filed 10–25–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Conditional Commitment for a Federal Loan Guarantee for Project Financing for Southwest Intertie Project—South

AGENCY: U.S. Department of Energy, Loan Programs Office.

ACTION: Record of decision.

SUMMARY: The U.S. Department of Energy (DOE) has decided to offer Great Basin Transmission, LLC (Great Basin), a conditional commitment for a Federal loan guarantee for partial financing of the 235-mile southern portion of the Southwest Intertie Project (SWIP), a proposed 500-kilovolt (kV) transmission line that would extend from southern Nevada to southern Idaho. This Record of Decision (ROD) is based on the analysis in the Final Environmental Impact Statement for *Project Financing for Southwest Intertie Project—South* (SWIP South) (DOE/EIS–0443, January 2010) (DOE FEIS). The DOE FEIS consists of a cover sheet for the January 2010 adoption of the Bureau of Land Management (BLM) 1993 Southwest Intertie Project Environmental Impact Statement and Proposed Plan Amendment (SWIP EIS) and the BLM 2008 Environmental Assessment for the *Southwest Intertie Project Southern Portion* NV–040–07–048 (SWIP South EA). This ROD also reflects minor modifications to the Great Basin proposal and new information developed since DOE issued its FEIS.

DOE's offer of a conditional commitment for a loan guarantee for SWIP South is authorized under Title XVII of the Energy Policy Act of 2005, as amended by Section 406 of the American Recovery and Reinvestment Act of 2009 (Recovery Act). This conditional commitment to provide a Federal loan guarantee is contingent upon Great Basin satisfying all precedent funding obligations, and all other contractual, statutory, regulatory, environmental compliance, and other requirements specified by DOE. DOE has prepared this ROD in accordance with the Council on Environmental Quality regulations (40 CFR Parts 1500–1508) for implementing the National Environmental Policy Act (NEPA), and DOE's NEPA Implementing Procedures (10 CFR Part 1021).

FOR FURTHER INFORMATION CONTACT: For further information about DOE's decision, contact Carol Hammel-Smith, NEPA Document Manager, Environmental Compliance Division, Loan Programs Office at *carol.hammel-smith@hq.doe.gov.* Ms. Hammel-Smith can be reached by mail at the U.S. Department of Energy, 1000 Independence Avenue, SW., LP–10, Washington, DC 20585. For information on the DOE NEPA process, contact Carol Borgstrom, Director, Office of NEPA Policy and Compliance, at (202) 586–4600 or (800) 472–2756, or by facsimile at (202) 586–7031. Ms. Borgstrom can be reached by mail at the U.S. Department of Energy, 1000 Independence Avenue, SW., GC–54, Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

Project Background

SWIP South would begin at the existing Harry Allen Substation, located in Dry Lake, Nevada, approximately 20 miles northeast of Las Vegas, Nevada, and would run north to the proposed Thirtymile Substation, located approximately 18 miles northwest of Ely, Nevada, where it would interconnect with Sierra Pacific Power Company's existing Falcon-Gonder 345–kV transmission line. The SWIP South would traverse approximately 235 miles through parts of White Pine, Nye, Lincoln, and Clark counties in Nevada, and would consist of self-supporting and guyed structures placed approximately 1,200 to 1,500 feet apart. Because of its location SWIP South could be a vital link for distributing power from renewable energy sources to adjacent states that have adopted specific renewable energy standards. The SWIP South would have the potential to provide up to 600 megawatts of renewable energy-derived electricity to fulfill renewable energy standards.

The proposed project seeking a DOE loan guarantee also includes two elements related to the Falcon-Gonder transmission line: The Falcon Substation Upgrades and a Backup Communications System. Falcon Substation is an existing 345–kV switchyard owned by NV Energy (NVE) and located in Boulder Valley approximately 40 miles northeast of Battle Mountain, Nevada. SWIP South would connect to the Falcon-Gonder transmission line at the proposed Thirtymile Substation. The addition of the SWIP South line necessitates upgrades to NVE's Falcon Substation to improve the existing grid system's stability. The equipment included in the upgrade would consist of a 345–kV

fixed and/or series capacitor bank and other facilities as required for system stability mitigation. Access to Falcon Substation during construction and operation of the expanded facility would be provided via existing access roads.

The Backup Communications System includes a communications network consisting of 16 microwave towers (on expanded existing sites and new sites) that would provide additional operational control to the primary fiber optic communications technology. The proposed communications towers would range in height from 80 feet to 300 feet. For each proposed site, the approximate area required would be up to 200 feet by 150 feet (0.7 acre), including ancillary support equipment and a small buffer area surrounding the site. Eight of the sites would require new graded access roads and/or power distribution lines.

Purpose and Need for Agency Action

Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511–16514), as amended by Section 406 of the Recovery Act, authorizes DOE to issue loan guarantees in support of debt financing for transmission infrastructure investment projects located in the United States. Title XVII as amended authorizes a new program for rapid deployment of renewable energy and electric power transmission projects (the Section 1705 Program). Section 1705 authorizes loan guarantees for "electric power transmission projects, including upgrading and reconductoring projects" that commence construction no later than September 30, 2011.

DOE's Proposed Action

DOE's proposed action is to offer Great Basin a conditional commitment for a Federal loan guarantee for partial financing of Great Basin's interest in SWIP South. Great Basin submitted an application to DOE to obtain a loan guarantee for financing Great Basin's interest in SWIP South—75% ownership interest in the SWIP South segment. The DOE loan guarantee would apply to no more than 80% of that share and other associated eligible costs. The balance of SWIP South—25% ownership interest—would be acquired by NVE and financed separately. The NVE subsidiaries with ownership in the 25% interest would include Nevada Power Corporation and Sierra Pacific Power Corporation.

NEPA Review

In July 1993, BLM completed the SWIP EIS in cooperation with the U.S. Forest Service, Bureau of Reclamation, National Park Service, and Bureau of Indian Affairs. The SWIP EIS analyzed the environmental impacts that would be associated with construction and operation of SWIP South and SWIP North, and addressed public comment. The environmental mitigation measures for SWIP South and SWIP North were specified in the ROD issued by BLM on December 14, 1994 (59 FR 30678), herein referred to as the BLM ROD. In 2008, BLM prepared the SWIP South EA to consider the impacts of amending the previously approved Right-of-Way (ROW) Grants to include a 4-mile extension on the southern end of SWIP South to allow interconnection with the existing Harry Allen Substation. The amendment included a shift in the location on the northern end of less than one mile to allow connection to the newly proposed Thirtymile Substation and to the existing Falcon-Gonder 345-kV transmission line. The SWIP South EA also provided an update on the key resource areas and impacts from the 1993 SWIP EIS. BLM issued a Finding of No Significant Impact (FONSI) on the SWIP South EA in July 2008.

In accordance with 40 CFR 1506.3, DOE, through its Western Area Power Administration (Western), on January 19, 2010, adopted the BLM's 1993 SWIP EIS or 2008 SWIP South EA to meet its NEPA obligations related to a proposal to finance part of SWIP South. The notice of adoption was published by the Environmental Protection Agency on February 19, 2010 (75 FR 7479). Western did not recirculate the SWIP EIS or SWIP South EA as a draft DOE EIS because the actions covered by the original SWIP EIS and SWIP South EA were substantially the same as those proposed by Western. Although Western has decided not to pursue its proposed financial assistance, DOE has decided to conditionally support SWIP South through DOE's Loan Guarantee Program.

BLM evaluated the Falcon Substation Upgrades described above as part of NVE's proposed One Nevada Line (ON Line) project, a transmission line similar to the SWIP South in design and geographic scope. BLM's evaluation, the Draft Supplemental Environmental Impact Statement for the ON Line Project, herein referred to as ON Line DSEIS (BLMNV/EL/EIS–GI–10/01+1793; DES 09–50), was published on November 20, 2009, and provides detailed information on the environmental effects of the Falcon Substation Upgrades. None of the 19 comment letters received concern the Falcon Substation Upgrades; therefore no changes are expected with respect to the Falcon Substation Upgrades when BLM issues the final SEIS.

The NVE microwave system upgrades were evaluated by BLM in the Environmental Assessment—NV Energy Microwave and Mobile Radio Project, herein referred to as the Microwave EA, (DOI–BLM–NV–L 020–2009–0024–EA), published on August 27, 2010. BLM simultaneously issued a Finding of No Significant Impact (FONSI) and Decision Record (BLM N–84551–84563; N–85487 and DOI–BLM–NV–L000–2009–0024 EA, respectively) based on the environmental effects evaluated and disclosed in the Microwave EA. The Microwave EA evaluated 14 of the 16 communication sites proposed by Great Basin. Two locations on private land were not evaluated since BLM's ROW grant will not be applicable to those sites. DOE has evaluated these sites, as discussed below.

Environmental Impacts of the Falcon Substation Upgrades and the Backup Communications System

This section describes the potential environmental impacts of the Falcon Substation Upgrades and the Backup Communications System. This discussion is based on the ON Line DSEIS and the Microwave EA.

DOE evaluated the environmental impacts of the Falcon Substation Upgrades that were analyzed by BLM in the ON Line DSEIS. Chapters 3 and 4 identify minor environmental effects to air emissions (mitigatable through gravelling) and housing in Eureka or Elko Counties (during construction); low potential for encountering paleontological resources; and no adverse impacts to other resources.

DOE also evaluated the impacts of the Backup Communications System as analyzed in the Microwave EA, and found that impacts would be small or not adverse with adoption of mitigation measures and best management practices.

A migratory bird survey would be required prior to any disturbance during migratory bird breeding and nesting seasons; monitoring/reporting would be implemented. DOE also evaluated the two proposed communications sites on private land that were not analyzed in the BLM Microwave EA. Due to their location at existing facilities with access roads and power, the impacts of constructing and operating these new communications towers would be low. Both sites include pre-disturbed vegetation and wildlife habitat, and low potential for impacts to cultural resources due to hilltop locations.

The environmental impacts associated with the NVE communications system expansion, including the sites to be located on BLM land and on private

land, would be brief in duration and would be minor or would be minimized or offset by the mitigation measures required by BLM. Further, the equipment associated with the NVE communications system expansion is not substantially different from the project features previously evaluated in DOE's EIS. Further, these projects are covered by DOE's NEPA categorical exclusion B1.19 (Appendix B to Subpart D, 10 CFR Part 1021), which is applicable to siting, construction, and operation of microwave and radio communications towers and associated facilities.

Review of Comments Received on DOE's 2010 Adoption of the 1993 SWIP EIS and 2008 SWIP South EA

As part of its decision process, DOE considered comments received on the DOE FEIS. In addition, DOE reviewed BLM's 2007 "Documentation of Land Use Plan Conformity and NEPA Adequacy" for SWIP South; the BLM-approved Construction, Operation & Maintenance Plan for the SWIP–Southern Portion (August 2010); and the BLM-approved Biological Assessment (2007) and the Biological Opinion (2007 and as amended in 2010) for SWIP South.

DOE reviewed comments received on February 22, 2010, from the Western Watersheds Project (WWP) in response to DOE's January 2010 adoption. WWP's comment attached two comment letters that WWP had previously submitted to BLM on November 11, 2007, as well as WWP's October 10, 2008, response to BLM and the Intervenors in the Interior Board of Land Appeals (IBLA) (which ruled against WWP's appeal on November 12, 2008).

In its February 2010 communication to Western, WWP recommended that DOE deny funding for SWIP South and instead award to decentralized energy projects that would be accessed locally. DOE has determined that decentralized projects would not be eligible for loan guarantees under this loan solicitation since DOE was granted Recovery Act authority to provide funding for transmission projects, with priority to those that facilitate the delivery of renewable power. WWP's recommendation would not meet DOE's purpose and need for its loan guarantee action. WWP also raised concerns that the SWIP project could facilitate industrial development that could cause the destruction of sagebrush wild lands. DOE reviewed the 1994 SWIP EIS and the 2008 Interior Board of Land Appeals *Westerm Watersheds Project* v *Bureau of Land Management and Great Basin Transmission, LLC* (IBLA No.2008–252 addressing WWP's challenge to the 2008 BLM EA and FONSI for the SWIP–Southern Portion). DOE has determined that BLM adequately addressed potential development in the FEIS and that the 2008 appeals process established that there has not been sufficient change in anticipated cumulative impacts considered for the SWIP line to require a supplemental EIS. DOE also notes that other energy projects that might be located in sagebrush habitat on public lands would only be permitted if they have been reviewed under NEPA and are consistent with Federal law and policy.

WWP's comments included claims of segmentation of NEPA review for the SWIP project; failure to consider alternatives; and inadequate review of impacts associated with invasive weeds, the desert tortoise and sage grouse, soil erosion, off-highway vehicle use, wild horse management, global warming, and cumulative impacts.In evaluating WWP's claims, DOE reviewed and considered the relevant materials in the BLM administrative record for SWIP South and found that these issues had been adequately considered.

DOE reviewed the 19 comments that BLM received on its 2009 analyses addressing the Falcon Substation Upgrades and the Backup Communications System. None concern the Falcon Substation Upgrades, and therefore few changes are expected for the Final SEIS that BLM plans to issue at the end of October 2010. After a 30-day protest period, BLM expects to issue its ROD and ROW by December 2010.

DOE also reviewed four comment letters received on the Microwave EA. A 30-day comment period began on April 12, 2010, and closed on May 14, 2010. The State Historic Preservation Officer indicated completion of a Section 106 consultation for the Lower Spruce site; the Nevada Department of Wildlife recommended installing gates and anti-perching measures; the Southern Nevada Water Authority recommended construction coordination; and the Elk County Commissioners indicated support of the project. On August 27, 2010, BLM issued a FONSI for the Microwave EA.

Based on review of the documents pertaining to the IBLA review, DOE finds that the issues raised by WWP have been adequately addressed. Further, as a result of its review of the comments on the ON Line DSEIS and Microwave EA, DOE concludes that the comments do not present any significant new circumstances or information relevant to environmental concerns bearing on SWIP South, or associated potential environmental impacts.

Alternatives Considered

DOE considered two alternatives: The Proposed Action and No Action. Under the Proposed Action, DOE would offer Great Basin a conditional commitment to partially finance the proposed SWIP South transmission line. Under No Action, SWIP South most likely would not be built and the potential impacts discussed above and their related mitigation would not occur, nor would this transmission line be available to transmit power to meet the renewable energy standards in adjoining states.

Environmentally Preferred Alternative

The Proposed Action is the Environmentally Preferred Alternative for several reasons. First, the Proposed Action furthers the goals of Section 1705 of the Energy Policy Act of 2005 to promote the rapid deployment of renewable energy and electric power transmission projects that could reduce the generation of greenhouse gas and other air pollutants created by non-renewable, fossil-fuel generation sources.

Also, because neighboring states that could be serviced by SWIP South have renewable energy standards, SWIP South provides the capacity to deliver up to 600 megawatts of renewable energy-derived electricity to fulfill the requirements of these states. Specifically, Nevada is required to deliver 20% of its megawatt capacity generated by renewable energy sources by 2015; Arizona, 15% by 2025; California, 33% by 2030, and Colorado, 20% by 2020.

Consultation

A Section 106 review under the National Historic Preservation Act (NHPA) and Tribal consultation have been completed by BLM for the proposed SWIP South project. An NHPA Section 106 programmatic agreement was finalized during the DOE FEIS process, requiring that prior to construction, a preconstruction field survey and a mitigation plan be completed and approved. In July, 2010, the BLM submitted to the Nevada State Historic Preservation Office (SHPO) the Historic Properties Treatment Plans for SWIP South entitled: "Historic Properties Treatment Plan, Southwest Intertie Project, Southern Portion White Pine, Nye, Lincoln, and Clark Counties, Nevada, Volumes 1a–c (BLM Report Number 8111NG040–2009–1593d Volumes 1a–c)." The SHPO concurred with the BLM determination that the three submitted historic treatment plans, and BLM Archaeologist

monitoring and consulting activities would be adequate treatment.

An Endangered Species Act (ESA) (16 U.S.C. 1536) Section 7 consultation was completed by BLM during the DOE FEIS NEPA process. The Service has issued four Biological Opinions for the proposed project: (1) May 1993; (2) March 1994, which included an analysis of potential effects to the desert tortoise and its designated critical habitat; (3) December 2007, which incorporated project realignments and the use of H-frames with perching deterrents within desert tortoise critical habitat; and (4) June and July 2010, which respectively amended the 2007 Biological Opinion to incorporate an additional tower design (tubular guyed-V tower) with perching deterrents, and modifications to include additional disturbance of desert tortoise habitat due to a minor calculation error.

Mitigation

DOE will require Great Basin to employ all practicable means to avoid or minimize environmental harm as a result of the proposed action. The loan guarantee agreement between DOE and Great Basin would require that Great Basin implement all project-specific environmental protection measures specified in the "Construction, Operation, and Maintenance Plan for the Southwest Intertie Project 500-kV Transmission Line; SWIP—Southern Portion; SWIP Central Portion (COM Plan)," and in the BLM Notice to Proceed, issued in August 2010. After the DOE loan guarantee is retired, enforcement of environmental protection will continue through the BLM ROW grant provisions for the life of the project.

The NEPA analysis completed in the DOE FEIS indicates that SWIP South would result in low environmental impacts after mitigation measures required for BLM's ROW are implemented. The mitigation measures are a condition of BLM issuance of the ROW that provides Great Basin access to construct, operate, and maintain SWIP South on BLM land. The BLM documents the conditions under which Great Basin must operate in the COM Plan approved by BLM in 2010. The COM Plan incorporates the mitigation measures required by the DOE FEIS, the 2010 Historic Properties Treatment Plan, and the 2010 Biological Opinion.

Decision

DOE has decided to offer Great Basin a conditional commitment for a Federal loan guarantee for partial financing of SWIP South. This decision is contingent on Great Basin satisfying all precedent funding obligations, and all other contractual, statutory, regulatory, environmental compliance, and other requirements specified by DOE.

In reaching this decision, DOE reviewed the SWIP NEPA documentation and considered the potential impacts of the selected alternative with implementation of the stipulated mitigation measures.

DOE has prepared this ROD in accordance with the Council on Environmental Quality regulations (40 CFR Parts 1500–1508) for implementing NEPA and DOE's NEPA Implementing Procedures (10 CFR Part 1021).

Basis for Decision

DOE has determined that the potential environmental impacts analyzed in the DOE FEIS will be minor after implementation of the mitigation provisions for the SWIP South BLM ROW. The mitigation measures will be reflected in the DOE Loan Guarantee Common Agreement, and will remain in the BLM COM Plan for the duration of the granted ROW.

DOE has also determined that potential environmental impacts associated with the Falcon Substation Upgrades and the Backup Communications System would not be adverse or can be characterized as minor. DOE has determined that no further analysis is required, and incorporates by reference the environmental analyses conducted on these project elements. Further, DOE has also considered the Congressional direction specified in Section 2003 of H.R. 4899, the 2010 Supplemental Appropriations Act, Public Law 111–212, effective on July 29, 2010 (the 2010 Supplemental Appropriations Act) in its decision to issue this ROD. The 2010 Supplemental Appropriations Act allows DOE to provide or facilitate Federal financing for SWIP under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5; 123 Stat. 115), or the Energy Policy Act of 2005 (42 U.S.C. 15801 *et seq.*), based on the comprehensive reviews and consultations performed by BLM under the Secretary of the Interior.

Issued in Washington, DC, on October 18, 2010.

Jonathan M. Silver,

Executive Director, Loan Programs Office.

[FR Doc. 2010–27046 Filed 10–25–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC11–725B–000]

Commission Information Collection Activities (FERC–725B); Comment Request; Extension

October 19, 2010.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A) (2006), (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the proposed information collection described below.

DATES: Comments in consideration of the collection of information are due December 27, 2010.

ADDRESSES: Commenters must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Comments may be filed either on paper or on CD/DVD, and should refer to Docket No. IC11–725B–000. Documents must be prepared in an acceptable filing format and in compliance with Commission submission guidelines at *http://www.ferc.gov/help/submission-guide.asp.* eFiling and eSubscription are not available for Docket No. IC11–725B–000, due to a system issue.

All comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's eLibrary at *http://www.ferc.gov/docs-filing/elibrary.asp*, by searching on Docket No. IC11–725B. For user assistance, contact FERC Online Support by e-mail at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by e-mail at *DataClearance@FERC.gov*, telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The information collected by the FERC–725B, Reliability Standards for Critical Infrastructure Protection (OMB Control No. 1902–0248), is required to implement the statutory provisions of section 215 of the Federal Power Act (FPA) (16 U.S.C. 824o). On August 8, 2005, the Electricity Modernization Act of 2005, which is Title XII, Subtitle A,

of the Energy Policy Act of 2005 (EPAct 2005), was enacted into law.[1] EPAct 2005 added a new section 215 to the FPA, requiring a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced in the United States by the ERO subject to Commission oversight, or the Commission can independently enforce Reliability Standards.[2]

On February 3, 2006, the Commission issued Order No. 672, implementing section 215 of the FPA. Pursuant to Order No. 672, the Commission certified one organization, North American Electric Reliability Corporation (NERC), as the ERO. The Reliability Standards developed by the ERO and approved by the Commission apply to users, owners and operators of the Bulk-Power System, as set forth in each Reliability Standard.

On January 18, 2008, the Commission issued order 706, approving eight Critical Infrastructure Protection (CIP) Reliability Standards submitted by the NERC for Commission approval.[3] The CIP Reliability Standards require certain users, owners, and operators of the Bulk-Power System to comply with specific requirements to safeguard critical cyber assets.[4] These standards help protect the nation's Bulk-Power System against potential disruptions from cyber attacks.[5]

The eight CIP Reliability Standards address the following topics:

- Critical Cyber Asset Identification.
- Security Management Controls.
- Personnel and Training.
- Electronic Security Perimeters.
- Physical Security of Critical Cyber Assets.
- Systems Security Management.
- Incident Reporting and Response Planning.
- Recovery Plans for Critical Cyber Assets.

The CIP Reliability Standards include one actual reporting requirement and several recordkeeping requirements. Specifically, CIP–008–1 requires responsible entities to report cyber security incidents to the Electricity Sector–Information Sharing and Analysis Center (ES–ISAC). In addition, the eight CIP Reliability Standards require responsible entities to develop various policies, plans, programs, and procedures. For example, each responsible entity must develop and document a risk-based assessment methodology to identify critical assets, which is then used to develop a list of critical cyber assets (CIP–002–1). A responsible entity that identifies any critical cyber assets must also document: A cyber security policy (CIP–003–1); a security awareness program (CIP–004–1, Requirement R1); a personnel risk assessment program (CIP–004–1, Requirement R3); an electronic security perimeter and processes for control of electronic access to all electronic access points to the perimeter (CIP–005–1, Requirements R1 and R2); a physical security plan (CIP–006–1); procedures for securing certain cyber assets (CIP–007–1); and recovery plans for critical cyber assets (CIP–008–1). To demonstrate compliance with the CIP Reliability Standards, responsible entities are required to maintain various lists and access logs. All responsible entities are required to be auditably compliant with the CIP Reliability Standards by the end of 2010, including all required documentation.

The CIP Reliability Standards do not require a responsible entity to report to the Commission, ERO or Regional Entities, the various policies, plans, programs and procedures. However, a showing of the documented policies, plans, programs and procedures is required to demonstrate compliance with the CIP Reliability Standards.

Action: The Commission is requesting a three-year extension of the FERC–725B reporting requirements, with no changes.

Burden Statement: The extent of the reporting burden is influenced by the number of identified critical assets and related critical cyber assets pursuant to CIP–002. An entity identifying one or more critical cyber assets, including assets located at remote locations, will likely require more resources to demonstrate compliance with the CIP Reliability Standards compared to an entity that identifies no critical assets. The Commission has developed estimates using data from NERC's compliance registry as well as a 2009 survey that was conducted by NERC to asses the number of entities reporting Critical Cyber Assets.

Data collection	No. of respondents [6] (1)	Average No. of responses per respondent (2)	Average No. of Burden hours per response [7] (3)	Total annual hours (1)×(2)×(3)
FERC–725B.				
Estimate of U.S. Entities that have identified Critical Cyber Assets	345	1	320	110,400
Estimate of U.S. Entities that have not identified Critical Cyber Assets	1,156	1	8	9,248
Totals	1,501			119,648

[6] The NERC Compliance Registry as of 9/28/2010 indicated that 2,079 entities were registered for NERC's compliance program. Of these, 2,057 were identified as being U.S. entities. Staff concluded that of the 2,057 U.S. entities, only 1,501 were registered for at least one CIP related function. According to an April 7, 2009 memo to industry, NERC's VP and Chief Security officer noted that only 31% of entities responded to an earlier survey and reported that they had at least one Critical Asset, and only 23% reported having a Critical Cyber Asset. Staff applied the 23% reporting to the 1,501 figure to obtain an estimate.

[7] This figure relates to NERC's audit schedule which requires NERC to engage in a compliance Audit once every 3 to 5 years. For simplicity, staff has divided the total number of hours by 3 to reflect the amount of time annually spent preparing documents. Staff assumed that each CIP audit or spot check would require four individuals 6 weeks to prepare and demonstrate compliance with CIP standards for entities that have identified Critical Cyber Assets. Staff estimated that entities that do not have Critical Cyber Assets would still be required to demonstrate compliance with CIP–002, which would require one individual approximately three days to execute.

[1] Energy Policy Act of 2005, Public Law No. 109–58, Title XII, Subtitle A, 119 Stat. 594, 941 (2005), 16 U.S.C. 824o.

[2] 16 U.S.C. 824o(e)(3).

[3] CIP–002–1, CIP–003–1, CIP–004–1, CIP–005–1, CIP–006–1, CIP–007–1, CIP–008–1, and CIP–009–1.

[4] In addition, in accordance with section 215(d)(5) of the FPA, the Commission proposed to direct NERC to develop modifications to the CIP Reliability Standards to address specific concerns identified by the Commission.

[5] For a description of the CIP Reliability Standards, see the Critical Infrastructure Protection Section at NERC's Web site at *http://www.nerc.com/page.php?cid=2/20*.

The total estimated annual cost burden to respondents is:

- Entities that have identified Critical Assets = 110,400 hours@$96 = $10,598,400.
- Entities that have not identified Critical Assets = 9,248 hours@$96 = $887,808.

The hourly rate of $96 is the average cost of legal services ($230 per hour), technical employees ($40 per hour) and administrative support ($18 per hour), based on hourly rates from the Bureau of Labor Statistics (BLS) and the 2009 Billing Rates and Practices Survey Report.[8]

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–26988 Filed 10–25–10; 8:45 am]

BILLING CODE 6717–01–P

[8] Bureau of Labor Statistics figures were obtained from *http://www.bls.gov/oes/current/naics2_22.htm,* and 2009 Billing Rates figure were obtained from *http://www.marylandlawyerblog.com/2009/07/average_hourly_rate_for_lawyer.html.* Legal services were based on the national average billing rate (contracting out) from the above report and BLS hourly earnings (in-house personnel). It is assumed that 25% of respondents have in-house legal personnel.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–12783–003]

Inglis Hydropower, LLC; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

October 19, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* P–12783–003.

c. *Date filed:* July 22, 2009.

d. *Applicant:* Inglis Hydropower, LLC.

e. *Name of Project:* Inglis Hydropower Project.

f. *Location:* The project would be located at the existing Inglis bypass channel and spillway on the Withlacoochee River, west of Lake Rousseau and Inglis Dam, within the town of Inglis and Levy, Citrus, and Marion counties, Florida. No federal lands would be occupied by the proposed project.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Dean Edwards, P.O. Box 1565, Dover, FL 33527; Mr. Kevin Edwards, P.O. Box 143, Mayodan, NC 27027.

i. *FERC Contact:* Jennifer Adams at (202) 502–8087, or *jennifer.adams@ferc.gov.*

j. The deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice and reply comments are due 105 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is ready for environmental analysis at this time.

l. The proposed 2.0-megawatt Inglis Hydropower Project would operate using flows released by the Southwest Water Management District from Lake Rousseau which is typically operated to maintain the water surface elevation of Lake Rousseau at 27.5 feet mean sea level. The proposed project would consist of: (1) A 45-foot-long, 100-foot-wide intake conveying water from the bypass channel located downstream of Lake Rousseau; (2) a 130-foot-long penstock consisting of two 14-foot by 14-foot reinforced concrete conduits; (3) a 60-foot-long, 80-foot-wide, 30-foot-high concrete powerhouse containing three vertical shaft turbines, two 0.8 megawatt (MW) turbines and one 0.4 MW turbine for a total installed capacity of 2.0 MW; (4) a 100-foot-long concrete discharge channel; (5) a new substation adjacent to the powerhouse; (6) a 120-foot-long, 24.5-kilovolt transmission line connecting the project substation to the local utility; and (7) appurtenant facilities. The Inglis Project would annually generate approximately 12,300 megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov.* using the "eLibrary

link." Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

All filings must: (1) Bear in all capital letters the title "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions, or prescriptions must set forth their evidentiary basis, and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this, or other pending projects. For assistance, contact FERC Online Support.

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to, and in compliance with, public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

o. A license applicant must file, no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–26990 Filed 10–25–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

October 18, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–7–000.
Applicants: Legg Mason, Inc.
Description: Legg Mason, Inc. Request for Reauthorization and Extension of Existing Blanket Authorization To Acquire Securities Under Section 203 of the Federal Power Act and Request for Expedited Action.
Filed Date: 10/15/2010.
Accession Number: 20101015–5165.
Comment Date: 5 p.m. Eastern Time on Friday, November 5, 2010.

Docket Numbers: EC11–8–000.
Applicants: Sagebrush Power Partners, LLC.
Description: Application for Authorization for Disposition of Jurisdicational Facilities and Request for Expedited Action of Sagebrush Power Partners, LLC.
Filed Date: 10/15/2010.
Accession Number: 20101015–5171.
Comment Date: 5 p.m. Eastern Time on Friday, November 5, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–2233–007.
Applicants: GWF Energy LLC.
Description: Amendment to Application for Determination of Category 1 Status, including Notice of Change in Status of GWF Energy LLC.
Filed Date: 10/15/2010.
Accession Number: 20101015–5173.
Comment Date: 5 p.m. Eastern Time on Friday, November 5, 2010.

Docket Numbers: ER08–1281–005.
Applicants: New York Independent System Operator Inc.
Description: Supplemental Response to Data Request of New York Independent System Operator, Inc.
Filed Date: 10/14/2010.
Accession Number: 20101014–5122.
Comment Date: 5 p.m. Eastern Time on Thursday, November 4, 2010.

Docket Numbers: ER10–2680–001.
Applicants: Puget Sound Energy, Inc.
Description: Puget Sound Energy, Inc. submits tariff filing per 35: OATT Section 23 Filing 10/15/2010 to be effective 9/24/2010.
Filed Date: 10/15/2010.
Accession Number: 20101015–5076.
Comment Date: 5 p.m. Eastern Time on Friday, November 5, 2010.

Docket Numbers: ER10–2753–001.
Applicants: Domtar Corporation.
Description: Notice of Non-Material Change in Status of Domtar Corporation.
Filed Date: 10/15/2010.
Accession Number: 20101015–5169.
Comment Date: 5 p.m. Eastern Time on Friday, November 5, 2010.

Docket Numbers: ER10–2774–001.
Applicants: Arizona Solar One LLC.
Description: Arizona Solar One LLC submits tariff filing per 35.17(b): Amendment to Market-Based Rate Application to be effective 10/11/2010.
Filed Date: 10/14/2010.
Accession Number: 20101014–5099.
Comment Date: 5 p.m. Eastern Time on Thursday, November 4, 2010.

Docket Numbers: ER11–26–000.
Applicants: Ashtabula Wind III, LLC.
Description: Ashtabula Wind III, LLC Supplement To Request for Authorization To Sell Energy and Capacity at Market-Based Rates.
Filed Date: 10/15/2010.
Accession Number: 20101015–5125.
Comment Date: 5 p.m. Eastern Time on Friday, November 5, 2010.

Docket Numbers: ER11–123–000.
Applicants: GWF Energy LLC.
Description: GWF Energy LLC submits tariff filing per 35.13(a)(2)(iii): GWF FERC Electric Tariff No. 1 to be effective 9/30/2010.
Filed Date: 10/15/2010.
Accession Number: 20101015–5109.
Comment Date: 5 p.m. Eastern Time on Friday, November 5, 2010.

Docket Numbers: ER11–124–000.
Applicants: Northeast Utilities Service Company.
Description: Report/Form of Northeast Utilities Service Company Regarding Notice of Transmission Rate Schedule Cancellations.
Filed Date: 10/15/2010.
Accession Number: 20101015–5126.
Comment Date: 5 p.m. Eastern Time on Friday, November 5, 2010.

Docket Numbers: ER11–125–000.
Applicants: Intercom Energy, Inc.
Description: Intercom Energy, Inc. submits tariff filing per 35: Intercom Energy, Inc. Market-Based Rate Tariff to be effective 10/18/2010.
Filed Date: 10/15/2010.
Accession Number: 20101015–5143.
Comment Date: 5 p.m. Eastern Time on Friday, November 5, 2010.

Docket Numbers: ER11–126–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): Revisions To Eliminate Market Monitor Data Retention Auditing Requirement to be effective 12/14/2010.

Filed Date: 10/15/2010.
Accession Number: 20101015–5144.
Comment Date: 5 p.m. Eastern Time on Friday, November 5, 2010.

Docket Numbers: ER11–127–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii0: ISA No. 2656—Queue No. U2–068–PJM, VEPCO and DomVA—Lost River to be effective 9/17/2010.
Filed Date: 10/18/2010.
Accession Number: 20101018–5031.
Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Docket Numbers: ER11–128–000.
Applicants: Grand Ridge Energy IV LLC.
Description: Grand Ridge Energy IV LLC submits tariff filing per 35.12: Filing of Facility Connection Agreement to be effective 12/31/2010.
Filed Date: 10/18/2010.
Accession Number: 20101018–5071.
Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Docket Numbers: ER11–129–000.
Applicants: Grand Ridge Energy IV LLC.
Description: Grand Ridge Energy IV LLC submits tariff filing per 35.13(a)(2)(iii): Amendment to Assignment, Co-Tenancy, and Shared Facilities Agreement to be effective 12/31/2010.
Filed Date: 10/18/2010.
Accession Number: 20101018–5072.
Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Docket Numbers: ER11–130–000.
Applicants: Grand Ridge Energy LLC.
Description: Grand Ridge Energy LLC submits tariff filing per 35.13(a)(2)(iii): Amended Assignment, Co-Tenancy, and Shared Facilities Agreement to be effective 12/31/2010.
Filed Date: 10/18/2010.
Accession Number: 20101018–5076.
Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Docket Numbers: ER11–131–000.
Applicants: Grand Ridge Energy II LLC.
Description: Grand Ridge Energy II LLC submits tariff filing per 35.13(a)(2)(iii): Amended Assignment, Co-Tenancy, and Shared Facilities Agreement to be effective 12/31/2010.
Filed Date: 10/18/2010.
Accession Number: 20101018–5078.
Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Docket Numbers: ER11–132–000.
Applicants: Grand Ridge Energy III LLC.
Description: Grand Ridge Energy III LLC submits tariff filing per 35.13(a)(2)(iii): Amended Assignment, Co-Tenancy, and Shared Facilities Agreement to be effective 12/31/2010.
Filed Date: 10/18/2010.
Accession Number: 20101018–5080.
Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Docket Numbers: ER11–133–000.
Applicants: Grand Ridge Energy V LLC.
Description: Grand Ridge Energy V LLC submits tariff filing per 35.13(a)(2)(iii): Amended Assignment, Co-Tenancy, and Shared Facilities Agreement to be effective 12/31/2010.
Filed Date: 10/18/2010.
Accession Number: 20101018–5081.
Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Docket Numbers: ER11–134–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 10–18–10 ALLETE, Inc., Att. O and GG to be effective 1/1/2011.
Filed Date: 10/18/2010.
Accession Number: 20101018–5098.
Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Docket Numbers: ER11–135–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits tariff filing per 35.12: Service Schedule No. 305, E&P Agreement between APS and Ajo 1 to be effective 10/7/2010.
Filed Date: 10/18/2010.
Accession Number: 20101018–5101.
Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Docket Numbers: ER11–136–000.
Applicants: Michigan Electric Transmission Company,
Description: Michigan Electric Transmission Company, LLC submits tariff filing per 35.12: METC 205 Filing and Petition for Declaratory Order Related to Agency Agreement to be effective 12/17/2010.
Filed Date: 10/18/2010.
Accession Number: 20101018–5143.
Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–2–000.
Applicants: Consolidated Edison Company of New York, Inc.
Description: Application Pursuant to Section 204 of Consolidated Edison Company of New York, Inc. for Authority to Issue and Sell Short-Term Debt.
Filed Date: 10/13/2010.
Accession Number: 20101013–5221.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 3, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–26995 Filed 10–25–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

October 19, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–9–000.
Applicants: Tenaska Energy Inc, Kiowa Power Partners, LLC, Tenaska Alabama II Partners, L.P., Tenaska Gateway Partners LTD, Tenaska Georgia Partners LP, Tenaska Virginia Partners, L.P., Tyr Acquisition Company, LLC.
Description: Tenaska Energy, Inc., *et al.* Joint Application For Approval.
Filed Date: 10/18/2010.
Accession Number: 20101018–5154.
Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Docket Numbers: EC11–10–000.
Applicants: FirstEnergy Generation Corp.
Description: FirstEnergy Generation Corp. Application for Authorization Pursuant to Section 203 of the Federal Power Act and Requests for Waivers of Filing Requirements, Confidential Treatment, and Expedited Review.
Filed Date: 10/18/2010.
Accession Number: 20101018–5206.
Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–6–000.
Applicants: AES ES Deepwater, LLC.
Description: Notice of Self-Certification as an Exempt Wholesale Generator of AES ES Deepwater, LLC.
Filed Date: 10/19/2010.
Accession Number: 20101019–5056.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 9, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–137–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits tariff filing per 35: Supplement Market Power Update to be effective 10/18/2010.
Filed Date: 10/18/2010.
Accession Number: 20101018–5163.
Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Docket Numbers: ER11–138–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: 10–18–10 Clean-Up Compliance to be effective 7/28/2010.
Filed Date: 10/18/2010.
Accession Number: 20101018–5193.
Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Docket Numbers: ER11–1828–000.
Applicants: Maine Public Service Company.
Description: Maine Public Service Company submits tariff filing per 35.13(a)(2)(iii): Interconnection Agreement Filing to be effective 9/29/2010.
Filed Date: 10/19/2010.
Accession Number: 20101019–5070.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 9, 2010.

Docket Numbers: ER11–1829–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: FCM Conforming Chges. to Appendix A; Ancillary Chges. to App. A and III.13.6. to be effective 12/19/2010.
Filed Date: 10/19/2010.
Accession Number: 20101019–5086.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 9, 2010.

Docket Numbers: ER11–1830–000.
Applicants: California Independent System Operator Corporation
Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii): 2010–10–19 CAISO Generator Interconnection Procedures Amendment to be effective 12/19/2010.
Filed Date: 10/19/2010.
Accession Number: 20101019–5133.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 9, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

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to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–26994 Filed 10–25–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF10–10–000]

Western Area Power Administration; Notice of Filing

October 19, 2010.

Take notice that on September 30, 2010, Western Area Power Administration submitted a tariff filing pursuant to its Open Access Transmission Tariff, to be effective January 25, 2010.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 1, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–26986 Filed 10–25–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF10–11–000]

Southeastern Power Administration; Notice of Filing

October 19, 2010.

Take notice that on September 30, 2010, the Deputy Secretary of the Department of Energy, under the authority vested in the Federal Energy Regulatory Commission by Delegation Order No. 00–037.00, submitted Southeastern Power Administration (Southeastern) Rate Order No. SEPA–53, for the sale of power from Southeastern's Georgia-Alabama-South Carolina System, for confirmation and approval on a final basis, effective October 1, 2010, up to September 30, 2015.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 1, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–26987 Filed 10–25–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Attendance at North American Electric Reliability Corporation Meetings

October 19, 2010.

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and Commission staff may attend the following North American Electric Reliability Corporation meetings:

NERC Board of Trustees Meeting

November 3, 2010, Wednesday, Atlanta, GA, 1 p.m. to 5 p.m. ET, (Member Representatives Committee).

November 4, 2010, Thursday, Atlanta, GA, 8 a.m. to 1 p.m. ET.

The meetings scheduled to be held in Atlanta will take place at:

Grand Hyatt Atlanta—Buckhead, 3300 Peachtree Road, NE., Atlanta, GA 30305.

Further information may be found at *http://www.nerc.com.*

The above-referenced meetings are open to the public.

The discussions at each of the meetings described above may address matters at issue in the following proceedings:

Docket No. RC08–4, *North American Electric Reliability Corporation;*
Docket No. RC08–5, *North American Electric Reliability Corporation;*
Docket No. RD09–11, *North American Electric Reliability Corporation;*
Docket No. RD10–2, *North American Electric Reliability Corporation;*
Docket No. RD10–4, *North American Electric Reliability Corporation;*
Docket No. RD10–6, *North American Electric Reliability Corporation;*
Docket No. RD10–8, *North American Electric Reliability Corporation;*
Docket No. RD10–10, *North American Electric Reliability Corporation;*
Docket No. RD10–11, *North American Electric Reliability Corporation;*

Docket No. RD10–12, *North American Electric Reliability Corporation;*
Docket No. RD10–14, *North American Electric Reliability Corporation;*
Docket No. RD10–15, *North American Electric Reliability Corporation;*
Docket No. RR08–4, *North American Electric Reliability Corporation;*
Docket No. RR09–6, *North American Electric Reliability Corporation;*
Docket No. RR10–1, *North American Electric Reliability Corporation;*
Docket No. RR10–6, *North American Electric Reliability Corporation;*
Docket No. RR10–7, *North American Electric Reliability Corporation;*
Docket No. RR10–11, *North American Electric Reliability Corporation;*
Docket No. RR10–13, *North American Electric Reliability Corporation.*

For more information, contact Jonathan First, Special Reliability Counsel, Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission at (202) 502–8529 or *jonathan.first@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–26989 Filed 10–25–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13800–000]

Osprey II, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

October 19, 2010.

On June 28, 2010, Osprey II, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the 649 Water Street Project to be located on the Cobbosseecontee Stream, in Kennebec County, Maine. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) A new intake structure with trash racks; (2) a new 6-foot-diameter, 1,900-foot-long buried concrete penstock; (3) a new approximately 400-square-foot powerhouse containing two new turbines and generators with a total installed capacity of 1.5 megawatts; (4) a new tailrace; (5) a new 7.2 or 12.47-kilovolt transmission line connecting to an existing distribution line immediately adjacent to the proposed powerhouse; and (6) appurtenant facilities. The project would have an estimated annual generation of 8,760 megawatt-hours.

Applicant Contact: Hoon Won, 275 River Road, P.O. Box 202, Woolwich, ME 04579; (203) 340–2517.

FERC Contact: Brandon Cherry, (202) 502–8328.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 Days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13800) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–26991 Filed 10–25–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2010–0834, FRL–9217–9]

Agency Information Collection Activities; Proposed Collection; Comment Request; Hazardous Waste Specific Unit Requirements, and Special Waste Processes and Types, EPA ICR Number 1572.08, OMB Control Number 2050–0050

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 EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on March 31, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 27, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2010–0834, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: rcra-docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* RCRA Docket (2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* 1301 Constitution Ave., NW, Room 3334, Washington, D.C. 20460. 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–RCRA–2010–0834. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The

http://www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT:

Norma Abdul-Malik, Office of Solid Waste (5303P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8753; fax number: 703–308–8617; e-mail address: *abdul-malik.norma@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2010–0834, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for RCRA Docket is (202) 566–0270.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES.**
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected Entities: Entities potentially affected by this action are private sector and State, Local, or Tribal governments.

Title: Hazardous Waste Specific Unit Requirements, and Special Waste Processes and Types.

ICR numbers: EPA ICR No. 1572.08, OMB Control No. 2050–0050.

ICR status: This ICR is currently scheduled to expire on March 31, 2011. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR provides a discussion of all of the information collection requirements associated with specific unit standards applicable to owners and operators of facilities that treat, store, or dispose of hazardous wastes as defined by 40 CFR Part 261. It includes a detailed description of the data items and respondent activities associated with each requirement and with each hazardous waste management unit at a facility. The specific units and processes included in this ICR are: Tank systems, Surface impoundments, Waste piles, Land treatment, Landfills, Incinerators, Thermal treatment, Chemical, physical, and biological treatment, Miscellaneous (subpart X), Drip pads, Process vents, Equipment leaks, Containment buildings, Recovery/recycling.

With each information collection covered in this ICR, EPA is aiding the goal of complying with its statutory mandate under RCRA to develop standards for hazardous waste treatment, storage, and disposal facilities, to protect human health and the environment. Without the information collection, the agency cannot assure that the facilities are designed and operated properly.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average as follows:

Unit type	Hours per response
Subpart I: Containers	73
Subpart J: Tank Systems	74
Subpart K: Surface Impoundments	78
Subpart L: Waste Piles	17
Subpart M: Land Treatment	0
Subpart N: Landfills	37

Unit type	Hours per response
Subpart O: Incinerators	3
Subpart W: Drip Pads	0
Subpart X: Miscellaneous Units	0
Subpart AA: Process Vents	400
Subpart BB: Equipment Leaks	4
Subpart DD: Containment Buildings	27

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.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 3,326.

Frequency of response: on occasion.

Estimated total average number of responses for each respondent: 1.6864.

Estimated total annual burden hours: 626,476 hours.

Estimated total annual costs: $26,735,793, which includes $22,795,000 annualized labor and $3,940,793 annualized capital and O&M costs.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: October 13, 2010.

Suzanne Rudzinski,

Acting Director, Office of Resource Conservation and Recovery.

[FR Doc. 2010–27071 Filed 10–25–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9217–6]

Cross-Media Electronic Reporting Rule State Authorized Program Revision Approval: State of Arkansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval, under regulations for Cross-Media Electronic Reporting, of the State of Arkansas's request to revise certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA's approval is effective October 26, 2010.

FOR FURTHER INFORMATION CONTACT: Evi Huffer, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566–1697, *huffer.evi@epa.gov,* U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Under Subpart D of CROMERR, state, tribe or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and get EPA approval. Subpart D also provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, in § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On April 27, 2010, the State of Arkansas Department of Environmental Quality (ARDEQ) submitted an application for its Net Discharge Monitoring Report (NetDMR) electronic document receiving system for revision of its 40 CFR part 123—National Pollutant Discharge Elimination System (NPDES) State Program Requirements EPA-authorized program for electronic reporting of Discharge Monitoring Report (DMR) information under 40 CFR part 122.

EPA has reviewed ARDEQ's request to revise its EPA-authorized program and, based on this review, EPA has determined that the application meets the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Arkansas's request for revision to its 40 CFR part 123—NPDES State Program Requirements authorized program for electronic reporting of discharge monitoring report information is being published in the **Federal Register**.

ARDEQ was notified of EPA's determination to approve its application with respect to the authorized program listed above.

Dated: October 19, 2010.

Andrew T. Battin,

Acting Director, Office of Information Collection.

[FR Doc. 2010–27067 Filed 10–25–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9217–8]

Science Advisory Board Staff Office; Request for Nominations of Experts for the Review of EPA's Draft Oil Spill Research Strategy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office requests public

nominations for technical experts to form a SAB panel to peer review the Agency's Draft Oil Spill Research Strategy. EPA's Office of Research and Development will be developing the strategy to discuss EPA's proposed research and collaborative approaches for four activities: dispersants, alternative remediation technologies, coastal restoration, and human health effects identified during the Gulf of Mexico oil spill.

DATES: Nominations should be submitted by November 9, 2010 per instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Notice and Request for Nominations may contact Mr. Thomas Carpenter, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–4885, by fax at (202) 565–2098, or via e-mail at *carpenter.thomas@epa.gov.* General information concerning the EPA SAB can be found at the EPA SAB Web site at *http//www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The SAB (42 U.S.C. 4365) is a chartered Federal Advisory Committee that provides independent scientific and technical peer review, advice, consultation, and recommendations to the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

After the BP Deepwater Horizon oil spill in the Gulf of Mexico, the EPA Science Advisory Board Staff Office prepared to meet EPA's emerging needs for advice relating to science and research linked to oil spills by announcing plans on May 19, 2010 to convene work groups of experts drawn from the U.S. EPA SAB to provide advice on scientific and technical issues related to the Gulf of Mexico oil spill (75 FR 28009). In a subsequent **Federal Register** Notice the SAB Staff Office requested public nominations of experts to serve on potential work groups or panels to advise the Agency on scientific and technical issues related to the Gulf of Mexico Oil Spill (75 FR 32769–32770, June 9, 2010). The request sought nominations of nationally and internationally recognized experts with demonstrated research or operational experience assessing the environmental impacts and associated mitigation of impacts due to oil spills, oil products, oil constituents, and dispersants in air and water (including wetlands) media. The **Federal Register** Notice sought individuals with expertise in one or more of the following disciplines: chemistry; fate, transport and exposure assessment; toxicology; public health; ecology; ecotoxicology; risk assessment; engineering; and economics.

Since publication of these **Federal Register** Notices, EPA's ORD has requested SAB advice on a Draft Oil Spill Research Strategy and changes to EPA's existing Oil Spill Research Program in light of the Deepwater Horizon oil spill in the Gulf of Mexico. This notice specifically requests public nominations for technical experts to form an SAB panel to peer review this Draft Oil Spill Research Strategy.

ORD was authorized to conduct oil spill research by the Oil Pollution Act of 1990 (OPA–90) following the Exxon Valdez oil spill. Since 1990, the objective of the research has been to provide environmental managers with the tools, models, and methods needed to mitigate the effects of oil spills in all ecosystems with emphasis on the inland environment. The Deepwater Horizon oil spill in the Gulf of Mexico has fundamentally different characteristics than previous near-shore oil spills creating new research needs for oil spill treatment methods (*e.g., in-situ* burning, bioremediation, and the use of dispersants), and potential human health and ecological impacts.

The Deep Water Horizon spill identified the need for additional research on alternative spill response technologies; environmental impacts of chemical dispersants under deep sea application conditions; the fate and toxicity of dispersants and dispersed oil; chronic health effects for spill response workers and the public; and shoreline and wetland impacts, restoration and recovery. Accordingly, ORD is developing a research strategy to address these needs, and has requested that the SAB review their draft strategy.

Availability of the review materials: The Draft Oil Spill Research Strategy will be available and posted on the Agency's Web site in the near future. General information on EPA's response to the BP Oil Spill in the Gulf of Mexico is available at *http://www.epa.gov/bpspill/.* For questions concerning the Draft Oil Spill Research Strategy, please contact Dr. Randy Wentsel, National Program Director for Land Research Program, Office of Research and Development, US EPA, 1200 Pennsylvania Avenue, NW., MC 8191R, Washington, DC 20460, phone (202) 564–3214 or at *wentsel.randy@epa.gov.*

Request for Nominations: The SAB Staff Office is seeking nominations of nationally and internationally recognized scientists and engineers with demonstrated expertise and research in one or more of the following areas: Chemistry, fate, transport and exposure assessment, public health, toxicology, ecotoxicology risk assessment, restoration ecology, environmental engineering, and environmental monitoring. We are particularly interested in scientists and engineers with direct experience in the oil spill remediation, management, and implementation of environmental protection and restoration programs that have included development of metrics and environmental indicators used to monitor, evaluate, and communicate progress in returning ecosystems and communities to conditions that support sustainability.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals in the areas of expertise described above for possible service on this expert Panel. Nominations should be submitted in electronic format (which is preferred over hard copy) following the instructions for "Nominating Experts to Advisory Panels and Ad Hoc Committees Being Formed" provided on the SAB Web site. The instructions can be accessed through the "Nomination of Experts" link on the blue navigational bar on the SAB Web site at *http://www.epa.gov/sab.* To receive full consideration, nominations should include all of the information requested below.

EPA's SAB Staff Office requests contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's curriculum vita; sources of recent grant and/or contract support; and a biographical sketch of the nominee indicating current position, educational background, research activities, and recent service on other national advisory committees or national professional organizations.

Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Mr. Thomas Carpenter, DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than November 9, 2010. 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.

The EPA SAB Staff Office will acknowledge receipt of nominations. The names and bio-sketches of qualified nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff, will be posted in a List of Candidates on the SAB Web site at *http://www.epa.gov/sab.* The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office, a review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In forming this expert panel, the SAB Staff Office will consider public comments on the List of Candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for Panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; and (e) skills working in committees, subcommittees and advisory panels; and, (f) for the Panel as a whole, diversity of expertise and viewpoints.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address *http://www.epa.gov/sab/pdf/epaform3110–48.pdf.*

The approved policy under which the EPA SAB Office selects subcommittees and review panels is described in the following document: *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA–SAB–EC–02–010), which is posted on the SAB Web site at *http://www.epa.gov/sab/pdf/ec02010.pdf.*

Dated: October 20, 2010.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–27073 Filed 10–25–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS10–7]

Modification of the Annual National Registry Fee

AGENCY: Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council.

ACTION: Notice of modification of the annual National Registry fee to $40.

SUMMARY: Under authority in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Reform Act), the ASC modified the annual National Registry fee (Registry fee) to $40 from the current $25 amount at its meeting on October 13, 2010. The ASC raised the Registry fee to support its supervisory activities, including additional authority and responsibility under the Dodd-Frank Reform Act. The modified Registry fee of $40 is effective on January 1, 2012. As of January 1, 2012, for all new appraiser credentials and all renewals of existing credentials, States are required to collect and transmit to the ASC the modified Registry fee of $40.

The National Registry is a database of all State licensed and certified appraisers who are eligible to perform appraisals for federally related transactions. Through the National Registry, lenders and consumers can readily determine whether an appraiser holds the appropriate credential and remains in good standing with the State. Each State maintains procedures for certifying, licensing, supervising and disciplining appraisers. The ASC is responsible for monitoring States' appraiser regulatory programs.

DATES: *Effective Date:* January 1, 2012.

FOR FURTHER INFORMATION CONTACT: James R. Park, Executive Director, at (202) 595–7575, or Alice M. Ritter, General Counsel, at (202) 595–7577, via Internet e-mail at *jim@asc.gov* and *alice@asc.gov,* respectively, or by U.S. Mail at Appraisal Subcommittee, 1401 H Street, NW., Suite 760, Washington, DC 20005.

SUPPLEMENTARY INFORMATION: Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Title XI), as amended, requires the ASC to maintain a national registry of State licensed and certified appraisers and to ensure that each State agency transmits to the ASC, along with an annual Registry fee, a roster of State certified and licensed appraisers who are eligible to perform appraisals in federally related transactions.

Title XI, as amended by the Dodd-Frank Reform Act, allows the ASC to modify the Registry fee to an amount not more than $40. With approval of the Federal Financial Institutions Examination Council, the ASC has authority to modify the Registry fee above $40 to an amount not to exceed $80.

At its meeting on October 13, 2010, the ASC approved a modification of the annual Registry fee to $40 from the current $25 amount, which had remained unchanged since 1989. The ASC raised the Registry fee to support its supervisory activities, including additional authority and responsibility under the Dodd-Frank Reform Act.

As addressed in ASC Policy Statement 8, *National Registry of State Certified and Licensed Appraisers,* Title XI requires States to transmit to the ASC a roster listing individuals who have received a State certification or license to perform appraisals and a Registry fee from those individuals. The Registry fee and roster requirements apply to all individuals who receive State certifications or licenses originally or by reciprocity. Moreover, the Registry fee is due to the ASC from each State in which an appraiser is certified or licensed.

To provide a reasonable transition period for implementation by the States of the modified Registry fee, the fee increase is effective on January 1, 2012. Accordingly, on or after January 1, 2012, for all new appraiser credentials and all renewals of existing credentials, States are required to collect and transmit to the ASC the modified Registry fee of $40 in order for a credential to be reflected on the National Registry.

For States that issue multi-year certifications or licenses that do not require renewal in 2012, the modified Registry fee is due to the ASC on the date that the credential is renewed by the State. For example, if a State remitted $50 to the ASC in 2011 for a two-year certification, the ASC would accept the amount as payment in full of the annual Registry fee for calendar years 2011 and 2012. The State would not have to collect the $15 difference in the Registry fee amount for 2012. Upon

renewal of the two-year credential in 2013, the State would be required to remit $80 to the ASC in order for the appraiser to remain on the National Registry in 2013 and 2014.

From the ASC's Web site (*http://www.asc.gov*), the public can access the National Registry for information on a credentialed appraiser. Certain personal information about an individual appraiser is protected by the Privacy Act, 5 U.S.C. 552a, and is not available to the public.

By the Appraisal Subcommittee.

Dated: October 20, 2010.

Deborah S. Merkle,

Chairman.

[FR Doc. 2010–27054 Filed 10–25–10; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2010–N–16]

Agency Information Collection Activities; Proposals, Submissions, and Approvals

AGENCY: Federal Housing Finance Agency.

ACTION: Submission of information collection for Approval from the Office of Management and Budget.

SUMMARY: The Federal Housing Finance Agency (FHFA) has submitted to the Office of Management and Budget (OMB) for emergency review, revisions to the information collection, "Survey of FHLBank Economic Development Programs," OMB No. 2590–0010. Specifically, FHFA requests review of the use of surveys at an agency-sponsored conference being held October 25–26, 2010. The surveys will be used for open-forum discussions at the conference, and will be distributed prior to the conference with the intent that they will help to initiate and focus the discussions. The surveys are part of the collection of information that was previously submitted for emergency review and subsequently approved on August 19, 2010, under OMB No. 2590–0010, in connection with open-forum discussions that were held in August and September, 2010. Since that approval, one of the surveys has been substantively revised for its use in October, therefore FHFA is requesting emergency review of these revisions, in addition to the general use of the surveys in October. This revision did not result in a change in burden. The collection of information is due to expire April 30, 2011. To allow interested persons to comment on this information collection, FHFA is publishing this notice and plans to submit a request for a three-year extension of OMB's approval. Comments regarding this information collection should be addressed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, *Fax:* 202–395–6974, *E-mail: OIRA_Submission@omb.eop.gov.* Please also submit comments to FHFA using any one of the following methods and include "Comments: Survey of FHLBank Economic Development Programs, No. 2010–N–16" as the subject:

- *E-mail: RegComments@fhfa.gov;*
- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *U.S. Mail/Hand Delivery:* Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, on the FHFA Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at 202–414–6924.

DATES: Written comments should be received on or before December 27, 2010 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: For additional information about this information collection, or to obtain a copy with applicable supporting documentation, contact Charles McLean, Associate Director, Office of Housing and Community Investments, (202) 408–2537, *Charles.McLean@fhfa.gov.*

Overview of the Information Collection

Title of the Collection: Survey of FHLBank Economic Development Programs.

OMB No.: 2590–0010,

Expires: April 30, 2011.

Need and Use of the Information Collection: The Office of Housing and Community Investment (OHCI) of FHFA is conducting research and outreach initiatives to determine ways to enhance the Federal Home Loan Banks' (FHLBanks) capacity to meet the nation's unmet economic development credit needs. At the conclusion of these processes, OHCI expects to propose for public comment amendments to the Community Investment Cash Advance (CICA) Regulation in late 2011. Amending the regulation will update the regulatory standards to reflect current community and economic development investment strategies and priorities, and clarify a regulation that may be difficult to apply.

OHCI is conducting research and outreach initiatives in two phases. The first phase consisted of two on-line surveys and open-forum discussion sessions held in August and September 2010 at Federal Home Loan Banks in Pittsburgh, San Francisco, Atlanta, Boston, Dallas, and Des Moines. The open-forum discussion sessions were attended by approximately 120 community and economic development practitioners and experts from all segments of the community development field.

This request for an emergency ICR approval is for the second phase of the research and outreach initiatives. OHCI will host an Economic Development Conference in October 2010. This conference will be attended by OHCI staff, FHLBank staff and approximately 100 individuals representing economic development organizations from all segments of the community development field. Participants will discuss current and future national economic development issues, financing challenges, opportunities in the field, and best practices. OHCI staff will send four surveys electronically. At the conference, OHCI staff will conduct concurrent open-forum discussions and use the survey responses to initiate the discussions. The discussions will center on opportunities and challenges in using FHLBank financing to fund economic development projects and activities that will create jobs and spur economic growth. Information from the discussions at the FHLBanks and at the conference will be used to inform OHCI how the CICA regulation may be enhanced.

Affected Public: Private sector.

Costs: FHFA estimates that there will be no annualized capital/start-up costs for the respondents to collect and submit this information.

Type of Respondents: Federal Home Loan Bank Members, Economic and Community Development Trade Associations, State and Local Economic Development Authorities, and Economists.

ANNUAL BURDEN ESTIMATES FOR RESPONDENTS

Instrument	Number of respondents	Number of responses per respondent	Average burden per response (minutes)	Total average burden per response (minutes)	Total annual burden hours
Survey Questions for Economic and Community Development Trade Associations (For Oct. conference).	25	× 1	× 15	= 375	6.25 hours (*375/60 mins*).
Survey Questions for State and Local Economic Development Authorities (For Oct. conference).	25	× 1	× 15	= 375	6.25 hours (*375 mins/60 mins*).
Survey Questions for Economists (For Oct. conference).	25	× 1	× 15	= 375	6.25 hours (*375 mins/60 mins*).
Survey Questions for FHLBank Member Lenders (For Oct. conference).	25	× 1	× 15	= 375	6.25 hours (*375/60 mins*).
Survey Questions for Economic Development Organizations (For Aug.–Sep. Open-Forum discussions).	60 (10 per each location).	× 1	× 15	= 900	15 hours (*900 mins/60 mins*).
Survey Questions for FHLBank Member Lenders (For Aug.–Sep. Open-Forum discussions).	60 (10 per each location).	× 1	× 15	= 900	15 hours (*900 mins/60 mins*)

Dated: October 20, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010–27075 Filed 10–25–10; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 10, 2010.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *J. Grant Burcham, as trustee of the James Grant Burcham Trust,* Kansas City, Missouri; to retain control of MBT Bancshares, Inc., and thereby indirectly retain control of Missouri Bank and Trust Company, both of Kansas City, Missouri.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Byron Cook; Ginne Sue Cook; Katie Cook; Lance Cook; Karen Cook, and Nina Sue Cook,* all in Corsicana, Texas, collectively the Cook Family; to retain voting shares of Community Bank Holdings of Texas, Inc., and thereby indirectly retain voting shares of Community National Bank and Trust of Texas, both of Corsicana, Texas.

Board of Governors of the Federal Reserve System, October 21, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–27012 Filed 10–25–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 19, 2010.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer), P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Woolfam VI SLB, LLC,* Maryland Heights, Missouri; to become a bank holding company by controlling 32.5 percent of the voting shares of St. Louis Bancshares, Inc., and thereby indirectly acquire voting shares of St. Louis Bank, both of Town and Country, Missouri.

Board of Governors of the Federal Reserve System, October 21, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–27013 Filed 10–25–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL MARITIME COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Maritime Commission.

ACTION: Final notice of submission for OMB review.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Federal Maritime Commission (FMC or Commission) hereby gives notice that it has submitted to the Office of Management and Budget a request for an extension of the existing collection requirements under 46 CFR 515—Licensing, Financial Responsibility Requirements and General Duties for Ocean Transportation Intermediaries and Related Forms. The FMC has requested an extension of an existing collection as listed below.

DATES: Written comments must be submitted on or before November 26, 2010.

ADDRESSES: Comments should be addressed to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Kristy L. Daphnis, Desk Officer for Federal Maritime Commission, 725 17th Street, NW., Washington, DC 20503, *OIRA_Submission@OMB.EOP.GOV,* Fax (202) 395–5167, and to:

Ronald D. Murphy, Managing Director, Office of the Managing Director, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, Telephone: (202) 523–5800, *omd@fmc.gov.*

Please reference the information collection's title and OMB number in your comments.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by contacting Jane Gregory on 202–523–5800 or e-mail: *jgregory@fmc.gov.*

SUPPLEMENTARY INFORMATION: A notice that FMC would be submitting this request was published in the **Federal Register** on August 11, 2010 (75 FR 48685), allowing for a 60-day comment period. No comments were received.

The FMC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Information Collection Open for Comment

Title: 46 CFR Part 515—Licensing, Financial Responsibility Requirements and General Duties for Ocean Transportation Intermediaries and Related Forms.

OMB Approval Number: 3072–0018 (Expires October 31, 2010).

Abstract: The Shipping Act of 1984 (the "Act"), 46 U.S.C. 40101–41309 (2006), as modified by Public Law 105–258 (The Ocean Shipping Reform Act of 1998) and Section 424 of Public Law 105–383 (The Coast Guard Authorization Act of 1998), provides that no person in the United States may act as an ocean transportation intermediary (OTI) unless that person holds a license issued by the Commission. The Commission shall issue an OTI license to any person that the Commission determines to be qualified by experience and character to act as an OTI. Further, no person may act as an OTI unless that person furnishes a bond, proof of insurance or other surety in a form and amount determined by the Commission to ensure financial responsibility. The Commission has implemented the provisions of section 19 in regulations contained in 46 CFR 515, including financial responsibility forms FMC–48, FMC–67, FMC–68, and FMC–69, Optional Rider Forms FMC–48A and FMC–69A, and its related license application form, FMC–18.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses information obtained under this part and through Form FMC–18 to determine the qualifications of OTIs and their compliance with shipping statutes and regulations and to enable the Commission to discharge its duties under the Act by ensuring that OTIs maintain acceptable evidence of financial responsibility. If the collection of information were not conducted, there would be no basis upon which the Commission could determine if applicants are qualified for licensing.

Frequency: This information is collected when applicants apply for a license or when existing licensees change certain information in their application forms.

Type of Respondents: The respondents are persons desiring to obtain a license to act as an OTI. Under the Act, OTIs may be either an ocean freight forwarder, a non-vessel-operating common carrier, or both.

Number of Annual Respondents: The Commission estimates a potential annual respondent universe of 5,400 entities.

Estimated Time per Response: The time per response for completing Application Form FMC–18 averages 2 hours. The time to complete a financial responsibility form averages 20 minutes.

Total Annual Burden: The Commission estimates the total annual person-hour burden at 5,162 person-hours.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–27059 Filed 10–25–10; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Trans No.	ET req status	Party name
20–SEP–10	20101032	G	Hewlett-Packard Company.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Fortify Software, Inc.
		G	Fortify Software, Inc.
	20101047	G	International Business Machines Corporation.
		G	Unica Corporation.
		G	Unica Corporation.
	20101054	G	Kindred Healthcare, Inc.
		G	Vista Healthcare Holdings, LLC.
		G	Vista Hospital of South Bay, LLC.
		G	Vista Healthcare, LLC.
		G	Vista Hospital of South Bay, LP.
		G	Perris Valley Community Hospital, LLC.
		G	Vista Specialty Hospital of Southern California, LP.
		G	Rancho Cucamonga Community Hospital, LLC.
		G	South Bay Community Hospital, Inc.
	2010193	G	Welsh, Carson, Anderson & Stowe XI, L.P.
		G	Seaport Capital Partners II, L.P.
		G	Peak 10, Inc.
	20101114	G	Bain Capital Fund X, L.P.
		G	Brockway Moran & Partners Fund II, L.P.
		G	Air Medical Group Holdings, Inc.
21–SEP–10	20101071	G	Finlav S.p.A.
		G	Green Mountain Coffee Roasters, Inc.
		G	Green Mountain Coffee Roasters, Inc.
	20101101	G	W. Galen Weston.
		G	Kent P. Dauten.
		G	Keystone Bakery Holdings, LLC.
22–SEP–10	20101104	G	HealthSpring, Inc.
		G	Bravo Health, Inc.
		G	Bravo Health, Inc.
23–SEP–10	20100928	G	Coventry Health Care, Inc.
		G	Sisters of Mercy Health System.
		G	MHP, Inc.
	20101035	G	BHP Billiton Limited.
		G	Potash Corporation of Saskatchewan Inc.
		G	Potash Corporation of Saskatchewan Inc.
	20101036	G	BHP Billiton Plc.
		G	Potash Corporation of Saskatchewan Inc.
		G	Potash Corporation of Saskatchewan Inc.
	20101124	G	Taleo Corporation.
		G	James Barrett Riley.
		G	Learn.com, Inc.
	20101130	G	Targa Resources Partners LP.
		G	Targa Resources Investments Inc.
		G	Targa Capital LLC.
24–SEP–10	20101110	G	The Veritas Capital Fund III, L.P.
		G	PerkinElmer, Inc.
		G	PerkinElmer Sensors, Inc.
	20101131	G	Hellman & Friedman Capital Partners VI, L.P.
		G	AMH Holdings II, Inc.
		G	AMH Holdings II, Inc.
	20101132	G	ProAssurance Corporation.
		G	American Physicians Service Group, Inc.
		G	American Physicians Service Group, Inc.
	20101135	G	Protective Life Corporation.
		G	Torchmark Corporation.
		G	United Investors Life Insurance Company.
	20101136	G	Partners Limited.
		G	Prime Infrastructure Holdings Limited.
		G	Prime Infrastructure Holdings Limited.
	20101139	G	TreeHouse Foods, Inc.
		G	Windjammer Senior Equity Fund III, L.P.
		G	STSF Holdings, Inc.
	20101143	G	3G Special Situations Fund II, L.P.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Burger King Holdings, Inc.
		G	Burger King Holdings, Inc.
	20101144	G	Prestige Brands Holdings, Inc.
		G	Charlesbank Equity Fund VII, Limited Partnership.
		G	Blacksmith Brands Holdings, Inc.
	20101156	G	Clayton, Dubilier & Rice Fund VIII, L.P.
		G	Ulysses Participation S.a.r.l.
		G	Univar, Inc.
27–SEP–10	20101076	G	World Fuel Services Corporation.
		G	Western Petroleum Company.
		G	Western Petroleum Company.
	20101125	G	IASIS Investment LLC.
		G	Brim Holding Company, Inc.
		G	Brim Holding Company, Inc.
	20101149	G	Constellation Energy Group, Inc.
		G	CPower, Inc.
		G	CPower, Inc.
28–SEP–10	20101111	G	Intel Corporation.
		G	Colville Ventures LLC.
		G	Colville Ventures LLC.
	20101112	G	General Electric Company.
		G	Colville Ventures LLC.
		G	Colville Ventures LLC.
	20101147	G	ConocoPhillips.
		G	Apache Corporation.
		G	ZPZ Delaware I LLC.
	20101154	G	Occidental Petroleum Corporation.
		G	ConocoPhillips.
		G	ConocoPhillips Company.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, or Renee Chapman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2010–26818 Filed 10–25–10; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New; 30-Day notice]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: ONC State HIE Performance Measures and Progress Report—OMB No. 0990–NEW–Office of the National Coordinator for Health Information Technology (ONC).

Abstract: The purpose of the State Health Information Exchange Cooperative Agreement Program, as authorized by Section 3013 of the American Recovery and Reinvestment Act is to provide grants to States and Qualified State Designated Entities is to facilitate and expand the secure, electronic movement and use of health information among organizations according to national recognized standards. As part of that project, States and Qualified State Designated Entities are required to provide biannual program progress reports and report on performance measures during the implementation phase of the cooperative agreement. This request is for those two data gathering requirements. The data collections will last four years, which is the duration of the project, and this request is for the data collection for the first three years of that project period.

ESTIMATED ANNUALIZED BURDEN HOURS

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Program progress report—Full biannual report with 7 modules.	State government or Qualified State Designated Entity.	56	2	12	1,344
Program progress report—Partial progress report update on interim quarters with 2 modules.	State government or Qualified State Designated Entity.	56	2	3	336
Total					1,680

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2010–26956 Filed 10–25–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–NEW; 30-day notice]

Agency Information Collection Request 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: ONC State HIE State Plans—OMB No. 0990—Existing collection in use without OMB control number—Office of the National Coordinator for Health Information Technology (ONC).

Abstract: The purpose of the State Health Information Exchange Cooperative Agreement Program, as authorized by Section 3013 of the American Recovery and Reinvestment Act is to provide grants to States and Qualified State Designated Entities is to facilitate and expand the secure, electronic movement and use of health information among organizations according to national recognized standards. Section 3013 requires States and Qualified State Designated Entities to have approved State Plans, consisting of strategic and operational components, before funding can be used for implementation activities. The State Plans must be submitted to the National Coordinator for Health Information Technology during the first year of the project period in order to receive implementation funding through the cooperative agreement. Annual updates to the State plans will be required in the three remaining project periods. The data collection will last four years, which is the duration of the project, and this request is for the data collection for the first three years of that project period.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
State government or Qualified State Designated Entity.	State Plans (Strategic and Operational).	56	1	3,341.3	187,112.8
State government or Qualified State Designated Entity.	Subsequent updates to the State Plan.	56	1	500	28,000
Total					215,114.6

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2010–26955 Filed 10–25–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Standards Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Standards Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

Date and Time: The meeting will be held on November 30, 2010, from 9 a.m. to 3 p.m./Eastern Time.

Location: The meeting will be conducted virtually only. Dial into the meeting: 1–877–705–6006; webcast: *http://altarum.adobeconnect.com/HITstandards.*

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov.* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will hear reports from its workgroups, including the Clinical Operations, Vocabulary Task Force, Implementation, and Enrollment Workgroups. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 24, 2010. Oral comments from the public will be scheduled between approximately 2 and 3 p.m./Eastern Time. Time allotted for each presentation will be limited to three minutes each. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: October 18, 2010.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2010–26918 Filed 10–25–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0541]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Special Protocol Assessment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 26, 2010.

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 0910–0470. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3792, *Elizabeth.berbakos@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on Special Protocol Assessment—OMB Control Number 0910–0470—Extension

The "Guidance for Industry on Special Protocol Assessment" describes Agency procedures to evaluate issues related to the adequacy (*e.g.,* design, conduct, analysis) of certain proposed studies. The guidance describes procedures for sponsors to request special protocol assessment and for the Agency to act on such requests. The guidance provides information on how the Agency interprets and applies provisions of the Food and Drug Administration

Modernization Act of 1997 and the specific Prescription Drug User Fee Act of 1992 (PDUFA) goals for special protocol assessment associated with the development and review of PDUFA products. The guidance describes the following two collections of information: (1) The submission of a notice of intent to request special protocol assessment of a carcinogenicity protocol and (2) the submission of a request for special protocol assessment.

Notification for a Carcinogenicity Protocol

As described in the guidance, a sponsor interested in Agency assessment of a carcinogenicity protocol should notify the appropriate division in FDA's Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER) of an intent to request special protocol assessment at least 30 days prior to submitting the request. With such notification, the sponsor should submit relevant background information so that the Agency may review reference material related to carcinogenicity protocol design prior to receiving the carcinogenicity protocol.

Request for Special Protocol Assessment

The guidance asks that a request for special protocol assessment be submitted as an amendment to the investigational new drug application (IND) for the underlying product and that it be submitted to the Agency in triplicate with Form FDA 1571 attached. The guidance also suggests that the sponsor submit the cover letter to a request for special protocol assessment via facsimile to the appropriate division in CDER or CBER. Agency regulations (21 CFR 312.23(d)) state that information provided to the Agency as part of an IND is to be submitted in triplicate and with the appropriate cover form, Form FDA 1571. An IND is submitted to FDA under existing regulations in part 312 (21 CFR part 312), which specifies the information that manufacturers must submit so that FDA may properly evaluate the safety and effectiveness of investigational drugs and biological products. The information collection requirements resulting from the preparation and submission of an IND under part 312 have been estimated by FDA and the reporting and recordkeeping burden has been approved by OMB under OMB control number 0910–0014.

FDA suggests that the cover letter to the request for special protocol assessment be submitted via facsimile to the appropriate division in CDER or CBER to enable Agency staff to prepare for the arrival of the protocol for assessment. The Agency recommends that a request for special protocol assessment be submitted as an amendment to an IND for two reasons: (1)To ensure that each request is kept in the administrative file with the entire IND and (2) to ensure that pertinent information about the request is entered into the appropriate tracking databases. Use of the information in the Agency's tracking databases enables the appropriate Agency official to monitor progress on the evaluation of the protocol and to ensure that appropriate steps will be taken in a timely manner.

The guidance recommends that the following information should be submitted to the appropriate Center with each request for special protocol assessment so that the Center may quickly and efficiently respond to the request:

- Questions to the Agency concerning specific issues regarding the protocol; and
- All data, assumptions, and information needed to permit an adequate evaluation of the protocol, including: (1) The role of the study in the overall development of the drug; (2) information supporting the proposed trial, including power calculations, the choice of study endpoints, and other critical design features; (3) regulatory outcomes that could be supported by the results of the study; (4) final labeling that could be supported by the results of the study; and (5) for a stability protocol, product characterization and relevant manufacturing data.

Description of Respondents: A sponsor, applicant, or manufacturer of a drug or biologic product regulated by the Agency under the Federal Food, Drug, and Cosmetic Act or section 351 of the Public Health Service Act (42 U.S.C. 262) who requests special protocol assessment.

Burden Estimate: Table 1 of this document provides an estimate of the annual reporting burden for requests for special protocol assessment.

Notification for a Carcinogenicity Protocol. Based on data collected within CDER and CBER, including the number of notifications for carcinogenicity protocols and the number of carcinogenicity protocols submitted in fiscal years (FY) 2007, 2008, and 2009, CDER estimates that it will receive approximately 60 notifications of an intent to request special protocol assessment of a carcinogenicity protocol per year from approximately 28 sponsors. CBER estimates that it will receive approximately one notification of an intent to request special protocol assessment of a carcinogenicity protocol per year from approximately one sponsor. The hours per response, which is the estimated number of hours that a sponsor would spend preparing the notification and background information to be submitted in accordance with the guidance, is estimated to be approximately 8 hours.

Requests for Special Protocol Assessment. Based on data collected within CDER and CBER, including the number of requests for special protocol assessment submitted in FY 2007, 2008, and 2009, CDER estimates that it will receive approximately 372 requests for special protocol assessment per year from approximately 216 sponsors. CBER estimates that it will receive approximately 10 requests from approximately 10 sponsors. The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted with a request for special protocol assessment, including the time it takes to gather and copy questions to be posed to the Agency regarding the protocol and data, assumptions, and information needed to permit an adequate evaluation of the protocol. Based on the Agency's experience with these submissions, FDA estimates approximately 15 hours on average would be needed per response.

In the **Federal Register** of July 13, 2010 (75 FR 39949), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received on the information collection.

FDA estimates the burden of this collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Notification for Carcinogenicity Protocols	29	2.10	61	8	488

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Requests for Special Protocol Assessment	226	1.69	382	15	5,730
Total					6,218

[1] There are no capital costs or operating and maintenance costs associated with this collection.

Dated: October 20, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–26985 Filed 10–25–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Award of a Single-source Program Expansion Supplement Grant to the Research Foundation of the State University of New York (SUNY) at Albany, NY, for the National Child Welfare Workforce Institute (NCWWI)

AGENCY: Children's Bureau, ACYF, ACF, HHS.

ACTION: Notice.

CFDA Number: 93.648.

Legislative Authority: Section 426(a)(1)(C) of the Social Security Act, as amended [42 U.S.C. 626(a)(1)(C)].

Amount of Award: $480,000.

Project Period: September 30, 2010 through September 29, 2011.

Summary: The Administration for Children and Families (ACF), Children's Bureau (CB) announces the award of a single-source program expansion supplement grant to the Research Foundation at the State University of New York (SUNY) at Albany, National Child Welfare Workforce Institute (NCWWI), Albany, NY, to support additional Bachelor's of Social Work (BSW) and Master's of Social Work (MSW) traineeship programs at three universities.

The NCWWI was awarded a cooperative agreement in FY 2008 as the result of a competition. Under the cooperative agreement, NCWWI identifies promising practices in child welfare workforce development, identifies and facilitates leadership training for middle managers and child welfare supervisors, administers BSW and MSW traineeships at multiple universities, engages national peer networks, supports strategic dissemination of effective and promising workforce practices, and advances knowledge through collaboration and evaluation.

As part of the program, NCWWI provides stipend to public and/or non-profit institutions of higher education with accredited social work education programs for traineeships for professional education for current or prospective child welfare practitioners enrolled in BSW or MSW social work programs. During the course of traineeship and after obtaining the degree for which the stipend was awarded, stipend recipients must participate in regular training at a child welfare agency and work for a child welfare agency for a period that is equivalent to the period of the supported traineeship.

The three programs to be awarded traineeships with the expansion supplement award are:

Northeastern State University, Tahlequah, OK. This program provides for a child welfare specialization at the BSW level. Students are recruited from American Indian Tribes for work in Tribal child welfare agencies.

University of South Dakota, Vermillion, SD. The BSW program includes a special emphasis on serving rural and Native American populations. Distance education is being used to reach remote geographic areas.

New Mexico State University, Las Cruces, NM. This combined BSW and MSW program is selecting trainees that are sensitive to Hispanic/Chicano heritage and are Spanish speaking. With special field instructors who can address child welfare skills, Hispanic culture, and the Spanish language, this project is serving an overrepresented population in the child welfare system.

Contact for Further Information: Jane Morgan, Children's Bureau, 1250 Maryland Avenue, SW., Washington, DC 20024. Telephone: 202–205–8807. E-mail: *jane.morgan@acf.hhs.gov.*

Dated: October 14, 2010.

Bryan Samuels,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 2010–26936 Filed 10–25–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel, Member Conflict: Auditory Neuroscience.

Date: October 27, 2010.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: John Bishop, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: October 20, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–27040 Filed 10–25–10; 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 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 sections552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and thediscussions could disclose confidential trade secrets or commercial property such as patentablematerial, 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; Small Business: AIDS/HIV Innovative Research Applications.

Date: November 10, 2010.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance M Street Hotel,1143 New Hampshire Avenue, NW.,Washington, DC 20037.

Contact Person: Mark P. Rubert, PhD,Scientific Review Officer,Center for Scientific Review,National Institutes of Health,6701 Rockledge Drive, Room 5218, MSC 7852,Bethesda, MD 20892,301–435–1775,*rubertm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitationsimposed by the review and funding cycle.

(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: October 20, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–27039 Filed 10–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Computational Biology Special Emphasis Panel A.

Date: October 29, 2010.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Mark Caprara, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7844, Bethesda, MD 20892, 301–435–1042, *capraramg@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Computational Biology Special Emphasis Panel B.

Date: October 29, 2010.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Joseph D Mosca, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 408–9465, *moscajos@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: October 19, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–27049 Filed 10–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel; National Biocontainment Laboratories (NBLs) Operations Support.

Date: November 17, 2010.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call)

Contact Person: Peter R. Jackson, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC, 7616, Bethesda, MD 20892–7616, 301–496–2550, *pj8v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 20, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–27053 Filed 10–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel; U.S.-Bilateral Collaborative Research Partnerships (CRP) on the Prevention of HIV/AIDS and Co-morbidities (R21).

Date: December 1–2, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Regency, Rockville, MD 20852.

Contact Person: Eugene R. Baizman, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–402–1464, *eb237e@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 20, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–27055 Filed 10–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Cellular, Tissue and Gene Therapies Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming teleconference meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Cellular, Tissue and Gene Therapies Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The teleconference meeting will be held on December 14, 2010, from 3 p.m. to 6 p.m. EST.

Location: National Institutes of Health (NIH). Bldg. 29B, Conference Room C. The public is welcome to attend the meeting at the specified location where a speakerphone will be provided. Public participation in the meeting is limited to the use of the speakerphone in the conference room. Important information about transportation and directions to the NIH campus, parking and security procedures is available on the Internet at *http://www.nih.gov/about/visitor/index.htm.* (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.) Visitors must show two forms of identification, one of which must be a government-issued photo identification such as a Federal employee badge, driver's license, passport, green card, etc. Detailed information about security procedures is located at *http://www.nih.gov/about/visitorsecurity.htm.* Due to the limited available parking, visitors are encouraged to use public transportation.

Contact Person: Gail Dapolito or Sheryl Clark, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512389. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On December 14, 2010, the committee will meet in open session to hear updates of the research programs in the Tumor Vaccines and Biotechnology Branch, Office of Cellular, Tissue and Gene Therapies, Center for Biologics Evaluation and Research, FDA.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: On December 14, 2010, from 3 p.m. to 5 p.m. the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before December 7, 2010. Oral presentations from the public will be scheduled between approximately 4 p.m. and 5 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 29, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 30, 2010.

Closed Committee Deliberations: On December 14, 2010, from 5 p.m. to 6 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss a report of intramural research programs and make recommendations regarding personnel staffing decisions.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its 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 Gail Dapolito at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 21, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–27063 Filed 10–25–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Risk Communication Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Risk Communication Advisory Committee. This meeting was announced in the **Federal Register** of September 20, 2010 (75 FR 57279). The amendment is being made to reflect a change in the *Agenda* portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Lee L. Zwanziger, Office of Policy, Planning and Budget, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 3278, Silver Spring, MD 20993, 301–796–9151, FAX: 301–847–8611, e-mail: *RCAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732112560. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 20, 2010, FDA announced that a meeting of the Risk Communication Advisory Committee would be held on November 8 and 9, 2010. On page 57280, in the first column, the *Agenda* portion of the document is changed to read as follows:

Agenda: On November 8 and 9, 2010, the Committee will hear and discuss developments in FDA's ongoing communications programs, such as FDA's Strategic Plan for Risk Communication, FDA's Transparency Initiative, foodborne outbreaks and related recall communications, and the challenges of effectively communicating with patients and caregivers about appropriate use of medical devices when a patient is prescribed a medical device for home use.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: October 21, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–27060 Filed 10–25–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Tobacco Products Scientific Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Tobacco Products Scientific Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 18, 2010, from 1 p.m. until 5 p.m.

Location: FDA White Oak Conference Center, 10903 New Hampshire Ave., Bldg. 31, rm. 1503, Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm*; under the heading "Resources for You" click on "White Oak Conference Center Parking and Transportation Information for FDA Advisory Committee Meetings."

Contact Person: Caryn Cohen, Office of Science, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 1–877–287–1373 (choose Option 4), e-mail: *TPSAC@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732110002. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On November 18, 2010, the committee will (1) Receive an update on the Menthol Report Subcommittee and (2) receive and discuss presentations regarding the data requested by the committee at the March 30 and 31, 2010, meeting of the Tobacco Products Scientific Advisory Committee.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 9, 2010. Oral presentations from the public will be scheduled between approximately 3 p.m. and 4 p.m. on November 18, 2010. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 1, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 2, 2010.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its 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 Caryn Cohen

at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 21, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–27008 Filed 10–25–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Special Emphasis Panel; HIV/AIDS Behavioral Treatment Intervention and Services Development-Member Conflict.

Date: November 12, 2010.

Time: 9:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Enid Light, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6132, MSC 9608, Bethesda, MD 20852, 301–443–3599, *elight@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 18, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–26959 Filed 10–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Council of Councils, November 8, 2010, 9 a.m. to November 8, 2010, 3 p.m., National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892 which was published in the **Federal Register** on September 30, 2010, 75 FR 60465.

This **Federal Register** Notice is amended to add a Closed Session from 12:15 p.m. to 12:45 p.m. on November 8, 2010.

The meeting is partially closed to the public.

Dated: October 20, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–27051 Filed 10–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Listing of Members of the National Centers for Disease Control and Prevention's 2010 Performance Review Board (PRB)

AGENCY: The Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) announces the persons who will serve on the CDC's 2010 Performance Review Board. This action is being taken in accordance with Title 5, U.S.C., 4314(c)(4), which requires that members of performance review boards be appointed in a manner to ensure consistency, stability, and objectivity in performance appraisals and requires that notice of the appointment of an individual to serve as a member be published in the **Federal Register**.

The following persons will serve on the CDC Performance Review Board, which is responsible for making recommendations on performance appraisal ratings, pay adjustments, and performance awards for CDC's Senior Executive Service (SES) members:

Kevin Fenton (Co-Chair), Lynn Austin (Co-Chair), Ed Hunter, Rima Khabbaz, Crayton Lankford, Carolyn Black, Christine Branche, Anne Haddix, Barbara Harris, Jim Seligman, Walter Harris, Hazel Dean, Bill Porter.

For further information about the CDC Performance Review Board, contact the Centers for Disease Control and Prevention, Human Capital Management Office, Human Capital Planning Branch, 1600 Clifton Road, NE., MS E–50, Atlanta, GA 30333. Telephone (404) 498–6709 (not a toll free number).

Dated: October 20, 2010.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2010–26999 Filed 10–25–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0511]

Withdrawal of Approval of New Animal Drug Applications; Aklomide; Levamisole Hydrochloride; Nitromide and Sulfanitran

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of eight new animal drug applications (NADAs). In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to remove portions reflecting approval of these NADAs.

DATES: Withdrawal of approval is effective November 5, 2010.

FOR FURTHER INFORMATION CONTACT: John Bartkowiak, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9079, e-mail: *john.bartkowiak@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, a Division of Wyeth Holdings, a Wholly Owned Subsidiary of Pfizer, Inc., 235 East 42d

St., New York, NY 10017 has requested that FDA withdraw approval of the eight NADAs listed in Table 1 of this document.

TABLE 1

NADA No.	Product	Established name of drug(s)
NADA 11–141	UNISTAT–2 Type A medicated article	nitromide and sulfanitran
NADA 14–250	NOVASTAT Type A medicated article	aklomide and sulfanitran
NADA 34–536	ALKOMIX Type A medicated article	aklomide
	ALKOMIX–3 Type A medicated article	aklomide, sulfanitran, and roxarsone
NADA 34–537	NOVASTAT–3 Type A medicated article	aklomide, sulfanitran, and roxarsone
NADA 35–388	NOVASTAT–W Soluble Powder	aklomide and sulfanitran
NADA 39–666	UNISTAT–3 Type A medicated article	nitromide, sulfanitran, and roxarsone
NADA 44–015	TRAMISOL Type A medicated article	levamisole
NADA 45–455	TRAMISOL Type A medicated article	levamisole

Therefore, under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, and in accordance with § 514.116 *Notice of withdrawal of approval of application* (21 CFR 514.116), notice is given that approval of NADAs 11–141, 14–250, 34–536, 34–537, 35–388, 39–666, 44–015, and 45–455, and all supplements and amendments thereto, is hereby withdrawn, effective November 5, 2010.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to reflect the withdrawal of approval of these NADAs.

Dated: October 8, 2010.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2010–27010 Filed 10–25–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5382–N–16]

Notice of Proposed Information Collection for Public Comment: Survey of Market Absorption of New Multifamily Units

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1995. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 27, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW., Room 8234, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed forms and instructions submitted to OMB should be directed to: Carolyn Lynch, Economist, Housing and Demographic Analysis Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; via telephone (202) 402–5910 (this is not toll-free number); via e-mail at *Carolyn.Lynch@hud.gov* or to Robert R. Callis, U.S. Census Bureau, Social, Economic and Housing Statistics Division, 4600 Silver Hill Road, Room 7H087, Washington, DC 20233; via telephone (301) 763–5694 (this is not toll-free number); via e-mail at *Robert.R.Callis@Census.gov.*

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed information collection package to OMB for review as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

I. Abstract: Description of the Need for the Information and Proposed Use

The Survey of Market Absorption (SOMA) provides the data necessary to measure the rate at which new rental apartments and new condominium apartments are absorbed; that is, taken off the market, usually by being rented or sold, over the course of the first twelve months following completion of a building. The data are collected at quarterly intervals until the twelve months conclude, or until the units in a building are completely absorbed. The survey also provides estimates of certain characteristics, including asking rent/price, number of units, and number of bedrooms. The survey provides a basis for analyzing the degree to which new apartment construction is meeting the present and future needs of the public. Additionally, beginning with new construction in 2002, the survey ascertains the number and degree of services provided by "Assisted Living" type units.

II. Method of Collection

The methodology for collecting information on the lease or sale of new multifamily units involves contacting a sample of new multifamily units by telephone or in person.

III. Data

Title of Proposal: Survey of Market Absorption of New Multifamily Units.

OMB Control Number: 2528–0013 (Expires 1/30/2011).

Form Number: H–31.

Type of Review: Regular Submission.

Members of affected public: Rental Agents/Builders.

Estimated Number of Respondents: 12,000 yearly (maximum).

Estimated Time per Response: 20 minutes.

Frequency of Response: Four times (maximum).

Estimated Total Annual Burden Hours: 4,000 (12,000 × 20 minutes).

Estimated Total Annual Cost: The only cost to respondents is that of their time. The total estimated cost to do the survey in FY 2011 is $943,000.

Respondent's Obligation: Voluntary.

Legal Authority: The survey is taken under Title 12, United States Code, Section 1701Z.

IV. Request for Comments

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed information collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection. Submitted comments will become a matter of public record.

Dated: October 20, 2010.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2010–27074 Filed 10–25–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–11937, AA–11938, AA–11939, AA–11940, AA–11944, AA–11943, AA–11941, AA–11936, AA–11933, AA–11928, AA–11929, AA–11931, AA–11932; LLAK–962000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management will issue an appealable decision to The Aleut Corporation. The decision will approve the conveyance of only the surface estate for certain lands pursuant to the Alaska Native Claims Settlement Act. The lands are located on the Rat Islands, west of Adak, Alaska, aggregating 191.31 acres. Notice of the decision will also be published four times in the *Anchorage Daily News.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until November 26, 2010 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may contact the Bureau of Land Management by calling the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

Dina L. Torres,

Land Transfer Resolution Specialist, Branch of Preparation and Resolution.

[FR Doc. 2010–27050 Filed 10–25–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–10668; LLAK–962000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management will issue an appealable decision to Bristol Bay Native Corporation. The decision will approve the conveyance of the surface and subsurface estates for certain lands pursuant to the Alaska Native Claims Settlement Act. The lands are located southwesterly of Manokotak, Alaska, aggregating 31.96 acres. Notice of the decision will also be published four times in the *Anchorage Daily News.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until November 26, 2010 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may contact the Bureau of Land Management by calling the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

Dina L. Torres,

Land Transfer Resolution Specialist, Branch of Preparation and Resolution.

[FR Doc. 2010–27048 Filed 10–25–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM932000.L1430000.HR000 LVDIG10ZGKK0; NMNM114447]

Notice of Application for a Recordable Disclaimer of Interest; NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Mr. Carlos Ortega, Jr., has filed an application with the Bureau of Land Management (BLM) for a Disclaimer of Interest from the United States pursuant to Section 315 of the Federal Land Policy and Management Act of 1976, as amended (FLPMA), and the regulations contained in 43 CFR subpart 1864 for the surface estate of land lying along the right bank of the Rio Caliente river in Rio Arriba County, New Mexico. This Notice provides the public an opportunity to comment on the Disclaimer of Interest application.

DATES: Interested parties may submit written comments regarding the proposed disclaimer of interest on or before January 24, 2011.

ADDRESSES: Comments should be sent to the Deputy State Director, Lands and Resources, BLM, New Mexico State

Office, P.O. Box 27115, 301 Dinosaur Trail, Santa Fe, New Mexico 87502.

FOR FURTHER INFORMATION CONTACT: Gilda Fitzpatrick, Realty Specialist, BLM New Mexico State Office, (505) 954–2197. Additional information pertaining to this application can be reviewed in case file NMNM 114447 located in the New Mexico State Office, at the above address.

SUPPLEMENTARY INFORMATION: The purpose of this Disclaimer of Interest is to address the land title status to a parcel of land that is within the exterior boundary of the Carson National Forest. The authority to issue a Disclaimer of Interest for lands within the boundaries of the National Forest system administered by the U.S. Forest Service (USFS) falls to the BLM. The USFS, Southwest Regional Office, requested the BLM process Mr. Ortega's Disclaimer of Interest application after a determination by BLM Cadastral Survey that the east boundary of the parcel is riparian and extends to the medial line of the current location of the Rio Caliente river. The application requests that the United States disclaim any interest in the surface estate of the subject land from their original surveyed and platted location to the center line of the Rio Caliente river. This action will be processed pursuant to Section 315 of the FLPMA (43 U.S.C. 1745) for the following described land:

Carson National Forest, New Mexico Principal Meridian

T. 25 N., R. 8 E.,
Sec. 24, a portion of lot 6.

The area described contains 1.490 acres more or less, in Rio Arriba County. Individual respondents may request confidentiality. 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.

A final decision on the merits of the application will not be made before January 24, 2011.

If no valid objection is received, a Disclaimer of Interest may be approved stating that the United States does not have a valid interest in these surface lands.

(Authority: 43 CFR 1864.2)

William Merhege,

Deputy State Director, Division of Lands and Resources.

[FR Doc. 2010–27047 Filed 10–25–10; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM910000 L10200000.PH0000]

Notice Reopening the Call for Nominations for the New Mexico Resource Advisory Councils

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to reopen the nomination period for the Bureau of Land Management's (BLM) New Mexico Resource Advisory Councils (RAC). The RACs provide advice and recommendations to the BLM on land use planning and management of the public lands within their geographic areas.

DATE: All nominations must be received no later than November 26, 2010.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for the address of BLM offices accepting nominations.

FOR FURTHER INFORMATION CONTACT: Allison Sandoval, Bureau of Land Management, Correspondence, International, and Advisory Committee Office, 1849 C Street, NW., MS–401 LS, Washington, DC 20240; (202) 912–7434.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1739) directs the Secretary of the Interior (Secretary) to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA directs the Secretary to establish 10- to 15-member citizen-based advisory councils that are consistent with the Federal Advisory Committee Act (FACA). The rules governing RACs are found at 43 CFR subpart 1784. As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. These include three categories:

Category One—Holders of Federal grazing permits and representatives of organizations associated with energy and mineral development, timber industry, transportation or rights-of-way, developed outdoor recreation, off-highway vehicle use, and commercial recreation;

Category Two—Representatives of nationally or regionally recognized environmental organizations, archaeological and historic organizations, dispersed recreation activities, and wild horse and burro organizations; and

Category Three—Representatives of state, county, or local elected office; representatives and employees of a state agency responsible for management of natural resources; representatives of Indian tribes within or adjacent to the area for which the council is organized; representatives of academia who are employed in natural sciences; and the public-at-large.

Individuals may nominate themselves or others. Nominees must be residents of the BLM district in which the RAC has jurisdiction. The BLM will evaluate nominees based on a variety of factors, including training, experience, and knowledge of the geographical area of the RAC. Nominees should demonstrate a commitment to collaborative resource decisionmaking. Current administration policy discourages individuals who are currently federally registered lobbyists from serving on FACA and non-FACA boards, committees, or councils. The following must accompany all nominations:

—Letters of reference from represented interests or organizations;
—A completed background information nomination form; and
—Any other information that addresses the nominee's qualifications.

The BLM's New Mexico State Office will issue a press release simultaneously with this notice, providing additional information for submitting nominations, specifying the number and categories of positions available for each RAC. The terms of the appointments range from 1 to 3 years in order to stagger future expirations. If you have already submitted your nomination materials for 2010, you do not need to resubmit them. Nominations for RACs should be sent to the appropriate BLM offices listed below:

Albuquerque RAC

Edwin Singleton, Albuquerque District Office, BLM, 435 Montano NE, Albuquerque, New Mexico 87107, (505) 761–8700.

Farmington RAC

Dave Evans, Farmington District Office, BLM, 1235 La Plata Highway, Farmington, New Mexico 87401, (505) 599–8900.

Las Cruces RAC

Bill Childress, Las Cruces District Office, BLM, 1800 Marquess Street, Las

Cruces, New Mexico 88005, (575) 525–4300.

Pecos RAC

Doug Burger, Pecos District Office, BLM, 2909 West Second Street, Roswell, New Mexico 88201, (575) 627–0272.

Certification Statement: I hereby certify that the BLM's New Mexico RACs are necessary and in the public interest in connection with the Secretary's responsibilities to manage the lands, resources, and facilities administered by the BLM.

Linda S.C. Rundell,

State Director.

[FR Doc. 2010–27029 Filed 10–25–10; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2010–N235; 1112–0000–81440–F2]

Endangered and Threatened Wildlife and Plants; Permit, Santa Barbara County, CA

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Pacific Renewable Energy Generation LLC (applicant) for an incidental take permit under the Endangered Species Act of 1973, as amended (Act). We are considering issuing an incidental take permit (ITP) that would authorize the applicant's take of the federally endangered El Segundo Blue Butterfly incidental to otherwise lawful activities that would result in the loss of Coast Buckwheat, which serves as butterfly habitat. We invite comments from the public on the application, which includes the Geotechnical Boring Project Habitat Conservation Plan (HCP), and on our preliminary determination that the HCP qualifies as a low-effect plan that is eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended.

DATES: To ensure consideration, please send your written comments by November 26, 2010.

ADDRESSES: You may download a copy of the HCP, draft Environmental Action Statement, Low-Effect Screening Form, and related documents on the Internet at *http://www.fws.gov/ventura/,* or you may request documents by U.S. mail or phone (see below). Please address written comments to Diane K. Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. You may alternatively send comments by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Jen Lechuga, HCP Coordinator, at the Ventura address above, or by telephone at (805) 644–1766 extension 224.

SUPPLEMENTARY INFORMATION: We have received an application from Pacific Renewable Energy Generation LLC for an incidental take permit under the Act (16 U.S.C. 1531 et seq.). We are considering issuing an incidental take permit (ITP) that would authorize the applicant's take of the federally endangered El Segundo Blue Butterfly (*Euphilotes battoides allyni*) incidental to otherwise lawful activities that would result in the loss of 356 plants of Coast Buckwheat, which serves as habitat for El Segundo Blue Butterfly near the west end of the Santa Ynez Mountains, 7 miles south of Lompoc, Santa Barbara County, California. We invite comments from the public on the application and associated documents, and on our preliminary determination that the HCP qualifies as a low-effect plan eligible for categorical exclusion under NEPA.

Background

The El Segundo Blue Butterfly was listed as endangered on June 1, 1976 (41 FR 22041). The Gaviota Tarplant was listed as endangered on March 20, 2000 (65 FR 14888) and has been listed as endangered under the state of California's Endangered Species Act (California Fish and Game Code, Sections 2050 *et seq.*) since January 1990. Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and our implementing Federal regulations in the Code of Federal Regulations (CFR) at 50 CFR 17 prohibit the "take" of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532). However, under limited circumstances, we issue permits to authorize incidental take. "Incidental Take" is defined by the Act as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are, respectively, in the Code of Federal Regulations at 50 CFR 17.32 and 17.22. Issuance of an ITP also must not jeopardize the existence of federally listed fish, wildlife, or plant species.

The Act's take prohibitions do not apply to federally listed plant species on private lands unless such take would be in violation of State law. In addition to meeting other criteria, the HCP's proposed actions must not jeopardize the existence of federally listed fish, wildlife, or plants. The applicant has submitted an application to the California Department of Fish and Game for an incidental take permit pursuant to the California Endangered Species Act.

The applicant proposes to conduct 43 geotechnical borings about 8 miles northwest of Point Conception, near the west end of the Santa Ynez Mountains, and 7 miles south of Lompoc, Santa Barbara County, California. The geotechnical borings will provide the data necessary to develop and complete the design and engineering plans for the Lompoc Wind Energy Project. Phase II of the Lompoc Wind Energy Project would involve the construction and operation of wind turbines. Any potential impacts to listed species caused by the construction and operation of the Lompoc Wind Energy Project will be addressed through a subsequent consultation or permitting process under the Act. The geotechnical boring project is viewed as a discrete action because it does not guarantee that Phase II would occur. The proposed project would result in temporary direct impacts to 0.69 acres of El Segundo Blue Butterfly habitat and 0.64 acres of the Gaviota Tarplant habitat.

The applicant proposes to implement the following measures to minimize and mitigate for the loss of El Segundo Blue Butterfly habitat and Gaviota Tarplant within the permit area: (1) Establish a permanent conservation area that will preserve 712 coast buckwheat plants through a conservation easement and provide for the management of the area; (2) restore degraded native Central Coastal Scrub and Grassland habitats within the conservation area; (3) enhance 0.49 acres of Gaviota Tarplant; (4) design access routes to boring sites to minimize impacts to Gaviota Tarplant areas; (5) minimize ground disturbance; (6) use silt fencing and soil salvaging techniques to minimize impacts to the El Segundo Blue Butterfly and Gaviota Tarplant; (7) avoid flight season of the El Segundo Blue Butterfly; (8) conduct dust control, relocation of El Segundo Blue Butterflies, staging, and boundary delineation to minimize El Segundo Blue Butterfly impacts; and (9) conduct ongoing monitoring for both species to track compliance with the permit, the effects of the permitted activities, and effectiveness of the mitigation measures.

In the proposed HCP, the applicant considers two alternatives to the taking

of the El Segundo Blue Butterfly and Gaviota Tarplant. The No Action alternative would maintain current conditions, the project would not be implemented, no impacts to the El Segundo Blue Butterfly and Gaviota Tarplant would occur, and an incidental take permit application would not be submitted to the Service. The second alternative would involve helicopter access to the site, which would eliminate the risk of driving over the listed plant species.

We are requesting comments on our preliminary determination that the applicant's proposal will have a minor or negligible effect on the species covered in the plan, and that the plan qualifies as a "low-effect" HCP as defined by our Habitat Conservation Planning Handbook (November 1996). We base our determination that the HCP qualifies as a low-effect HCP on the following three criteria: (1) Implementation of the applicant's project description in the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the HCP—considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects—would not result, over time, in cumulative effects to the environmental values or resources that would be considered significant. Based upon our analysis of these criteria, we have made a preliminary determination that the approval of the HCP and issuance of an ITP qualify for categorical exclusions under the NEPA (42 U.S.C. 4321 *et seq.*), as provided by the Department of Interior Manual (516 DM 2 Appendix 2 and 516 DM 8). Based upon our review of public comments that we receive in response to this notice, this preliminary determination may be revised.

Next Steps

We will evaluate the HCP and comments we receive to determine whether the ITP application meets the requirements of section 10(a)(1)(B) of the Act and implementing regulations (50 CFR 17.22). We will also evaluate whether issuance of a section 10(a)(1)(B) permit would comply with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue an ITP. If the requirements are met, we will issue the ITP to the applicant for the incidental take of the El Segundo Blue Butterfly. We will make the final permit decision no sooner than 30 days after the date of this notice.

Public Comments

If you wish to comment on the permit application, HCP, and associated documents, you may submit comments by any one of the methods in **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: October 19, 2010.

Diane K. Noda,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2010–27002 Filed 10–25–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before October 2, 2010. Pursuant to section 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by November 10, 2010.

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.

J. Paul Loether,

National Register of Historic Places/National Historic Landmarks Program.

AMERICAN SAMOA

Western District

Governor H. Rex Lee Auditorium, Rte. 1, William McKinley Memorial HWY,Utulei, 10000888

CALIFORNIA

Humboldt County

Hoopa Valley Adobe, Campus St, Hoopa, 10000893

CONNECTICUT

Hartford County

Oxford—Whitney Streets Historic District, Fern, Oxford, and Whitney Sts, Hartford, 10000896

Underwood Computing Machine Company Factory, 56 Arbor St, Hartford, 10000895

DISTRICT OF COLUMBIA

District of Columbia

Atlas Theater and Shops, 1313–33 H Street, NE., Washington, DC, 10000909

Dahlgreen Courts, (Apartment Buildings in Washington, DC, MPS) 2504–2520 10th St, NE., Washington, 10000901

IOWA

Jasper County

Fred Maytag Park Historic District, 301 S 22th Ave., W, Newton, 10000917

Polk County

Hubbell Warehouse, 340 SW 5th St, Des Moines, 10000894

Story County

Delta Upsilon Chapter House, 117 Ash Ave., Ames, 10000919

Webster County

Fort Dodge Downtown Historic District, 1st Ave N, Central Ave, and 1st Ave., S from 3rd St., on West to 12th St., on East, Fort Dodge, 10000918

KENTUCKY

Breathitt County

Morris Fork Presbyterian Church and Community Center, 908 Morris Fork Rd, Morris Fork, 10000908

Fayette County

Headley, Hal Price, Sr., House, 1236 Standish Way, Lexington, 10000907

Jefferson County

Arcadia Apartments, 68 Apartments in the vicinity of Arcade and Utah Aves, Louisville, 10000906

Nelson County

Bardstown Historic District Boundary Increase, Generally bounded by First St., Fifth St., Muir Ave., Beall Ave., Maiden's Alley, Cherry Alley, Mulberry Alley, Bardstown, 10000905

Todd County

Woodstock, 6338 Clarksville Rd, Trenton, 10000904

LOUISIANA

Lincoln Parish

Harris Hotel Annex, The, 208 and 210 Park Ave., Ruston, 10000889

MARYLAND

Baltimore Independent City

Bohemian National Cemetery, 1300 Horners Lake, Baltimore, 10000910

MISSISSIPPI

Amite County

Westbrook Cotton Gin, 395 Gillsburg Rd, Liberty, 10000903

Harrison County

Cuevas Rural Historic District, Menge Ave running NS between Red Creek Rd and Fahrion Dr, Pass Christian, 10000902

NEW HAMPSHIRE

Merrimack County

Blossom Hill and Calvary Cemeteries, N State St, Concord, 10000891

NEW JERSEY

Warren County

Finesville—Seigletown Historic District, County Rte 627; Mountain, Musconetcong, Mt. Joy and Bellis Rds, Pohatcong, 10000892

NEW YORK

Chemung County

Brand, John, Sr., House, 405 Maple Ave, Elmira, 10000913

Columbia County

Van Salsbergen House, 333 Joslen Blvd, Hudson, 10000915

Herkimer County

Thendara Historic District, Roughly bounded by Birch St and Forge St, Old Forge, 10000897

Monroe County

East Side Presbyterian Church, 345 Parsells Ave, Rochester, 10000898

Queens County

Saint Luke's Episcopal Church, 85 Greenway South, Forest Hills, 10000900

Richmond County

Stirn, Louis A. and Laura, House, 79 Howard Ave, Staten Island, 10000899

St. Lawrence County

First Congregational Church of Madrid, 6 Cross St; 32 Main St, Madrid, 10000914

Suffolk County

Winganhauppauge, 77 St. Marks Ln, Islip, 10000912

Ulster County

Christ Episcopal Church, 426 Old Post Rd, Marlboro, 10000916

VERMONT

Caledonia County

Darling Estate Historic District, Darling Hill Rd in Burke and Lyndon; Pinkham Rd in Burke, Burke, 10000911

Chittenden County

Peck, Cicero Goddard, House, 18 Mechanicsville Rd, Hinesburg, 10000890

[FR Doc. 2010–27057 Filed 10–25–10; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Removal of Listed Property

Pursuant to section 60.15 of 36 CFR part 60, comments are being accepted on the following properties being considered for removal from the National Register of Historic Places. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by November 10, 2010.

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.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

Request for REMOVAL has been made for the following resources:

KENTUCKY

Jefferson County

Drumanard Boundary Increase, 6401 Wolf Pen Branch Rd, Louisville, 88002654

[FR Doc. 2010–27058 Filed 10–25–10; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR–936000–L14300000–ET0000; HAG–10–0346; WAOR–48056]

Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting for the Peony, Pole Pick, and Frank Burge Seed Orchards; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service (USFS) has filed an application with the Bureau of Land Management (BLM) that proposes to extend the duration of Public Land Order (PLO) No. 6952 for an additional 20-year term. PLO No. 6952 withdrew approximately 110 acres of National Forest System land from location and entry under the United States mining laws in order to protect the integrity and functionality of the seed orchards, along with the investment of Federal funds at the Peony, Pole Pick, and Frank Burge Seed Orchards. The withdrawal created by PLO No. 6952 will expire on November 11, 2012, unless extended. This notice also gives an opportunity to comment on the proposed action and to request a public meeting.

DATES: Comments and requests for a public meeting must be received by January 24, 2011.

ADDRESSES: Comments and meeting requests should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, BLM Oregon/Washington State Office, (503) 808–6189, or Susan Daugherty, USFS Pacific Northwest Region, (503) 808–2416.

SUPPLEMENTARY INFORMATION: The USFS has filed an application requesting that the Assistant Secretary of the Interior for Land and Minerals Management extend PLO No. 6952 (57 FR 53587 (1992)), which withdrew certain lands in Okanogan County, Washington from location and entry under the United States mining laws for an additional 20-year term, subject to valid existing rights. The area described contains

approximately 110 acres in Okanogan County. PLO No. 6952 is incorporated herein by reference.

The purpose of the proposed withdrawal extension is to continue the protection of the integrity and functionality of the seed orchards, along with the investment of Federal funds at the Peony, Pole Pick, and Frank Burge Seed Orchards. The orchards produce tree seeds used for replanting harvested areas. The orchards cannot be moved to another location.

The use of a right-of-way, interagency agreement, or cooperative agreement would not provide adequate protection.

The USFS would not need to acquire water rights to fulfill the purpose of the requested withdrawal extension.

Records related to the application may be examined by contacting Charles R. Roy at the above address or phone number.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM State Director at the address indicated above.

Comments, including names and street addresses of respondents, will be available for public review at the address indicated above during regular business hours.

Individual respondents may request confidentiality. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organization or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM State Director at the address indicated above by January 24, 2011. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and in at least one local newspaper at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.4.

(Authority: 43 CFR 2310.3–1)

Cathie Jensen,

Acting Chief, Branch of Land, Mineral, and Energy Resources.

[FR Doc. 2010–27052 Filed 10–25–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDT03000–L14300000.EU0000; IDI–35249]

Notice of Realty Action: Segregation To Consider Proposed Sale of Public Lands in Blaine County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM), Shoshone Field Office, proposes to sell a parcel of public land totaling approximately 3.4 acres in Blaine County, Idaho, to the Point of Rocks Ranch, LLC under the provisions of the Federal Land Policy Management Act of 1976 (FLPMA), at no less than the appraised fair market value.

DATES: In order to ensure consideration of your comments regarding this Notice of Realty Action (NORA), as well as the environmental analysis of the proposed sale, comments must be received by the BLM on or before December 10, 2010.

ADDRESSES: Address all comments concerning this NORA to the Field Manager, BLM Shoshone Field Office, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Tara Hagen, Realty Specialist, BLM Shoshone Field Office, at the above address or telephone (208) 732–7205.

SUPPLEMENTARY INFORMATION: The following described public land is being proposed for direct sale to the Point of Rocks Ranch, LLC in accordance with Sections 203 and 209 of FLPMA, as amended (43 U.S.C. 1713 and 1719), and implementing regulations at 43 CFR part 2710 and 2720, at no less than the appraised fair market value:

Boise Meridian

T. 1 S., R. 20 E.,

Sec. 15, that portion of public lands in the NW¼SW¼ lying south of the North Picabo Road.

The area described contains approximately 3.4 acres in Blaine County.

The 1981 BLM Sun Valley Management Framework Plan, as amended by the 2003 Amendments to the BLM Shoshone Field Office Land Use Plans for Land Tenure Adjustment and Areas of Critical Environmental Concern, identifies this parcel of public land as suitable for disposal. The BLM is proposing a direct sale to resolve an inadvertent unauthorized use and occupancy of the lands. Conveyance of the identified public land will be subject to valid existing rights and encumbrances of record, including but not limited to, rights-of-way for roads and public utilities. Conveyance of any mineral interests pursuant to Section 209 of FLPMA will be analyzed during processing of the proposed sale.

On October 26, 2010, the above-described land will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of FLPMA. The BLM is no longer accepting land use applications affecting the identified public land, except applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or October 26, 2012 unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

Public Comments: For a period until December 10, 2010, interested parties and the general public may submit in writing any comments concerning the land being considered for direct sale, including notification of any encumbrances or other claims relating to the identified land, to the Field Manager, BLM Shoshone Field Office, at the above address. In order to ensure consideration in the environmental analysis of the proposed sale, comments must be in writing and postmarked or delivered within 45 days of the initial date of publication of this NORA. Comments transmitted via e-mail will not be accepted. Comments, including names and street addresses of respondents, will be available for public review at the BLM Shoshone Field

Office during regular business hours, except holidays.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2711.1–2.

Ruth A. Miller,

Shoshone Field Manager.

[FR Doc. 2010–27041 Filed 10–25–10; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA 49537, LLCAD08000, L51030000, FX0000, LVRAM109AA03]

Notice of Availability of the Record of Decision for the Calico Solar Project and Associated Amendment to the California Desert Conservation Area Resource Management Plan-Amendment, San Bernardino County, CA

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 a right-of-way (ROW) lease/grant to Calico Solar Limited Liability Corporation (LLC) for the Calico Solar Project (formerly SES Solar One) and an associated Amendment to the California Desert Conservation Area Resource Management Plan (CDCA Plan). The Calico Solar Project is located in San Bernardino County, California. The Secretary of the Interior signed the ROD on October 20, 2010, which constitutes the final decision of the Department. The ROD and the Approved Plan Amendment are effective immediately.

DATES: These decisions are effective immediately upon publication of this notice.

ADDRESSES: Copies of the ROD are available upon request from the Field Manager, Barstow Field Office, Bureau of Land Management, 2601 Barstow Road, Barstow, California 92311 or at the following Web site: *http://www.blm.gov/ca/st/en/prog/energy/fasttrack/calico/fedstatus.html* or *http://www.blm.gov/ca/st/en/fo/barstow/solar_one_calico.html.* Copies of the ROD are also available for public inspection at the Barstow Field Office.

FOR FURTHER INFORMATION CONTACT: Jim Stobaugh, National Project Manager, by telephone: 775–861–6478; mail: BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520–0006; or e-mail: *Jim_Stobaugh@blm.gov.*

SUPPLEMENTARY INFORMATION: After extensive environmental analysis; consultation and collaboration with Federal, state, and local agencies; consideration of public comments; and application of relevant Federal laws and policies, the BLM has decided to offer Calico Solar LLC a ROW lease/grant for the construction, operation, maintenance, and decommissioning of the 663.5 megawatt (MW), 4,604-acre Calico Solar Project, including related project facilities and access roads across public lands administered by the BLM. In association with this ROW lease/grant, the BLM is also amending the CDCA Plan to allow for the siting of a solar energy power plant on the proposed project site. The ROW lease/grant authorizes the use of public lands for the project for a term of 30 years, and the lease/grant is renewable. A temporary use permit authorizes the use of public lands for construction of temporary access roads and construction space for a term of 3 years and is also subject to renewal. The amendment of the CDCA Plan will allow for the siting of the Calico Solar Project and related facilities, including 26,450 SunCatcher solar dishes, a 230-kilovolt (kV) Calico Substation and 2-mile, 230-kv transmission line, and other project facilities through incorporation of the Calico Solar Project into the Energy Production and Utility Corridors Element of the CDCA Plan. The BLM's decision authorizes issuance of a ROW lease/grant to Calico Solar LLC for the Modified Agency Preferred Alternative. The Agency Preferred Alternative is within the scope of alternatives that were analyzed in the Final Environmental Impact Statement (EIS) issued in August 2010. Modifications to the Agency Preferred Alternative have been made since publication of the Final EIS as the result of additional agency consultation and in response to public comments. The Environmental Protection Agency published a Notice of Availability (NOA) of the Final EIS in the **Federal Register** on August 6, 2010 (75 FR 47620). Publication of the NOA for the Final EIS initiated a 30-day protest period for the proposed amendment to the CDCA Plan. At the close of the protest period on September 7, 2010, five protests were received and resolved. Detailed information on the protests may be found on the BLM Washington Office Web site at: *http://www.blm.gov/wo/st/en/prog/planning/protest_resolution.html.* The proposed amendment to the CDCA Plan was not modified as a result of the protest resolution. Simultaneously with the protest period, the California Governor's Office conducted a 30-day consistency review of the proposed CDCA Plan amendment/Final EIS to identify any inconsistencies with state or local plan, policies or programs. The California Governor's office did not identify inconsistencies between the proposed amendment to the CDCA Plan/Final EIS. As a result of the above and additional consultation with jurisdictional regulatory agencies, the 6,215-acre, 850–MW Agency Preferred Alternative for the Calico Solar Project was modified to include: (1) A project footprint reduced from 6,215 acres to 4,604 acres; (2) generation capacity reduced from 850–MW (34,000 SunCatchers) to 663.5–MW (26,540 SunCatchers); and (3) construction of Phase 1 subdivided into phase 1a and 1b. The authorized ROW lease/grant includes all of the above modifications.

Because this decision is approved by the Secretary of the Interior, it is not subject to administrative appeal (43 CFR 4.410(a)(3)).

Authority: 40 CFR 1506.6.

Robert V. Abbey,

Director, Bureau of Land Management.

[FR Doc. 2010–27027 Filed 10–25–10; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUTW01100–LF2000ES–JS0000–LFESE4J7]

Notice of Closure to Motorized Vehicle Travel on Public Lands in the Big Pole Fire Area in Tooele County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure

SUMMARY: Notice is hereby given that a temporary closure to motorized vehicle travel was implemented as of May 17, 2010. This closure affects 27,100 acres of public land administered by the Salt Lake Field Office, Bureau of Land Management (BLM), within the Big Pole Fire area in Tooele County, Utah.

DATES: This temporary closure on motor vehicle travel within the described area will remain in effect for a minimum of

2 years from May 17, 2010, the date the closure order was signed by the authorized officer. The closure may be extended beyond this period, if necessary, until the BLM Salt Lake Field Office Manager has determined emergency stabilization and rehabilitation treatments have been successful and the threat of resource damage from motorized vehicle travel no longer exists in the area. The BLM will provide appropriate public notification when the motor vehicle travel restrictions are lifted for the area. Fencing and closure signs will be removed as necessary.

FOR FURTHER INFORMATION CONTACT: Glenn Carpenter, District Manager, BLM, West Desert District, 2370 South 2300 West, Salt Lake City, Utah 84119; by phone at 801–977–4300; or by e-mail at *utslmail@blm.gov.* 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 individuals 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 individuals. You will receive a reply during normal hours.

SUPPLEMENTARY INFORMATION: This temporary closure affects public lands within the Big Pole Fire area in Tooele County, Utah, and encompasses all public lands administered by the BLM Salt Lake Field Office east of State Route 196, south of Interstate 80, west of the crest of the Stansbury Mountain range, and north of the Skull Valley Goshute Indian Reservation in Tooele County, Utah. The legal description of the affected area is all public lands within Townships 1, 2, 3 and 4 South, Ranges 7 and 8 West, Salt Lake Meridian.

The closure and stabilization actions were analyzed pursuant to the National Environmental Policy Act, in the Big Pole Fire Motor Vehicle Closure environmental assessment (DOI–BLM–W010–2010–0005–EA) and FY2009 Emergency Stabilization and Rehabilitation determination of NEPA adequacy (DOI–BLM–UT–W000–2009–0001–DNA), respectively. This closure is being implemented for the purposes of protecting soil, watershed, vegetation, and cultural resources which the BLM Salt Lake Field Office has determined are at immediate risk. The reasons for implementing this closure are based on a risk determination which, in turn, is based on field observations and stabilization planning conducted by the BLM staff specialists following the Big Pole Fire, which started on August 6, 2009, and was declared contained on August 16, 2009. This wildfire was particularly intense due to winds in excess of 40 mph and heavy fuel loads of cheatgrass and juniper trees. The BLM monitoring revealed extensive resource damage caused by the burn patterns and the severity of a wildfire that burned over 44,000 acres in approximately 24 hours. Heavy soil scorching and a total loss of vegetative cover have resulted in a significantly greater risk for water runoff and soil erosion. Soil composition in the area is highly erodible. Subsequent motor vehicle traffic in burned areas has increased the risk of erosion and may have a negative impact on efforts to stabilize soils and establish new vegetation. Motor vehicle travel may also increase the spread of invasive species, such as cheatgrass, into areas damaged by wildfire. The BLM Salt Lake Field Office is implementing a comprehensive emergency stabilization and rehabilitation plan within the Big Pole fire area which includes seeding, planting, soil treatments, noxious weed control, fencing, signing, resource monitoring, and law enforcement. The following persons are exempt from this order: Federal, state, and local officers and employees in the performance of their official duties; members of organized rescue or fire-fighting forces in the performance of their official duties; and persons with written authorization from the Bureau of Land Management.

The closure order has been posted at major entry points to the burn area. Copies of the closure order and maps of the closed area have been made available at the BLM West Desert District's Salt Lake Field Office, 2370 South 2300 West, Salt Lake City, UT 84119. The closure was also published on the BLM Salt Lake Field Office Web site and distributed to local government and media outlets.

Penalties: Under the authority of Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8341.2(a), 43 CFR 8364.1, and 43 CFR 9268.3(d), the Bureau of Land Management is enforcing the following rule(s) within the Big Pole Fire Area:

You must not use motorized vehicles in the closed area. Any person who violates the above rule may be issued a citation, tried before a United States Magistrate, and fined no more than $1,000, imprisoned for no more than 12 months, or both, as provided for in 43 CFR 8340.0–7. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571 and 3581.

Authorities: 43 CFR 8341.2(a), 8364.1, and 9268.3(d).

Juan Palma,

State Director.

[FR Doc. 2010–27030 Filed 10–25–10; 8:45 am]

BILLING CODE 4310–DQ–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–698]

In the Matter of Certain DC–DC Controllers and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Terminating The Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Corrected Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determination ("ID") (Order No. 56) granting a joint motion to terminate the investigation as to one respondent and terminating the investigation in its entirety.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 29, 2009, based on a complaint filed by Richtek Technology Corp. (Taiwan) and Richtek USA, Inc. (San Jose, California) (collectively "Richtek"), alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain DC–DC controllers by reason of infringement

of certain claims of U.S. Patent Nos. 7,315,190; 6,414,470; and 7,132,717; and by reason of trade secret misappropriation. 75 FR 446 (Jan. 5, 2010). The complaint, as amended, named eight respondents: uPI Semiconductor Corp. (Taiwan) ("uPI"); Advanced Micro Devices, Inc. (Sunnyvale, California) ("AMD"); Sapphire Technology Ltd. (Hong Kong) ("Sapphire"); Best Data Products d/b/a Diamond Multimedia (Chatsworth, California) ("Diamond"); Eastcom, Inc. d/b/a XFX Technology USA (Rowland Heights, California) ("XFX"); Micro-Star International Co., Ltd. (Taiwan) and MSI Computer Corp. (City of Industry, California) (collectively, "MSI"); and VisionTek Products LLC (Inverness, Illinois) ("VisionTek"). *See* Second Am. Compl. ¶¶ 12–34 (May 20, 2010).

The investigation has been terminated by settlement agreement or consent order against all parties other than VisionTek: On July 12, 2010, the Commission determined not to review the ALJ's termination of the investigation as against AMD, Diamond, and XFX. On August 13, 2010, the Commission determined not to review the ALJ's termination of the investigation against uPI and Sapphire. On August 20, 2010, the Commission determined not to review the ALJ's termination of the investigation against the MSI respondents.

On July 27, 2010, VisionTek and Richtek jointly moved to terminate the investigation based on a consent order stipulation and proposed consent order. The ALJ denied the motion. Order No. 51 (July 29, 2010). On August 5, 2010, VisionTek and Richtek jointly moved to terminate the investigation based on a settlement agreement. On August 17, 2010, the ALJ granted the motion. Order No. 56. Because VisionTek is the last respondent, termination against VisionTek results in termination of the investigation.

No petitions for review of the ID were filed. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.21(b) and 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.21(b), 210.42).

By order of the Commission.

Issued: October 21, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–27024 Filed 10–25–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Products Containing Interactive Program Guide and Parental Controls Technology,* DN 2763; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: Marilyn R. Abbott, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of Rovi Corporation, Rovi Guides, Inc. (f/k/a Gemstar-TV Guide International Inc.), United Video Properties, Inc., and Index Systems, Inc. on October 20, 2010. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain products containing interactive program guide and parental controls technology. The complaint names as respondents Toshiba Corp. of Minato-ku, Tokyo, 105–8001, Japan; Toshiba America, Inc. of New York, NY; Toshiba America Consumer Products, L.L.C. of Wayne, NJ; and Toshiba America Information Systems, Inc. of Irvine, CA.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number ("Docket No. 2763") in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential

treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

By order of the Commission.

Issued: October 20, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–26977 Filed 10–25–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Data Storage Products and Components Thereof,* DN 2764; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: Marilyn R. Abbott, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of Data Network Storage, LLC on October 20, 2010. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain data storage products and components thereof. The complaint names as respondents NetApp, Inc. of Sunnyvale, CA; Dell, Inc. of Round Rock, TX; Xyratex, Ltd. of Fremont, CA; Xyratex International Inc. of West Sacramento, CA; Xyratex (Malaysia) Sdn. Bhd. of Penang, Malaysia; Dot Hill Systems Corp. of Longmont, CO; International Business Machines Corporation of Armonk, NY; Cisco Systems, Inc. of San Jose, CA; and QNAP Systems, Inc. of Pomona, CA.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number ("Docket No. 2764") in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (*see* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

By order of the Commission.

Issued: October 21, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–27045 Filed 10–25–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–703]

In the Matter of: Certain Mobile Telephones and Wireless Communication Devices Featuring Digital Cameras, and Components Thereof;Notice of Commission Determination ThatJune 22, 2010, Initial Determination Is an OrderRather Than an Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that the June 22, 2010, initial determination on claim construction ("ID") issued by the presiding administrative law judge ("ALJ") in the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337") is properly issued in the form of an order rather than an initial determination.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on February 23, 2010, based upon a complaint filed on behalf of Eastman Kodak Company of Rochester, New York ("Kodak") on January 14, 2010, and supplemented on February 4, 2010. 75 FR 8112. The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile telephones and wireless communication devices featuring digital cameras, and components thereof, that infringe certain claims of U.S. Patent No. 6,292,218. The complaint named as respondents Apple, Inc., of Cupertino, Calif. ("Apple"); Research in Motion, Ltd., of Ontario, Canada; and Research in Motion Corp., of Irving, Texas (collectively, "RIM").

On June 22, 2010, the ALJ issued the subject *Markman* hearing initial determination ("ID"), finding that a *Markman* ruling was appropriate in this case and that summary determination was an appropriate vehicle for that ruling. He then proceeded to construe certain terms of the asserted patent claims. ID 8–92.

On June 30, 2010, the parties filed four petitions and contingent petitions for review. On September 1, 2009, each of the parties filed responses thereto.

On July 22, 2010, the Commission issued notice of its determination to review the subject ID and requested briefing on the issues on review, including the following proposed analysis:

> As used in rule 210.18(a), the term "issues to be determined in the investigation" can be viewed as limited to claims and affirmative defenses; a "part" of such an issue includes an element (or subpart thereof) of a claim or affirmative defense. Thus, the following could be a non-exhaustive list of examples of issues or parts thereof that are covered by rule 210.18(a): Violation, importation, infringement, domestic industry (technical or economic prong), invalidity on any basis (such as anticipation or obviousness), unenforceability. Claim construction may be a necessary underpinning to the resolution of certain issues or elements, and may be part of a summary determination that addresses an issue or element. On its own, however, claim construction might not be viewed as constituting such an issue or element.

75 FR 44282 (July 28, 2010).

On August 5, 2010, each of the parties filed a submission in response to the notice of review. On August 16, 2010, each of the parties filed a reply thereto.

Upon review of Commission rules 210.18 and 210.42, 19 CFR 210.18, 210.42, and the parties' submissions, the Commission has determined that the June 22, 2010, initial determination on claim construction issued by the presiding administrative law judge is an order rather than an initial determination. Commission rule 210.42 does not include claim construction in the list of issues that must be decided in the form of an initial determination. Nor is claim construction properly the subject of a motion for summary determination under Commission rule 210.18 since claim construction, standing alone, is not an "issue" or "any part of an issue" within the meaning of that rule. While the Commission finds that the rules are unambiguous, to the extent interpretation is required, the Commission determines in its discretion and in the interest of the expeditious conclusion of section 337 investigations that a ruling on claim construction is properly issued in the form of an order.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and under sections 210.18 and 210.42–.46 of the Commission's Rules of Practice and Procedure (19 CFR 210.18, 210.42–.46).

By order of the Commission.

Issued: October 20, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–26976 Filed 10–25–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–709]

In the Matter of: Certain Integrated Circuits, Chipsets, and Products Containing Same Including Televisions, Media Players, and Cameras; Notice of Commission Determination Not To Review an Initial Determination Granting a Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 20) issued by the presiding administrative law judge ("ALJ") granting a motion filed by complainant Freescale Semiconductor, Inc. ("Freescale") for leave to amend its complaint and the notice of investigation.

FOR FURTHER INFORMATION CONTACT: Paul M. Bartkowski, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5432. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its

Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 2, 2010, based on a complaint filed by Freescale Semiconductor of Austin, Texas ("Freescale"). 75 FR 16837–38. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain integrated circuits, chipsets, and products containing same including televisions, media players, and cameras by reason of infringement of certain claims of U.S. Patent Nos. 5,467,455; 5,715,014; and 7,199,306 ("the '306 patent"). The Commission's notice of investigation named numerous respondents.

The presiding administrative law judge issued the subject ID on September 30, 2010, granting Freescale's motion to amend the complaint and notice of investigation to (1) change the name of one respondent from BestBuy.com, Inc. to BestBuy.com, LLC; (2) correct the addresses of BestBuy.com, LLC and Best Buy Purchasing, LLC; and (3) terminate the investigation as to respondent Liberty Media Corp. No party filed a petition for review of the ID. The Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 21, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–27044 Filed 10–25–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–698]

In the Matter of Certain DC–DC Controllers and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Corrected notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determination ("ID") (Order No. 56) granting a joint motion to terminate the investigation as to one respondent and terminating the investigation in its entirety.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 29, 2009, based on a complaint filed by Richtek Technology Corp. (Taiwan) and Richtek USA, Inc. (San Jose, California) (collectively "Richtek"), alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain DC–DC controllers by reason of infringement of certain claims of U.S. Patent Nos. 7,315,190; 6,414,470; and 7,132,717; and by reason of trade secret misappropriation. 75 FR 446 (Jan. 5, 2010). The complaint, as amended, named eight respondents: uPI Semiconductor Corp. (Taiwan) ("uPI"); Advanced Micro Devices, Inc. (Sunnyvale, California) ("AMD"); Sapphire Technology Ltd. (Hong Kong) ("Sapphire"); Best Data Products d/b/a Diamond Multimedia (Chatsworth, California) ("Diamond"); Eastcom, Inc. d/b/a XFX Technology USA (Rowland Heights, California) ("XFX"); Micro-Star International Co., Ltd. (Taiwan) and MSI Computer Corp. (City of Industry, California) (collectively, "MSI"); and VisionTek Products LLC (Inverness, Illinois) ("VisionTek"). *See* Second Am. Compl. ¶¶ 12–34 (May 20, 2010).

The investigation has been terminated by settlement agreement or consent order against all parties other than VisionTek: On July 12, 2010, the Commission determined not to review the ALJ's termination of the investigation as against AMD, Diamond, and XFX. On August 13, 2010, the Commission determined not to review the ALJ's termination of the investigation against uPI and Sapphire. On August 20, 2010, the Commission determined not to review the ALJ's termination of the investigation against the MSI respondents.

On July 27, 2010, VisionTek and Richek jointly moved to terminate the investigation based on a consent order stipulation and proposed consent order. The ALJ denied the motion. Order No. 51 (July 29, 2010). On August 5, 2010, VisionTek and Richtek jointly moved to terminate the investigation based on a settlement agreement. On August 17, 2010, the ALJ granted the motion. Order No. 56. Because VisionTek is the last respondent, termination against VisionTek results in termination of the investigation.

No petitions for review of the ID were filed. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.21(b) and 210.42 of the Commission's Rules of Practice and Procedure (19 CFR. 210.21(b), 210.42).

By order of the Commission.

Issued: October 21, 2010,

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–27043 Filed 10–25–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–705]

In the Matter of: Certain Notebook Computer Products and Components Thereof; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 28) granting a joint motion filed by the complainant and the respondents to terminate the investigation based on a settlement agreement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Daniel E. Valencia, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–1999. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 24, 2010, based on a complaint filed by Toshiba Corporation of Japan ("Toshiba"). 75 FR 8400. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain notebook computer products and components thereof by reason of infringement of Toshiba's patents. The complaint named Wistron Corporation of Taiwan, Wistron InfoComm (Texas) Corporation of Grapevine, Texas, and Wistron InfoComm Technology (America) Corporation of Flower Mound, Texas (collectively, "Wistron") as respondents.

On October 4, 2010, Toshiba and Wistron jointly moved to terminate the investigation based on a settlement agreement, pursuant to Commission rule 210.21 (19 CFR 210.21). The Commission investigative attorney supported the joint motion.

On October 5, 2010, the ALJ issued the subject ID (Order No. 28) granting the joint motion to terminate the investigation. No petitions for review of the ID were filed. The Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: October 20, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–26978 Filed 10–25–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Media Workflow Association, Inc.

Notice is hereby given that, on September 23, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Advanced Media Workflow Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Doug Carson & Associates, Inc., AKA Digimetrics-DCA, Inc., Cushing, OK; Interra Systems, Cupertino, CA; Tokyo Broadcasting System Television, Tokyo, Japan; and Peter Humphrey, San Francisco, CA, have been added as parties to this venture. Also, Tobias Soppa, Leipzig, Germany, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advanced Media Workflow Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On March 28, 2000, Advanced Media Workflow Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on June 22, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 14, 2010 (75 FR 40851).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–26741 Filed 10–25–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on September 27, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Pistoia Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Eagle Genomics Ltd., Babraham Research Campus, Cambridge, United Kingdom; Blue Reference, Inc., Bend, OR; and Biowisdom Ltd., Harston, Cambridge, United Kingdom, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to

Section 6(b) of the Act on July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on July 13, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 18, 2010 (75 FR 51114).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–26740 Filed 10–25–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International SAE Consortium Ltd.

Notice is hereby given that, on September 21, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), International SAE Consortium Ltd. ("ISAEC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Amgen, Inc., Thousand Oaks, CA; AstraZeneca UK Ltd., London, United Kingdom; Cerner Corporation, Kansas City, MO; Clinical Data, Inc., Newton, MA; and Merck Sharp & Dohme Corp., Rahway, NJ, has been added as parties to this venture.

Also, F. Hoffmann-La Roche, INC., Basel, Switzerland; Johnson & Johnson Pharmaceutical Research & Development, LLC, Raritan, NJ; and Sanofi-Aventis, Bridgewater, NJ, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ISAEC intends to file additional written notification disclosing all changes in membership.

On September 27, 2007, ISAEC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 7, 2007 (72 FR 62867).

The last notification was filed with the Department of Justice on May 21, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 27, 2008 (73 FR 36571).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–26737 Filed 10–25–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International

Notice is hereby given that, on September 23, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), ASTM International ("ASTM") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM standards activities originating between May 2010 and September 2010 designated as work items. A complete listing of ASTM work items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on May 6, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 1, 2010 (75 FR 30440).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–26736 Filed 10–25–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Alliance for Water Stewardship

Notice is hereby given that, on September 10, 2010, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 e*t seq.* ("the Act"), Alliance for Water Stewardship ("AWS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: Alliance for Water Stewardship, Arlington, VA. The nature and scope of AWS's standards development activities are: (1) To establish equitable, voluntary, transparent, science-based standards for socially beneficial and environmentally sustainable use and management of fresh water at the watershed level; (2) to promote use and management of fresh water which will maintain or improve biodiversity and ecological processes and secure longterm benefits for local peoples and society at large; and (3) to encourage effective governance for water use and management through voluntary certification of businesses and water service providers. The AWS is responsible for coordinating and overseeing the process of developing water use and management target standards and indicators, such as catchment flow volume, user abstraction, nutrients in effluents, sediments in effluents, temperature of effluents, water pricing, and other aspects of a voluntary water stewardship standard system. As part of its standards development activities, the AWS organizes a Global Water Roundtable and continent-level Regional Initiatives, through which it invites stakeholder organizations to participate in the standards development process. The AWS will hold the intellectual property resulting from its standards development activities until such a time when it may

transfer its holdings to a successor organization or is itself designated the permanent custodian of the intellectual property.

Below is the name and contact information of an individual from whom additional information concerning the organization can be obtained: Carey R. Ramos, Esq.; Paul, Weiss, Rifkind, Wharton & Garrison LLP; 1285 Avenue of the Americas; New York, NY 10019–6064.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–26734 Filed 10–25–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances;Notice of Application

This is notice that on July 22, 2010, Cody Laboratories Inc., 601 Yellowstone Avenue, Cody, Wyoming 82414–9321, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Raw Opium (9600)	II
Concentrate of Poppy Straw (9670).	II

The company plans to import narcotic raw materials for manufacturing and further distribution to its customers. The company is registered with DEA as a manufacturer of several controlled substances that are manufactured from raw opium, poppy straw, and concentrate of poppy straw.

As explained in the Correction to Notice of Application pertaining to Rhodes Technologies, 72 FR 3417 (2007), comments and requests for hearings on applications to import narcotic raw material are not appropriate.

As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745), all applicants for registration to import a basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: October 19, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator,Office of Diversion Control,Drug Enforcement Administration.

[FR Doc. 2010–27023 Filed 10–25–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice that on July 12, 2010, Noramco, Inc., Division of Ortho-McNeil, Inc., 500 Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Raw Opium (9600)	II
Concentrate of Poppy Straw (9670).	II
Tapentadol (9780)	II

The company plans to import the Raw Opium (9600) and Concentrate of Poppy Straw (9670) to manufacture other controlled substances. The company plans to import Tapentadol (9780) in intermediate form for the bulk manufacture of Tapentadol (9780) which it will distribute to its customers.

No comments, objections, or requests for any hearings will be accepted on any application for registration or re-registration to import crude opium, poppy straw, concentrate of poppy straw, and coca leaves. As explained in the Correction to Notice of Application pertaining to Rhodes Technologies, 72 FR 3417 (2007), comments and requests for hearings on applications to import narcotic raw material are not appropriate.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedule I or II, which fall under the authority of section 1002(a)(2)(B) of the Act [21 U.S.C. 952(a)(2)(B)] may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than November 26, 2010.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: October 19, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator,Office of Diversion Control,Drug Enforcement Administration.

[FR Doc. 2010–27025 Filed 10–25–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 12 2010, Aldrich Chemical Company Inc., DBA Isotec, 3858 Benner Road, Miamisburg, Ohio 45342–4304, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Methaqualone (2565)	I
Ibogaine (7260)	I
Tetrahydrocannabinols (7370)	I
2,5–Dimethoxyamphetamine (7396).	I
Psilocyn (7438)	I
Normorphine (9313)	I
Acetylmethadol (9601)	I
Alphacetylmethadol except levo–alphacetylmethadol (9603).	I
Normethadone (9635)	I
Norpipanone (9636)	I
3–Methylfentanyl (9813)	I

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
1–Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1–Piperidinocyclohexanecarbonitrile (8603).	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Meperidine intermediate-A (9232)	II
Meperidine intermediate-B (9233)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk, (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II

The company plans to manufacture small quantities of the listed controlled substances to produce isotope labeled standards for drug testing and analysis.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 27, 2010.

Dated: October 19, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–27018 Filed 10–25–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances;Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 8, 2009 Cedarburg Pharmaceuticals, Inc., 870 Badger Circle, Grafton, Wisconsin 53024, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

In reference to drug code 7370 the company plans to bulk manufacture a synthetic Tetrahydrocannabinol. No other activity for this drug is authorized for this registration.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 27, 2010.

Dated: October 19, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator,Office of Diversion Control,Drug Enforcement Administration.

[FR Doc. 2010–27021 Filed 10–25–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 3, 2010, Johnson Matthey Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Difenoxin (9168)	I
Propiram (9649)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such a controlled substance, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 27, 2010.

Dated: October 19, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator,Office of Diversion Control,Drug Enforcement Administration.

[FR Doc. 2010–27019 Filed 10–25–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 16, 2010, Chemic Laboratories, Inc., 480 Neponset Street, Building 7, Canton, Massachusetts 02021, made application

by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of Cocaine (9041), a basic class of controlled substance listed in schedule II.

The company plans to manufacture small quantities of the above listed controlled substance for distribution to its customers for the purpose of research.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substance, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 27, 2010.

Dated: October 14, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–27037 Filed 10–25–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on July 9, 2010, Noramco, Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Thebaine (9333)	II
Tapentadol (9780)	II

The company plans to import Thebaine (9333) analytical reference standards for distribution to its customers. The company plans to import an intermediate form of Tapentadol (9780) to bulk manufacture Tapentadol for distribution to its customers.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration, and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than November 26, 2010.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: October 15, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–27032 Filed 10–25–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 21, 2009 and published in the **Federal Register** on October 28, 2009, (74 FR 55586), Archimica, Inc., 2460 W. Bennett Street, Springfield, Missouri 65807–1229, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Tapentadol (9780, a basic class of controlled substance listed in schedule II.

The company plans to manufacture the listed controlled substance in bulk for distribution to its customers.

One comment objecting to the granting of registration as a bulk manufacturer of the basic class of controlled substance listed to this applicant was received. However, after a thorough review of this matter, DEA has concluded that the issues raised in the comment and objection do not warrant the denial of this application.

DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Archimica, Inc. to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Archimica, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: October 19, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–27035 Filed 10–26–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Steven B. Brown, M.D.; Revocation of Registration

On May 13, 2010, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration ("Order") to Steven B. Brown, M.D. ("Registrant"), of Wilton Manors and Pompano Beach, Florida. The Order proposed the revocation of Registrant's DEA Certificates of Registration, BB2972140 and FB1490349, as well as the denial of any pending applications for the renewal or modification of both registrations, on the ground that his "continued registrations are inconsistent with the public interest, as that term is defined in 21 U.S.C. 823(f)." Order, at 1.

The Order alleged that Registrant "issued illegal prescriptions for oxycodone, a Schedule II controlled

substance, for no legitimate medical purpose and outside the course of [his] professional practice." *Id.* at 1–2 (citing 21 U.S.C. 841(a) and 21 CFR 1306.04(a)). More specifically, the Order alleged that Registrant "prescribed oxycodone 30 mg. tablets in amounts as high as 180 dosage units to patients" and that he "received half the dosage units back from the patients after the illegal prescription was filled and dispensed." *Id.* at 2. The Order also alleged that on March 27, 2010, "[a]s a result of [Registrant's] illegal prescribing and [his] illegal possession of controlled substances," Registrant "was arrested by the Broward County Sheriff's Office." *Id.* Moreover, the Order alleged that on April 28, 2010, Registrant "illegally possessed amphetamine, a Schedule II controlled substance" and was "arrested by the Broward County Sheriff's Office during an Administrative Inspection by the Florida Department of Health" at one of his registered locations. *Id.* Finally, the Order alleged that "[a]s a result of actions by the State of Florida Department of Health," Registrant is "currently without authority to handle controlled substances in the State of Florida," the State in which he is registered with DEA. *Id.*

Based on the above, I concluded "that [Registrant's] continued registrations, while these proceedings are pending, constitute an imminent danger to the public health and safety." *Id.* (citing 21 U.S.C. 824(d) and 21 CFR 1301.36(e)). I, therefore, ordered the immediate suspension of both of Registrant's registrations. *Id.*

On May 17, 2010, the Order, which also notified Registrant of his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedure for doing either, and the consequence for failing to do either, was served on him. *See* Order, at 3 (citing 21 CFR 1301.43); Gov't Not. of Svc. of Order. Since the date of service of the Order, 30 days have passed and neither Respondent, nor anyone purporting to represent him, has requested a hearing or submitted a written statement in lieu of a hearing. I, therefore, hold that Respondent has waived his right to a hearing or to submit a written statement and issue this Decision and Final Order based on relevant evidence contained in the record submitted by the government. 21 CFR 1301.43(d) & (e). I make the following findings of fact.

Findings

Registrant is a physician licensed by the State of Florida. He is the holder of two DEA Certificates of Registration: (1) BB2972140 (as well as XB2972140), at the registered address of 1749 N.E. 26th Street, Suite A, Wilton Manors, Florida; and (2) FB1490349, at the registered address of 605 East Atlantic Blvd, Pompano Beach, Florida. Both registrations do not expire until July 31, 2012.

Registrant practiced pain management at his Pompano Beach registered location. Order of Emergency Suspension of License, at 2, *In re: Steven Barry Brown, M.D.,* (Fla. Dep't of Health, Nos. 2010–06419, 2010–07923) (hereinafter, State Susp. Order). He is also registered under Florida law as a dispensing practitioner; this authorizes him to order and dispense controlled substances in the State.

In March 2010, DEA and the Broward County Sheriff's Office ("BSO") received information from a confidential source ("CS") that Registrant was issuing prescriptions for oxycodone [1] 30 mg. to the CS and providing her with money to fill the prescriptions; in exchange, the CS gave Registrant half of the pills she obtained. Declaration of Diversion Investigator (DI), at 1–2. According to the CS, Registrant had been treating her for chronic pain for the last four years. However, after two years, Registrant proposed that he would write her prescriptions for 160 tablets of oxycodone 30 mg. and give her the money to pay for them "if the CS would give half the pills back to" him. *Id.; see also* Stat. Susp. Order, at 2. The CS agreed to the arrangement. *Id.*

Each month for two years, Registrant wrote the CS prescriptions for up to 180 tablets of oxycodone 30 mg. and gave her the money to fill them; the CS would then provide Registrant with half of the pills she obtained. Declaration, at 2. Registrant told the CS to fill the prescriptions at local pharmacies and not at his clinic. *Id.* The CS also related to the Investigator that Registrant was abusing oxycodone and Dilaudid. *Id.* at 2.

At about 6:16 p.m. on March 27, 2010, the CS, under the direction of a BSO officer and a DI, made a consensually recorded telephone call to Registrant to arrange a delivery of oxycodone to him. During the call, Registrant twice asked the CS if she had split the oxycodone up; the CS answered affirmatively. The CS and Registrant then agreed to meet in the parking lot of a local fast food restaurant.

During the delivery, which was observed by several law enforcement officers, the CS wore a recording device. *Id.* Upon meeting, Registrant asked the CS if she "want[ed] one of these hits?" and stated: "Oh their good." The CS replied "Yeah" and Registrant then said: "You know what I'm talking about right? It's Percocet liquid." The CS replied that she knew "that's the Oxyfast" but added that she did not want any because it would upset her stomach. Acknowledging that the drug would do so, Registrant stated: "You know what I do? To make it taste better I put Wyler's Raspberry in it." Registrant then added: "It's so good." The CS, however, again said that she did not want any of the drug. The CS then gave the oxycodone to Registrant, who gave her eighty dollars. The CS left, and shortly thereafter, Registrant was arrested and charged with trafficking in oxycodone.

On May 5, 2010, the State Surgeon General, Florida Department of Health (DOH), issued an Order of Emergency Suspension of License which immediately suspended Registrant's physician's license. State Suspension Order, at 1, 12. The Order alleged that Registrant "violated Section 458.331(1)(q)" of the Florida Statutes "by prescribing medications to [three individuals] with no medical records justifying why the prescriptions were being written," *Id.* at 10, as well as "by prescribing * * * a legend drug, including any controlled substance, other than in the course of the physician's professional practice." *Id.* at 11.

The State Suspension Order further alleged "that [Registrant] has shown a disregard for the safety of the public with his practice of prescribing medications to patients with no medical records to justify why the prescriptions were being written" and that his "practice was especially egregious in that he was using his relationship as a physician with a patient to divert medication for his own use." *Id.* Accordingly, the State Suspension Order concluded that Registrant's "actions clearly constitute prescribing outside the practice of medicine and present such an immediate, serious danger to the public health, safety or welfare that nothing short of the immediate suspension of his license to practice medicine will protect the public from this danger." *Id.*

Discussion

Section 304(a) of the Controlled Substances Act ("CSA") provides that a "registration pursuant to section 823 of this title to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has had his State license suspended, revoked, or denied by competent State authority and is no longer authorized by

[1] Oxycodone is a schedule II controlled substance. 21 CFR 1308.12(b)(1)(xiii).

State law to engage in the * * * dispensing of controlled substances," 21 U.S.C. 824(a)(3), or "has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section." *Id.* § 824(a)(4). With respect to the latter ground for revocation, the CSA directs that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f).

The public interest "factors are * * * considered in the disjunctive." *Robert A. Leslie,* 68 FR 15227, 15230 (2003). I may rely on any one or a combination of factors and may give each factor the weight I deem appropriate in determining whether to revoke an existing registration or to deny an application. *Id.* Moreover, I am "not required to make findings as to all of the factors." *Hoxie* v *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v *DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005).

As explained below, the investigative record clearly shows that Registrant's experience in dispensing controlled substances and compliance with applicable laws is characterized by his unlawful use of his prescribing authority to obtain controlled substances for his personal use. Moreover, the record also shows that by virtue of the State Suspension Order, Registrant no longer has authority under Florida law to dispense controlled substances and thus, he no longer meets an essential requirement for holding a DEA registration. I will therefore order that Registrant's Certificates of Registration be revoked.

The Public Interest Grounds

Factors Two, Four, and Five: Registrant's Experience in Dispensing Controlled Substances, Record of Compliance With Applicable Controlled Substance Laws, and Such Other Conduct Which May Threaten Public Health and Safety

Under a longstanding DEA regulation, a prescription for a controlled substance is not effective unless it is issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. 21 CFR 1306.04(a). This regulation further provides that an "order purporting to be a prescription issued not in the usual course of professional treatment * * * is not a prescription within the meaning and intent of * * * 21 U.S.C. 829 * * * and * * * the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances." *Id. See also* 21 U.S.C. 802(10) (Defining the term "dispense" as meaning "to deliver a controlled substance to an ultimate user * * * by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance.")

As the Supreme Court recently explained, "the prescription requirement * * * ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses." *Gonzales* v *Oregon,* 546 U.S. 243, 274 (2006) (citing *United States* v *Moore,* 423 U.S. 122, 135, 143 (1975)).

As found above, in order to obtain drugs for his own use, Registrant entered into an agreement with the CS to provide her with monthly prescriptions for 160 to 180 tablets of oxycodone 30 mg. Registrant paid for the prescriptions in exchange for the CS's providing him with half of the pills. Registrant wrote the prescriptions on a monthly basis for a two-year period.

While during this period, Registrant may have been treating the CS for legitimate chronic pain (although with another drug), it is clear that Registrant's primary purpose in writing these prescriptions was to obtain drugs that he then abused. Each of the prescriptions Registrant wrote thus violated 21 CFR 1306.04(a) and constituted an unlawful distribution of a controlled substance. *See* 21 U.S.C. 841(a)(1) ("Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally * * * to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance."). *See also Michael F. Myers,* 72 FR 36464, 36486 (2007) (finding Respondent "engaged in the criminal distribution of controlled substances in violation of 21 U.S.C. 841" where Respondent "issued [a] person prescriptions for hydrocodone on a monthly basis * * * [and the] person admitted * * * that he took very few hydrocodone tablets and regularly provided Respondent with 60 of them").

Under the CSA, it is also "unlawful for any person knowingly or intentionally * * * to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge." 21 U.S.C. 843(a)(3). Even assuming that the CS required her share of the oxycodone to treat a legitimate medical condition, by writing prescriptions in excess of the CS's legitimate medical needs and for the purpose of obtaining the drugs for his own use, Registrant obtained possession of controlled substances by "deception[] or subterfuge" and violated Federal law.

Moreover, Florida prohibits the prescribing of "inappropriate quantities" of legend drugs, including controlled substances. Fla. Stat. 458.331(1)(q). Again, even assuming that the CS had a legitimate medical need for her share of the oxycodone, Registrant violated Florida law because the prescriptions he issued to her clearly exceeded the quantity necessary to treat her condition and were issued in those quantities so that he could obtain drugs for his own use.

Additionally, DEA has long held that a practitioner's self-abuse of controlled substances constitutes "conduct which may threaten public health and safety." 21 U.S.C. 823(f)(5). *See Tony T. Bui,* 75 FR 49979, 49990 (2010); *Kenneth Wayne Green, Jr.,* 59 FR 51453 (1994); *David E. Trawick,* 53 FR 5326 (1988). In addition to the evidence showing that Registrant issued prescriptions to the CS to obtain controlled substances for his own use, the evidence also shows that during the March 27, 2010 meeting with the CS, he offered her a hit of liquid oxycodone, stating "Oh their good," and then explained how he made it more palatable to ingest. Thus, it is clear that Registrant is a drug abuser and a threat to public health and safety.[2]

I, therefore, conclude that the evidence pertinent to Registrant's experience in dispensing controlled substances (factor two), his record of compliance with Federal and State laws related to controlled substances (factor

[2] I conclude that it is not necessary to make findings under factor one because Registrant's loss of his State authority will be considered separately in this Decision.

As for factor three, while there is evidence that Registrant was arrested on drug charges, there is no evidence as to the disposition of the charges. Nor is there any evidence establishing that Registrant has otherwise been convicted of any offenses within the purview of factor three. However, DEA has repeatedly held that the absence of any convictions under factor three is not dispositive of the public interest inquiry. *See, e.g., Edmund Chein,* 72 FR 6580, 6593 n.22 (2007).

four), and such other conduct which may threaten public health and safety (factor five), establishes that he has committed acts which render his continued registration "inconsistent with the public interest." 21 U.S.C. 824(a)(4). This finding provides reason alone to revoke Registrant's registrations and to deny any pending applications to renew or modify his registrations.

The Loss of State Authority Ground

Under the CSA, a practitioner must possess authority to dispense controlled substances under the laws of the State in which he engages in his professional practice in order to obtain and maintain a DEA registration. *See* 21 U.S.C. 802(21) (defining the term "practitioner" as a person "licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices * * * to distribute, dispense * * * [or] administer * * * a controlled substance"), *id.* § 823(f) ("The Attorney General shall register practitioners * * * to dispense * * * controlled substances * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices."). As these provisions make plain, possessing authority under State law to handle controlled substances is an essential condition for holding a DEA registration. *See John B. Freitas,* 74 FR 17524, 17525 (2009); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988).

DEA, has therefore, held repeatedly that the CSA requires the revocation of a registration issued to a practitioner whose State authority has been suspended or revoked. *David W. Wang,* 72 FR 54297, 54298 (2007); *Sheran Arden Yeates,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988). *See also id.* § 824(a)(3) (a "registration pursuant to section 823 of this title to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has had his State license suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the * * * dispensing of controlled substances"). DEA has further held that revocation is warranted even where a practitioner's State authority has been summarily suspended and the State has yet to provide the practitioner with a hearing to challenge the State's action. *See Robert Wayne Mosier,* 75 FR 49950 (2010) ("revocation is warranted * * * even in those instances where a practitioner's State license has only been suspended, and there is the possibility of reinstatement"); *accord Bourne Pharmacy,* 72 FR 18273, 18274 (2007).

As found above, on May 5, 2010, the Florida Surgeon General immediately suspended Registrant's State medical license. Registrant is therefore without authority to dispense controlled substances in the State where he holds his DEA registrations. Registrant's loss of his State authority thus provides an additional basis for revoking his registrations. Accordingly, his registrations will be revoked and any pending application will be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b) and 0.104, I order that DEA Certificates of Registration BB2972140, XB2972140, and FB1490349, issued to Stephen B. Brown, M.D., be, and they hereby are, revoked. I further order that any pending application of Stephen B. Brown, M.D., to renew or modify such registrations, be, and it hereby is, denied. This order is effective immediately.[3]

Dated: October 15, 2010.

Michele M. Leonhart,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Gilbert Eugene Johnson, M.D.; Revocation of Registration

On November 20, 2008, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Gilbert Eugene Johnson, M.D. (Respondent), of Idabel, Oklahoma. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, AJ6783535, as a practitioner, and the denial of any pending applications to renew or modify his registration, on the ground that Respondent's "continued registration is inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f)." Show Cause Order at 1.

The Show Cause Order alleged that the Oklahoma State Board of Medical Licensure had found that: (1) Respondent "prescribed or administered a drug (*i.e.,* meperidine, a schedule II controlled substance, and hydrocodone, a schedule III controlled substance) or treatment without sufficient examination or the establishment of a valid physician patient relationship"; (2) Respondent "engaged in indiscriminate or excessive prescribing, dispensing or administering of controlled or narcotic drugs"; and (3) Respondent "prescribed, dispensed or administered controlled substances or narcotic drugs in excess of the amount considered good medical practice or prescribed, dispensed or administered controlled substances or narcotic drugs without medical need." *Id.* at 1–2.

Next, the Show Cause Order alleged that on June 23, 2008, based on the Oklahoma Board's action, the Medical Board of California "ordered the revocation of [Respondent's] license to practice medicine in that state, effective July 23, 2008." *Id. at 2.* Finally, the Order alleged that on July 7, 2008, Respondent "falsified" his application for renewal of his DEA registration "by answering 'no' to the question concerning whether [Respondent] had ever had a state professional license revoked or placed on probation or whether any such action was pending." *Id.*

On December 16, 2008, the Show Cause Order was served on Respondent by certified mail to him at the address which he had recently given the Agency as his new registered location on his application to modify his registration. On January 29, 2009, Respondent's counsel filed a request for a hearing and the matter was placed on the docket of the Agency's Administrative Law Judges (ALJs).

Thereafter, the ALJ requested that the parties address whether Respondent had timely requested a hearing. *See* Corrected Order Cancelling Hearing and Terminating Proceedings, at 1. Following receipt of the parties' submissions, the ALJ found that Respondent's request was not timely because it was not filed within 30 days of service of the Show Cause Order as required by 21 CFR 1301.43(a). *Id.* at 2. Because Respondent had not "provide[d] a basis upon which to find good cause," the ALJ held that his failure to file a timely request constituted a waiver of his right to a hearing. *Id. (citing 21 CFR 1301.43(d) and Brinton D. Glisson, 72 FR 54296 (2007)).* Accordingly, the ALJ canceled the scheduled hearing, terminated the proceedings, and directed that the

[3] For the same reason that I ordered the immediate suspension of Registrant's DEA registrations, I conclude that the public interest requires that this Order shall be effective immediately.

matter be forwarded to me for final agency action pursuant to 21 CFR 1301.43(d) and 1301.46.

Thereafter, the Government forwarded the investigative record to me for final agency action. Having considered the record, I agree with the ALJ's finding that Respondent has waived his right to a hearing because he failed to timely file his request and has not offered good cause for his failure to do so. I further find that Respondent materially falsified his July 2008 application and that he has committed acts which render his registration inconsistent with the public interest. 21 U.S.C. 823(f) & 824(a)(1) & (4). Accordingly, Respondent's registration will be revoked and his pending application to modify his registration will be denied. I make the following findings.

Findings

Respondent previously held DEA registration, AJ6783535. While this registration expired on December 31, 2007, on July 9, 2008, Respondent submitted a renewal application and the registration was reinstated with an expiration date of December 31, 2010. Moreover, on December 11, 2008, Respondent requested to change the address of his registered location. I therefore find that Respondent has a registration and that his application to modify his registration is pending before the Agency.

On March 22, 2007, Respondent and the Oklahoma Board of State Medical Licensure and Supervision (Oklahoma Board) entered into an Order Accepting Voluntary Submittal to Jurisdiction (hereinafter, Order). Therein, Respondent pled guilty to the allegations in a Complaint and Citation which the Oklahoma Board had filed on January 27, 2007.

In the Order, the Oklahoma Board found that Respondent treated another physician, DWW, from around January 2004 through July 2006. During this period, Respondent issued "two (2) prescriptions for Meperidine, a Schedule II controlled dangerous substance * * * six (6) prescriptions for Testosterone and Hydrocodone, both Schedule III controlled dangerous substances * * * and twelve (12) prescriptions for Alprazolam, Soma, and But/Apap/Caf, Schedule IV controlled dangerous substances." [1] Order at 2, *Oklahoma ex rel. Bd. of Medical Licensure & Supervision* v. *Johnson* (Okla. Bd. of Med. Lic. & Super. Mar. 22, 2007). Respondent issued these prescriptions without "perform[ing] any physical examination on DWW" and without establishing either "a valid physician patient relationship" or "a legitimate medical need for the medical treatment." *Id.* In addition, he "failed to maintain complete and accurate records of all controlled dangerous drugs prescribed." *Id.* When questioned by an Oklahoma Board investigator, Respondent admitted that he did not keep a patient record on DWW. *Id.*

The Oklahoma Board also found that Respondent treated JWW, DWW's wife, from around November 2004 through February 2005. *Id. at 3.* Respondent issued to JWW, "one (1) prescription for Demerol, a Schedule II controlled dangerous substance[,] * * * one (1) prescription for Histinex HC, a Schedule III controlled dangerous substance, and six (6) prescriptions for Alprazolam and But/Apap/Caf, Schedule IV controlled dangerous substances." *Id.* As in the case of DWW, Respondent issued these prescriptions to JWW without "perform[ing] any physical examination" and without establishing "a valid physician patient relationship" or "a legitimate medical need for the medical treatment." *Id.* Again, Respondent failed to "maintain complete and accurate records of all controlled dangerous substances prescribed" and admitted to an Oklahoma Board investigator that he did not see JWW "as a patient." *Id.*

The Oklahoma Board further found that on two occasions, Respondent issued prescriptions to JOW, one of his employees, for "Diazepam, a Schedule IV controlled dangerous substance"; the Board also found that on another occasion, he issued prescriptions for "Fiorinal w/Codeine and Coughtuss, Schedule III controlled dangerous substances." *Id. at 3.* As to these prescriptions, the Board found that "he failed to perform any physical examination on JOW prior to prescribing the controlled dangerous drugs in her name, that he did not establish a valid physician patient relationship prior to prescribing the medications, that he did not establish a legitimate medical need for the medical treatment, and that he failed to maintain complete and accurate records of all controlled dangerous drugs prescribed." *Id.* Furthermore, the Board found that Respondent instructed JOW to fill the diazepam prescriptions at City Drug and then return them to him for "office use." *Id.*

The Oklahoma Board then found Respondent guilty of "unprofessional conduct" based on his violations of numerous provisions of state law and regulations. *Id.* at 4. The Board found, *inter alia,* that he: (1) "[p]rescribed or administered a drug or treatment without sufficient examination and the establishment of a valid physician patient relationship," in violation of 59 Okla. Stat. § 509(12); (2) "[e]ngaged in indiscriminate or excessive prescribing * * * of controlled or narcotic drugs," in violation of Okla. Admin. Code 435:10–7–4(1); (3) "[v]iolated * * * state or federal law or regulation relating to controlled substances," in violation of Okla. Admin. Code 435:10–7–4(27); (4) "[p]rescribed * * * controlled substances or narcotic drugs in excess of the amount considered good medical practice or prescribed * * * controlled substances or narcotic drugs without medical need in accordance with published standards," in violation of 59 Okla. Stat. § 509(16) and Okla. Admin. Code 435:10–7–4(2); 5) "[w]rote a false or fictitious prescription for any drugs or narcotics declared by the laws of [Oklahoma] to be controlled or narcotic drugs," in violation of 59 Okla. Stat. § 509(11); and 6) "[p]urchased or prescribed any regulated substance in Schedule I through V, as defined by the Uniform Controlled Dangerous Substances Act, for the physician's personal use," in violation of Okla. Admin. Code 435:10–7–4(5). *Id.* at 4–5.

Based on its findings, the Oklahoma Board reprimanded Respondent. The Board also placed Respondent's medical license on probation for one year, beginning March 22, 2007, subject to certain conditions including that he could not call in any controlled-substance prescriptions, that he complete board-approved courses in controlled substance prescribing and recordkeeping, and that he maintain duplicate, serially-numbered prescriptions of controlled substances, which are readily retrievable and which must be provided on request to the Board's investigators. *Id.* at 7.

On June 23, 2008, the Medical Board of California (California Board) adopted a Default Decision and Order in a proceeding against Respondent's California license. *See* Decision at 1, *In re Gilbert E. Johnson, M.D.* (Med. Bd. Cal. 2008). In the Default decision, the Board found that Respondent had been served with the accusation on September 25, 2007, and that his attorney had filed a response. *Default Decision and Order* at 1. The Board also noted that Respondent and his attorney had been served with a Notice of Hearing, which informed him of the scheduled date of the hearing, but that neither Respondent, nor his attorney, had appeared. *Id.*

[1] Neither Soma (carisoprodol) nor But/Apap/Caf is a controlled substance under Federal law. However, the other drugs noted in the Board's order are controlled under Federal law.

Based on the findings of the Oklahoma Board, the California Board concluded that Respondent had committed unprofessional conduct by, *inter alia,* prescribing controlled substances "to several individuals without a prior physical examination, without a valid physician-patient relationship, without establishing a medical need for the treatment, and without maintaining complete and accurate records." *Id.* at 2–3. The California Board further found that Respondent had committed unprofessional conduct when he issued the controlled substance prescriptions in the name of his employee, "without a prior physical examination or medical indications, and without maintaining an adequate medical record, and directed the employee to fill the prescriptions and then return the drugs to respondent." *Id.* at 3. The Board then revoked Respondent's California medical license, effective July 23, 2008. Decision at 1.

On July 7, 2008, Respondent completed and signed his renewal application for his DEA registration.[2] In section 4 of the application, Respondent was required to answer four "liability" questions. The third of these asked: "Has the applicant ever surrendered (for cause) or had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or *placed on probation, or is any such action pending?*" (emphasis added). Respondent answered "No."

Discussion

Section 304(a)(1) of the Controlled Substances Act (CSA) provides that a registration "may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has materially falsified any application pursuant to or required by this subchapter." 21 U.S.C. 824(a)(1). Section 304(a)(4) also provides that a registration to "dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section." 21 U.S.C. 824(a)(4). With respect to a practitioner, the CSA requires that the following factors be considered in making the public interest determination:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The [registrant's] experience in dispensing * * * controlled substances.

(3) The [registrant's] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.21 U.S.C. 823(f).

"[T]hese factors * * * are considered in the disjunctive." *Robert A. Leslie,* 68 FR 15227, 15230 (2003). I may rely on any one or a combination of factors and give each factor the weight I deem appropriate in determining whether to revoke an existing registration or to deny an application to modify a registration. *Id.* Moreover, I am "not required to make findings as to all of the factors." *Morall* v. *DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005); *see also Volkman* v. *DEA,* 567 F.3d 215, 222 (6th Cir. 2009).

Having considered the evidence, I conclude that the record provides two independent grounds to evoke Respondent's registration and to deny his pending application to modify his registration. First, Respondent materially falsified his July 2008 application when he answered "no" to the question whether he had ever had a state licensed sanctioned or if any such action was pending. Second, based on the Oklahoma Board's findings regarding his prescribing of controlled substances, I conclude that Respondent has committed acts which render his registration inconsistent with the public interest.

The Material Falsification Allegation

As found above, on his July 7, 2008 application, Respondent provided a "no" answer to the question: "Has the applicant ever surrendered (for cause) or had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation, or is any such action pending?" Respondent's answer was false for two reasons: (1) The Oklahoma Board had previously placed him on probation, and (2) the California Board had initiated a proceeding against him and had adopted the Default Decision, although the revocation of his license was not yet "effective."

Respondent knew that his statement was false with respect to both proceedings. As to his failure to disclose the Oklahoma proceeding, Respondent appeared in person before the Board and signed the Order Accepting Voluntary Submittal to Jurisdiction which he had entered into with the Board. He thus knew that the Oklahoma Board had placed him on probation.

As for his failure to disclose the California proceeding, while at the time he submitted his application, the revocation of his state license had yet to go into effect, the Default Decision specifically noted that Respondent had been served with the accusation, that his attorney had filed a response to it, and that the State had received signed certified mail receipts establishing that both he and his attorney had received the Notice of Hearing. Thus, Respondent clearly knew that the Medical Board of California had brought an action against him which was then "pending."

It is likewise clear that Respondent's failure to disclose both proceedings was a materially false statement under the CSA. A false statement is material if it "has a natural tendency to influence, or was capable of influencing, the decision of the decisionmaking body to which it was addressed." *Kungys* v. *United States,* 485 U.S. 759, 770 (1988) (int. quotation and other citations omitted). While the evidence must be "clear, unequivocal, and convincing," the "ultimate finding of materiality turns on a substantive interpretation of the law." *Id.* at 772 (int. quotations and citations omitted). *See also Craig H. Bammer,* 73 FR 34327, 34328 (2008). However, "[i]t makes no difference that a specific falsification did not exert influence so long as it had the *capacity* to do so." *United States* v. *Alemany Rivera,* 781 F.2d 229, 234 (1st Cir. 1985).

Respondent's false statement was material because, under the public interest standard, the Agency is required to consider, *inter alia,* an applicant's experience in dispensing controlled substances and his compliance with applicable state and federal laws related to controlled substances. *See* 21 U.S.C. 823(f)(2) & (4). As found above, both Boards' actions were based on Respondent's prescribing of various controlled substances including meperidine (a schedule II controlled substance), testosterone and hydrocodone (schedule III controlled substances), and diazepam and alprazolam (schedule IV controlled substances) without establishing a valid physician-patient relationship and without a legitimate medical purpose. In addition, Respondent issued fraudulent diazepam prescriptions in the name of his employee in order to obtain the drugs for his own use (whether he personally used them or sold them is legally irrelevant). Not only did these prescribings violate Oklahoma law (and provide grounds for discipline under California law), as explained more fully below, they also violated the

[2] The form is stamped with the filing date of July 9, 2008.

prescription requirement of Federal law. *See* 21 CFR 1306.04(a) ("A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice."). *See also* 21 U.S.C. 841(a)(1) (prohibiting knowing or intentional distribution/dispensing of a controlled substance "[e]xcept as authorized by" the CSA); 21 U.S.C. 843(a)(3) ("It shall be unlawful for any person knowingly or intentionally * * * to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge[.]").

Because both the Oklahoma and California Board proceedings were based on his unlawful prescribing of controlled substances, his failure to disclose the proceedings on his application clearly had the capacity to influence (and did influence) the Agency's decision to grant his July 2008 application. I therefore hold that Respondent's failure to disclose the Oklahoma and California proceedings was a material falsification of his application; this conclusion provides reason alone to revoke his registration and to deny his application to modify his registration. *See* 21 U.S.C. 824(a)(1).

The Public Interest Allegations

Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and Compliance With State and Federal Laws Related to Controlled Substances

As noted above, the Oklahoma Board found that, on multiple occasions, Respondent prescribed various controlled substances in schedules II through IV including Demerol (meperidine), hydrocodone (including both Histinex and Coughtuss), testosterone, Fiorinal with codeine, and alprazolam, to persons he had not physically examined prior to issuing the prescriptions. The Board further found that Respondent did not establish a valid physician-patient relationship with these persons, that he did not establish that these persons had a legitimate medical need for the controlled substances, and that he failed to maintain complete and accurate records of the controlled substances he prescribed. The Board also found that Respondent had issued diazepam prescriptions in the name of his employee (again without establishing a valid doctor-patient relationship and a legitimate medical need for the prescription) and directed the employee to fill the prescription and bring it back to the office.

The Oklahoma Board further found that in issuing these prescriptions Respondent violated various provisions of state law including, *inter alia,* prohibitions against prescribing "without sufficient examination and the establishment of a valid physician patient relationship," 59 Okla. Stat. § 509(12); "[e]ngag[ing] in indiscriminate or excessive prescribing * * * of controlled substances," Okla. Admin Code 435:10–7–4(1); prescribing a controlled substance "without medical need in accordance with published standards," 59 Okla. Stat. § 509(16); writing false prescriptions for controlled substances, *id.* § 509(11); and prescribing controlled substances for his "personal use." Okla. Admin. Code 435:10–7–4(5).

Both the Oklahoma Board's factual findings and its legal conclusions that Respondent violated state law are entitled to preclusive effect in this proceeding. *See University of Tennessee* v. *Elliot,* 478 U.S. 788, 797–98 (1986) ("When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply *res judicata*") (int. quotations and citations omitted). I therefore adopt the Board's findings that Respondent violated Oklahoma law and regulations with respect to his prescribing to DWW, JWW, and JOW, of those drugs which are controlled under Federal law.

I further hold that Respondent repeatedly violated Federal law when he prescribed controlled substances to these individuals. As noted above, under a longstanding Federal regulation, "[a] prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." 21 CFR 1306.04(a).

As the Supreme Court recently explained, "the prescription requirement * * * ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses." *Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006) (citing *United States* v. *Moore,* 423 U.S. 122, 135, 143 (1975)).

Under the CSA, "it is fundamental that a practitioner must establish a bona fide doctor-patient relationship in order to act 'in the usual course of * * * professional practice' and to issue a prescription for a 'legitimate medical purpose,'" as required by 21 CFR 1306.04(a). *Patrick W. Stodola,* 74 FR 20727, 20731 (2009) (citing *Moore,* 423 U.S. at 141–43. The CSA generally looks to state law to determine "whether a doctor and patient have established a bona fide patient relationship." *Id.; see also Kamir Garces-Mejias,* 72 FR 54931, 54935 (2007); *United Prescription Services, Inc.,* 72 FR 50397, 50407 (2007).

The Oklahoma Board found that Respondent did not establish a "valid physician patient relationship" with JWW, DWW and JOW, and that he did not establish that these individuals had a legitimate medical need for the prescriptions. Accordingly, I hold that in prescribing to these persons, Respondent acted outside of the usual course of professional practice and lacked a legitimate medical purpose and therefore violated Federal law as well. *See* 21 U.S.C. 841(a)(1); 21 CFR 1306.04(a). I further hold that Respondent violated Federal law when he acquired diazepam by issuing fraudulent prescriptions to JOW and directed the latter to fill the prescriptions and bring them back to the office. *See* 21 U.S.C. § 843(a)(3).

As the forgoing demonstrates, Respondent's experience in dispensing controlled substance and his record of compliance with applicable laws is characterized by his numerous violations of both State and Federal drug laws.[3] I therefore hold that Respondent has committed acts which render his registration "inconsistent with the public interest." *Id.* § 824(a)(4). This conclusion provides an independent ground (apart from his material falsification) to revoke his registration and to deny his application to modify his registration.

[3] While the Oklahoma Board placed Respondent on probation, it made no recommendation in this matter (factor one). Moreover, even were I to deem the Board's decision to continue Respondent's medical license as a recommendation, the Board's decision is not dispositive. While holding authority under state law is a necessary prerequisite to obtaining a DEA registration, *see* 21 U.S.C. 823(f), DEA has long held that "the Controlled Substances Act requires that the Administrator * * * make an independent determination as to whether the granting of controlled substances privileges would be in the public interest." *Mortimer Levin,* 57 FR 8680 (1992). Of course, the California Board revoked Respondent's California license based on the same conduct.

It is also acknowledged that Respondent has not been convicted of either a State or Federal offense related to the distribution or dispensing of controlled substances (factor three). However, the absence of a criminal conviction is not dispositive of the public interest inquiry. *See, e.g., Jayam Krishna-Iyer,* 74 FR 459, 461 (2009); *Edmund Chein,* 72 FR 6580, 6593 n.22 (2007).

In light of the extensive evidence under factors two and four, I conclude that there is no need to make findings under factor five.

Conclusion

The investigative record shows that Respondent materially falsified his July 2008 application and that he repeatedly prescribed controlled substances in violation of both Oklahoma and Federal law. The record thus establishes two independent and adequate grounds for revoking Respondent's registration and denying his application to modify his registration. Accordingly, Respondent's registration will be revoked and his application will be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I order that DEA Certificate of Registration, AJ6783535, issued to Gilbert Eugene Johnson, M.D., be, and it hereby is, revoked. I further order that the pending application of Gilbert Eugene Johnson, M.D., to modify his registration, be, and it hereby is, denied. This Order is effective November 26, 2010.

Dated: October 14, 2010.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 2010–27028 Filed 10–25–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Lincoln Pharmacy; Revocation of Registration

On March 26, 2010, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration (Order) to Lincoln Pharmacy (Respondent), of Edison, New Jersey. The Order proposed the revocation of Respondent's DEA Certificate of Registration, BL4082222, and the denial of any pending applications to renew or modify its registration, on the ground that Respondent's "continued registration is inconsistent with the public interest." Order at 1 (citing 21 U.S.C. 823(f) & 824(a)(4)).

The Order alleged that Respondent "routinely filled fraudulent prescriptions for highly addictive and abused controlled substances" and therefore violated 21 U.S.C. 841(a)(1) and 21 CFR 1306.04. *Id.* More specifically, the Order alleged that Respondent had filled six fraudulent prescriptions for Roxicodone and oxycodone, which are schedule II controlled substances, in exchange for cash on multiple occasions to wit: (1) On January 14, 2010, it filled three prescriptions totaling 540 dosage units of Roxicodone (30 mg.) for $975 in cash; (2) on January 21, 2010, it filled one prescription totaling 120 dosage units of oxycodone (30 mg.) for $215 in cash; and (3) on January 28, 2010, it filled two prescriptions totaling 360 tablets of oxycodone for $650 in cash. *Id.* at 1–2.

Based on the above, I concluded that Respondent's "continued registration during the pendency of these proceedings would constitute an imminent danger to the public health and safety." Id. at 2. I therefore exercised my authority under 21 U.S.C. 824(d) and immediately suspended Respondent's registration. *Id.*

On April 6, 2010, the Order, which also notified Respondent of its right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedures for doing so, and the consequence of failing to do so, was served on it. *Id.* at 2–3 (citing 21 CFR 1301.43(a), (c), (d) & (e)). Since that time, neither Respondent, nor anyone purporting to represent it, has either requested a hearing or submitted a written statement in lieu of a hearing. Thirty days now having passed since the Order was served on Respondent, I conclude that Respondent has waived its right to a hearing. *See* 21 CFR 1301.43(b) & (d). I therefore issue this Decision and Final Order based on the evidence contained in the investigative record submitted by the Government. *Id.* 1301.43(e). I make the following findings.

Findings

Respondent is a retail pharmacy located at 52 Lincoln Highway, Edison, New Jersey, which is owned and operated by Mr. Vincent Hsia, a registered pharmacist. Respondent is the holder of Certificate of Registration, BL4082222, which authorizes it to dispense controlled substances in schedules II through V as a retail pharmacy. Respondent's registration does not expire until March 31, 2012.

On January 14, 2010, at shortly after 7 p.m., a cooperating source (CS) went to Respondent and presented three prescriptions to Mr. Hsia. Each of the prescriptions was for 180 tablets of Roxicodone (oxycodone) 30 mg., contained dosing instructions, stated "chronic intractable pain," and was signed. While it is unclear whether the prescriptions the CS presented contained a patient name, the evidence which includes three cash-register receipts, the vials and the drugs, shows that at approximately 7:17 through 7:22 p.m., Hsia delivered the three vials, each containing 180 tablets of Roxicodone 30 mg. (for a total of 540 tablets), to the CS and charged him $325 in cash for each vial for a total of $975. The prescriptions listed the patients as Chris DiMarco of Clark, NJ; Rudy Lore, also purportedly of Clark; and Paul Smith of Rahway, NJ.

On January 21, 2010, at 7:45 p.m., the CS returned to Respondent and presented a prescription for 180 tablets of oxycodone 30 mg. This prescription listed the patient as Michael Williams of Newark, NJ. According to the transcript of a recording of the CS's conversation with Mr. Hsia, at one point the CS asked: "Quick questions. Since I'm moving [expletive deleted] moving these things really fast, is there any way you could write for more than 180? There isn't, right?" Hsia replied: "I don't really even like filling for 180." The CS then mentioned that an associate had told him that "you could get 240 all the time or somethin[g]." Hsia replied: "I can't even give you 180. I have to give you 120. Cause it doesn't say chronic intractable pain." Hsia subsequently distributed 120 tablets of oxycodone 30 mg. to the CS.

On January 27, 2010, the CS called Hsia to ask him what phrase needed to be on the prescription to justify dispensing the larger quantity. Hsia told him "chronic intractable pain." The following day, the CS returned to Respondent and presented two more prescriptions for 180 tablets of oxycodone 30 mg. which appear to have included the notation of "chronic intractable pain." One of the prescriptions listed the patient as Paul Fusatola of Belleville, NJ; the other as Rachel Billis of Nutley, NJ. The CS paid $325 in cash for each prescription and Hsia distributed two vials, each containing 180 tablets of oxycodone 30 mg., to the CS.

Discussion

Section 304(a) of the Controlled Substances Act provides that "[a] registration * * * to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section." 21 U.S.C. 824(a)(4). In determining the public interest in the case of a practitioner, the Act directs that the Attorney General consider the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Id. § 823(f).

"[T]hese factors are * * * considered in the disjunctive." Robert A. Leslie, M.D., 68 FR 15227, 15230 (2003). I may rely on any one or a combination of factors, and may give each factor the weight I deem appropriate in determining whether a registration should be revoked and/or an application should be denied. Id. Moreover, it is well settled that I am "not required to make findings as to all of the factors." Hoxie v. DEA, 419 F.3d 477, 482 (6th Cir. 2005); see also Morall v. DEA, 412 F.3d 165, 173–74 (D.C. Cir. 2005). However, the Government has the burden of proof. 21 CFR 1301.44(d) & (e).

Having considered all of the factors, I conclude that the evidence pertinent to factors two and four makes out a *prima facie* showing that Respondent "has committed such acts as would render [its] registration * * * inconsistent with the public interest." *21 U.S.C. 824(a)(4).* Accordingly, Respondent's registration will be revoked and any pending applications will be denied.

Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and Compliance With Applicable Laws Relating to Controlled Substances

Under a longstanding DEA regulation, a prescription for a controlled substance is unlawful unless it has been "issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." *21 CFR 1306.04(a).* The regulation further provides that while "[t]he responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, * * * a *corresponding responsibility rests with the pharmacist who fills the prescription.*" *Id.* (emphasis added). Continuing, the regulation states that "the person knowingly filling such a purported prescription, as well as the person issuing it, [is] subject to the penalties provided for violations of the provisions of law relating to controlled substances." *Id.*

DEA has consistently interpreted this provision as prohibiting a pharmacist from filling a prescription for a controlled substance when he either "knows or has reason to know that the prescription was not written for a legitimate medical purpose." *Medic-Aid Pharmacy, 55 FR 30043, 30044 (1990); see also Frank's Corner Pharmacy, 60 FR 17574, 17576 (1995); Ralph J. Bertolino, 55 FR 4729, 4730 (1990); United States v. Seelig, 622 F.2d 207, 213 (6th Cir. 1980). This Agency has further held that "[w]hen prescriptions are clearly not issued for legitimate medical purposes, a pharmacist may not intentionally close his eyes and thereby avoid [actual] knowledge of the real purpose of the prescription.*" *Bertolino, 55 FR at 4730 (citations omitted).*[1]

The evidence here shows that on multiple occasions, Respondent violated Federal law by dispensing prescriptions for oxycodone 30 mg., a schedule II controlled substance (*see 21 CFR 1308.12(b)),* which Mr. Hsia, its owner and pharmacist in charge, knew were not "issued for a legitimate medical purpose" by a "practitioner acting in the usual course of his professional practice." *Id. 1306.04(a); see also 21 U.S.C. 841(a)(1)* ("Except as authorized by this subchapter, it shall be unlawful for any persons knowingly or intentionally * * * to distribute[] or dispense * * * a controlled substance.").

More specifically, the evidence shows that on January 14, 2010, a CS simultaneously presented three prescriptions, each for 180 tablets of Roxicodone (oxycodone) 30 mg., to Hsia. Hsia then proceeded to fill the prescriptions and distributed the drugs to the CS from whom he received $975 in cash. Hsia clearly knew that the prescriptions were unlawful as the CS presented all three prescriptions (all of which for the same drug and quantity) at the same time and Hsia used three different patient names (Chris DeMarco, Rudy Lore and Paul Smith) on the prescription labels so as to hide the fact (in the event he was inspected) that he had distributed the drugs to a single person. In short, Hsia knowingly engaged in a drug deal. 21 U.S.C. § 841(a)(1).

The evidence further shows that on January 21, 2010, Hsia again unlawfully distributed 120 tablets of oxycodone 30 mg. to the CS in exchange for $215 in cash. Moreover, at the time the CS presented the prescription (which was in the name of Michael Williams) to Hsia, the CS told Hsia that he was re-selling the drugs, explaining that they were "moving these things really fast" and asked if he could get more than 180 tablets. While on this occasion Hsia only distributed 120 tablets to the CS (apparently because the prescription did not state "chronic intractable pain"), he clearly knew that the CS was seeking the drugs for an illegal purpose and not to treat a legitimate medical condition. Hsia thus again violated 21 U.S.C. § 841(a)(1).

Finally, on January 28, 2010, the CS presented two more prescriptions to Hsia; the prescriptions listed two different persons (Paul Fusatola and Rachel Billis) as the patients. Each prescription was for 180 tablets of oxycodone 30 mg. and indicated that it was for "chronic intractable pain." Hsia again distributed both prescriptions to the CS from whom he received $650 in cash, knowing that the CS was seeking the drugs for an illegal purpose. Hsia thus committed two additional violations of the CSA by unlawfully distributing controlled substances in violation of 21 U.S.C. § 841(a)(1).

As the forgoing demonstrates, Respondent's owner Mr. Hsia has used its registration to engage in blatant drug dealing. I therefore hold that Respondent has committed multiple acts which render its registration "inconsistent with the public interest." 21 U.S.C. 824(a)(4). Accordingly, Respondent's registration will be revoked and any pending application will be denied. For the same reasons that I immediately suspended Respondent's registration, I conclude that public interest requires that this Order be effective immediately.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I hereby order that DEA Certificate of Registration, BL4082222, issued to Lincoln Pharmacy, be, and it hereby is, revoked. I further order that any pending application of Lincoln Pharmacy for renewal or modification of its registration be, and it hereby is, denied. This Order is effective immediately.

Dated: October 15, 2010.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 2010–27026 Filed 10–25–10; 8:45 am]

BILLING CODE 4410–09–P

[1] As the Supreme Court recently explained, "the prescription requirement * * * ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses." *Gonzales* v. *Oregon,* 546 *U.S. 243, 274 (2006) (citing United States* v. *Moore, 423 U.S. 122, 135 (1975)).*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (10–138)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA Clearance Officer, NASA Headquarters, 300 E Street, SW., JF0000, Washington, DC 20546, (202) 358–1351, *Lori.Parker@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

DIME & WING are components of a NASA competition program which allows teams to design and build a science experiment which will then be operated in a NASA microgravity drop tower facility. Teams of 4 students are selected to come to GRC and drop their experiment and will be required to complete a registration form to get on base, photo release form and medical form.

II. Method of Collection

Electronic.

III. Data

Title: Dropping In a Microgravity Environment (DIME) and What If No Gravity? (WING) Drop Tower Competitions.

OMB Number: 2700–XXXX.

Type of Review: New Collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: 1.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 6 hours.

Estimated Total Annual Cost: $0.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA Clearance Officer.

[FR Doc. 2010–26968 Filed 10–25–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (10–140)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JF000, Washington, DC 20546, (202) 358–1351, *Lori.Parker@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Women in STEM High School Aerospace Scholars (WISH) is a pilot project for FY11. Applicants will apply voluntarily to be considered for this opportunity. This data collection is solely for identifying interested, qualified applications to participate in a multiple month on-line curriculum delivery and those who successfully complete the on-line curriculum will be invited to participate in a one-week experience at Johnson Space Center.

II. Method of Collection

Electronic.

III. Data

Title: Women in STEM High School Aerospace Scholars (WISH).

OMB Number: 2700-xxxx.

Type of Review: Emergency.

Affected Public: Individuals or households.

Number of Respondents: 50.

Responses per Respondent: 1.

Annual Responses: 50.

Hours per Request: 1.

Annual Burden Hours: 50.

Frequency of Report: Annually.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2010–26966 Filed 10–25–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (10–138)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA Clearance Officer, NASA Headquarters, 300 E Street, SW., JF0000, Washington, DC 20546, (202) 358–1351, *Lori.Parker@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Marshall Star is a Center newsletter available in print and PDF formats. Marshall employees and retirees may place classified ads to appear in the Marshall Star.

II. Method of Collection

Phone.

III. Data

Title: Marshall Star Classified Ads.
OMB Number: 2700–XXXX.
Type of Review: New Collection.
Affected Public: Individuals or households.
Estimated Number of Respondents: 20.
Estimated Number of Responses per Respondent: 1.
Estimated Time per Response: 10 minutes via phone.
Estimated Total Annual Burden Hours: 2 hours.
Estimated Total Annual Cost: $0.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,
NASA Clearance Officer.

[FR Doc. 2010–26967 Filed 10–25–10; 8:45 am]
BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (10–137)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA Clearance Officer, NASA Headquarters, 300 E Street, SW., JF0000, Washington, DC 20546, (202) 358–1351, *Lori.Parker@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA's portfolio of higher education projects aims to educate students, support the research and professional development of faculty and administrators, and enhance research and education capacity at institutions of higher education with the ultimate goal of strengthening the Nation's aerospace and aerospace-related science, technology, engineering, and mathematics (STEM) workforce. NASA intends to conduct a multi-staged evaluation of their cumulative investments in these higher education projects. Phase one of this evaluation will collect data on the degree completion and career placement of individuals who previously participated in a NASA project as an undergraduate or graduate student. Data from this collection will be used by NASA to respond to OMB and congressional inquiries, document the education and employment outcomes of NASA's higher education investments, and inform decisions about future project modifications and funding priorities.

II. Method of Collection

Data will be collected by means of a Web-based survey of former students who participated in or applied to NASA's higher education projects and telephone interviews of a sample of these students.

III. Data

Title: NASA Higher Education Portfolio Evaluation.
OMB Number: 2700–XXXX.
Type of Review: New Collection.
Affected Public: Individuals or households.
Estimated Number of Respondents: 15,571 (15,251 survey; 320 survey/interview).
Estimated Number of Responses per Respondent: 1 or 2 (survey only; survey and interview).
Estimated Time per Response: 20 minutes for survey; 50 minutes for survey and interview.
Estimated Total Annual Burden Hours: 5298.43 hours.
Estimated Total Annual Cost: $0.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated

collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA Clearance Officer.

[FR Doc. 2010–26969 Filed 10–25–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (10–135)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JF000, Washington, DC 20546, (202) 358–1351, *Lori.Parker@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA will require responsible officials for grant applicant institutions to sign this document as part of the application package grant award. The requirement for such an assurance of non-discrimination is long-standing and derives from NASA civil rights implementing regulation for Title VI of the Civil Rights Act of 1964.

II. Method of Collection

Paper form, signed by applicants.

III. Data

Title: NASA Assurance of Civil Rights Compliance Form.

OMB Number: 2700–xxxx.

Type of Review: Regular.

Affected Public: Business or other for-profit; not-for-profit institutions.

Number of Respondents: 2855.

Responses per Respondent: 1.

Annual Responses: 2,855.

Hours per Request: 0.25.

Annual Burden Hours: 714.

Frequency of Report: On occasion, as parties apply for grants.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2010–26971 Filed 10–25–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (10–134)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JF0000, Washington, DC 20546, (202) 358–1351, *Lori.Parker@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection, JSC Form 1625, has to do with operational groups at JSC and other NASA centers, NASA contractors, subcontractors, and vendors to provide descriptions of radioactive items used in or supplied for human space missions or approved JSC projects. The form also provides records of accountability, responsibility, transfer, location, and disposition of these items.

II. Method of Collection

The form, which is now available electronically, accompanies a physical shipment of nuclear materials and requires recipients to confirm shipment receipt. Converting the form to an electronic format and making it available on line has significantly reduced the burden of information gathering for respondents.

III. Data

Title: Radioactive Material Transfer Receipt.

OMB Number: 2700–0007.

Type of review: Renewal without change of Currently Approved Collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 25.

Estimated Total Annual Burden Hours: 10.

Estimated Total Annual Cost to Government: $10,000.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the

burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA Clearance Officer.

[FR Doc. 2010–26974 Filed 10–25–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (10–133)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA Clearance Officer, NASA Headquarters, 300 E Street, SW., JF0000, Washington, DC 20546, (202) 358–1351, *Lori.Parker@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting renewal of an existing collection that is used to help NASA to assess the services provided by its procurement offices. The NASA Procurement Customer Survey is used to determine whether NASA's Procurement Offices are providing an acceptable level of service to the business/educational community, and if not, which areas need improvement. Respondents will be business concerns and educational institutions that have been awarded a NASA procurement, or are interested in receiving such an award.

II. Method of Collection

NASA uses electronic methods to collect information from collection respondents.

III. Data

Title: NASA Procurement Customer Survey.

OMB Number: 2700–0101.

Type of review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Estimated Number of Respondents: 1000.

Estimated Annual Responses: 500.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 125.

Estimated Total Annual Cost: $0.

Estimated Total Annual Cost: $0.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA Clearance Officer.

[FR Doc. 2010–26973 Filed 10–25–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (10–132)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JF000, Washington, DC 20546, (202) 358–1351, *Lori.Parker@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA is requesting a Generic Clearance for data collection to integrate program planning, program accountability, management, and monitoring information pertaining to the NASA's education and outreach efforts. NASA's education and outreach portfolio includes efforts that span various organizational units within NASA.

II. Method of Collection

Electronic.

III. Data

Title: NASA Education Generic Clearance.

OMB Number: 2700–xxxx.

Type of review: Regular.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals or households.

Number of Respondents: 2,236,000.

Responses per Respondent: 1.

Annual Responses: 2,444,000.

Hours per Request: 0.15–.5 hour.

Annual Burden Hours: 245,333.

Frequency of Report: On occasion, quarterly, semi-annually, annually.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden

(including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2010–26972 Filed 10–25–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (10–136)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, Office of the Chief Information Officer, Mail Suite 2S65, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, Office of the Chief Information Officer, NASA Headquarters, 300 E Street, SW., Mail Suite 2S65, Washington, DC 20546, (202) 358–1351, *lori.parker@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this survey is to assimilate lunar regolith stimulant requirements as well as Apollo sample requests for the ETDP and Constellation projects and test facilities.

II. Method of Collection

Electronic.

III. Data

Title: Lunar Regolith & Stimulant Users' Survey for the In Situ Resource Utilization Web site.

OMB Number: 2700–XXXX.

Type of Review: Regular.

Affected Public: Individuals and household.

Estimated Number of Respondents: 31.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 2.

Estimated Total Annual Cost: $0.

IV. Requests for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2010–26970 Filed 10–25–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (10–141)]

NASA Advisory Council; Science Committee; Earth Science Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Earth Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Wednesday, November 17, 2010, 9 a.m. to 5 p.m., and Thursday, September 18, 2010, 9 a.m. to 3 p.m., Local Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 3H46 and 6H46, respectively, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Earth Science Division Update.
—Deformation, Ecosystem Structure and Dynamics of Ice Mission.
—Space Geodesy Networks.
—Report from the Applied Science Advisory Group.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than 10 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at (202) 358–4452.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–26965 Filed 10–25–10; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

Appointments to Performance Review Board for Senior Executive Service

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Appointments to Performance Review Board for Senior Executive Service.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has announced the following appointments to the NRC Performance Review Board.

The following individuals are appointed as members of the NRC Performance Review Board (PRB) responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives and Senior Level System employees:

Darren B. Ash, Deputy Executive Director for Corporate Management, Office of the Executive Director for Operations;
R. W. Borchardt, Executive Director for Operations;
Stephen G. Burns, General Counsel;
Elmo E. Collins, Jr., Regional Administrator, Region IV;
Margaret M. Doane, Director, Office of International Programs;
James E. Dyer, Chief Financial Officer;
Kathryn O. Greene, Director, Office of Administration;
Catherine Haney, Director, Office of Nuclear Material Safety and Safeguards;
Eric J. Leeds, Director, Office of Nuclear Reactor Regulation;
Martin J. Virgilio, Deputy Executive Director for Reactor and Preparedness Programs, Office of the Executive Director for Operations;
Michael F. Weber, Deputy Executive Director for Materials, Waste, Research, State, Tribal, and Compliance Programs, Office of the Executive Director for Operations;
James T. Wiggins, Director, Office of Nuclear Security and Incident Response.

The following individuals will serve as members of the NRC PRB Panel that was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members:

Marvin L. Itzkowitz, Associate General Counsel for Hearings, Enforcement, and Administration, Office of the General Counsel;
Michael R. Johnson, Director, Office of New Reactors;
Brian W. Sheron, Director, Office of Nuclear Regulatory Research.

All appointments are made pursuant to Section 4314 of Chapter 43 of Title 5 of the United States Code.

DATES: *Effective Date:* October 26, 2010.

FOR FURTHER INFORMATION CONTACT: Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492–2076.

Dated at Bethesda, Maryland, this 20th day of October, 2010.

For the U.S. Nuclear Regulatory Commission,

Miriam Cohen,

Secretary, Executive Resources Board.

[FR Doc. 2010–27033 Filed 10–25–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of October 25; November 1, 8, 15, 22, 29, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of October 25, 2010

Tuesday, October 26, 2010

9:30 a.m. Briefing on Security Issues (Closed—Ex. 1)

Week of November 1, 2010—Tentative

Tuesday, November 2, 2010

9:30 a.m. Briefing on Equal Employment Opportunity (EEO) and Small Business Programs (Public Meeting), (Contact: Barbara Williams, 301–415–7388).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Friday, November 5, 2010

9:30 a.m. Meeting with the Advisory Committee on Reactor Safeguards and Briefing on Design Acceptance Criteria (Public Meeting), (Contact: Cayetano Santos, 301–415–7270).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of November 8, 2010—Tentative

There are no meetings scheduled for the week of November 8, 2010.

Week of November 15, 2010—Tentative

There are no meetings scheduled for the week of November 15, 2010.

Week of November 22, 2010—Tentative

There are no meetings scheduled for the week of November 22, 2010.

Week of November 29, 2010—Tentative

Tuesday, November 30, 2010

1 p.m. Briefing on Security Issues (Closed—Ex. 1).

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: October 21, 2010.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2010–27161 Filed 10–22–10; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, November 3, 2010, at 11 a.m.

PLACE: Commission hearing room, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public. The open parts of the meeting will be audiocast. The audiocast can be accessed via the Commission's website at *http://www.prc.gov.*

MATTERS TO BE CONSIDERED: The agenda for the Commission's November meeting includes the nine items identified below.

PORTIONS OPEN TO THE PUBLIC:

1. Review of postal-related congressional activity.
2. Report on international activities.
3. Review of active cases.
4. Report on recent activities of the Joint Periodicals Task Force and status

of the report to the Congress pursuant to Section 708 of the PAEA.

5. Report on the status of the Annual Report.

6. Report on vacancies and positions recently filled.

PORTIONS CLOSED TO THE PUBLIC:

7. Discussion of pending litigation.

8. Discussion of confidential personnel issues.

9. Discussion of contracts involving confidential commercial information.

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, General Counsel, Postal Regulatory Commission, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001, at *stephen.sharfman@prc.gov* or 202–789–6820 (for agenda-related inquiries) and Shoshana M. Grove, Secretary, at 202–789–6800 (for inquiries related to meeting location, access for handicapped or disabled persons, the audiocast, or other similar matters).

Dated: October 22, 2010.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–27231 Filed 10–22–10; 4:15 pm]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2010–37 and CP2010–126; Order No. 553]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service request to add Inbound International Expedited Services 4 to the competitive product list. It is also noticing a contemporaneous Postal Service notice that new rates for inbound Express Mail Service from Canada will become effective January 1, 2011. This notice addresses procedural aspects associated with these filings.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system. Commenters who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for information on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at *stephen.sharfman@prc.gov* or 202–789–6824.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

On September 30, 2010, the Postal Service filed a request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Inbound International Expedited Services 4 to the competitive product list.[1] The Postal Service asserts that Inbound International Expedited Services 4 is a competitive product within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2010–37.

The Postal Service contemporaneously filed notice pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5 that new rates for inbound Express Mail Service (EMS) from Canada will become effective January 1, 2011, as provided in the Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (Bilateral Agreement), which governs bilateral rates for EMS with Canada Post Corporation (Canada Post), the postal operator in Canada. *Id.* at 1. It notes that prices and classifications "not of general applicability" for negotiated service agreements concerning Inbound International Expedited Services have been previously established in Governors' Decision No. 08–5.[2] *Id.* at 1–2. The Postal Service states the rates authorized by the Governors are an exception to those offered through the Universal Postal Union (UPU) EMS Cooperative. *Id.* The new prices, which are effective January 1, 2011, have been assigned Docket No. CP2010–126.

Background. The Bilateral Agreement, which was added to the competitive product list by Order No. 376,[3] covers parcels arriving in the United States by surface transportation and Xpresspost, a Canadian service for documents, packets, and light-weight packages. Governors' Decision No. 09–16.[4] Under the Bilateral Agreement, Canada Post may tender surface parcels and Xpresspost to the Postal Service at negotiated prices rather than the default prices through the UPU. The Bilateral Agreement establishes rates for 2010 and 2011. *Id.*

On August 2, 2010, the Postal Service filed a notice, pursuant to 39 CFR 3020.90 *et seq.,* of a classification change concerning the Bilateral Agreement.[5] The classification change filed in Docket No. MC2010–33, effective August 23, 2010, was approved by the Commission in Order No. 522.[6] The effect of this change is that inbound surface parcels tendered by Canada Post are now handled as Priority Mail and subject to the rates for Xpresspost merchandise established in the Bilateral Agreement. Additionally, for the period August 23, 2010 through December 31, 2010 a small volume of residual Xpresspost items will continue to be rated and handled as Xpresspost under the Bilateral Agreement.[7]

The classification change was prompted by Canada Post's decision to no longer dispatch parcels, referred to as Expedited Parcels, for entry into the Postal Service's Parcel Post network. Consequently, the service for Expedited Parcels is now provided at existing negotiated rates for Xpresspost in lieu of the negotiated surface parcel post rates. Xpresspost items are rated and handled as Express Mail with Canada as a Tier 1 country in the EMS country listing beginning August 23, 2010. In its Notice, the Postal Service stated "assuming that the rates charged to Canada Post for EMS-rated items are not the same as other rates charged to other countries, then before the end of CY 2010, the Postal Service will accordingly initiate a separate, combined mail classification and competitive price change proceeding to give effect to the CY 2011 rates for

[1] Request to Add Inbound International Expedited Services 4 to the Competitive Product List, and Notice of United States Postal Service of Filing Canada Post Group—United States Postal Service Contractual Bilateral Agreement (Under Seal), September 30, 2010 (Request).

[2] Governors' Decision No. 08–5, April 1, 2008, established prices for the inbound services offered under Express Mail International bilateral/multilateral agreements.

[3] Docket Nos. MC2010–14 and CP2010–13, Order Concerning Bilateral Agreement with Canada Post for Inbound Competitive Services, December 30, 2009 (Order No. 376).

[4] *See* Docket Nos. MC2010–14 and CP2010–13, Request of the United States Postal Service to Add Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services to the Competitive Product List, and Notice of Filing (Under Seal) the Enabling of Governors' Decision and Agreement, November 25, 2009. *See also* Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services, November 18, 2009 (Governors' Decision No. 09–16). The agreement became effective January 1, 2010 and is scheduled to expire December 31, 2011, unless terminated earlier by either party on 90 days' prior notice. *Id.,* Attachment 3.

[5] Notice of United States Postal Service of Proposed Minor Classification Change Concerning Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services, August 2, 2010 (Notice).

[6] Docket No. MC2010–33, Order Accepting Minor Classification Changes Related to Canada Post—United States Postal Service Contractual Bilateral Agreement, August 20, 2010 (Order No. 522).

[7] The Postal Service indicates the treatment of residual Xpresspost items is necessary to accommodate the use of existing Xpresspost mailing labels through the end of CY 2010.

Xpresspost handled in the EMS network." Notice at 6. The Postal Service's instant Request represents that subsequent filing to give effect to CY 2011 rates for Xpresspost handled in the EMS network.

Request. In support of its Request, the Postal Service filed the following materials:

- Attachment 1—an application for non-public treatment of pricing and supporting documents filed under seal;
- Attachment 2—a redacted version of Governors' Decision No. 08–5 establishing prices and classifications for services offered under EMS bilateral/multilateral agreements; Mail Classification Schedule (MCS) language applicable to Inbound EMS bilateral/multilateral agreements; formulas for inbound prices under EMS bilateral/multilateral agreements; and an analysis of the formulas, certification of the Governors' vote, and certification of compliance with 39 U.S.C. 3633(3)(a);
- Attachment 3—a redacted version of the portion of the Bilateral Agreement pertinent to the filing;
- Attachment 4—certification of prices for the Bilateral Agreement required by 39 CFR 3015.5(c)(2);
- Attachment 5—a Statement of Supporting Justification as required by 39 CFR 3020.32; and
- Attachment 6—proposed Mail Classification Schedule language describing International Expedited Services 4.

In the Statement of Supporting Justification, Lea Emerson, Executive Director, International Postal Affairs, asserts that "[t]he addition of the relevant portions of this [Bilateral] Agreement as a competitive product will enable the Commission to verify that each contract covers its attributable costs and enables competitive products, as a whole, to make a positive contribution to coverage of institutional costs." *Id.,* Attachment 5. She further states that as a result, "no issue of subsidization of competitive products by market dominant products arises." *Id.*

Joseph Moeller, Manager, Regulatory Reporting and Cost Analysis, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *Id.,* Attachment 4. He asserts that the prices for the Bilateral Agreement "should cover its attributable costs and preclude the subsidization of competitive products by market dominant products." *Id.,* Attachment 4.

The Postal Service filed much of the supporting materials, including the specific Bilateral Agreement, under seal. *Id.* at 5. In its Request, the Postal Service maintains that certain portions of the contract, the rates, descriptions of the rates, and related financial information should remain under seal. *Id.,* Attachment 1.

II. Notice of Filings

The Commission establishes Docket Nos. MC2010–37 and CP2010–126 for consideration of the Request pertaining to the proposed Inbound International Expedited Services 4 product, and the related Bilateral Agreement, respectively. In keeping with practice, these dockets are addressed on a consolidated basis for purposes of this order; however, future filings should be made in the specific docket in which issues being addressed pertain.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR 3020 subpart B. Comments are due no later than October 14, 2010.[8] The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2010–37 and CP2010–126 for consideration of the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
3. Comments by interested persons in these proceedings are due no later than October 14, 2010.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–26957 Filed 10–25–10; 8:45 am]

BILLING CODE 7710–FW–P

[8] Commenters who cannot file by the deadline should contact Mr. Sharfman.

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2010–28 and CP2011–20 through CP2011–25; Order No. 564]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently filed Postal Service request to add six Global Expedited Package Services 3 contracts to the competitive product list. This notice addresses procedural steps associated with the filing.

DATES: *Comments are due:* October 28, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at *stephen.sharfman@prc.gov* or 202–789–6824.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

On October 19, 2010, the Postal Service filed a notice announcing that it has entered into six additional Global Expedited Package Services 3 (GEPS 3) contracts.[1] The Postal Service believes the instant contracts are functionally equivalent to previously submitted GEPS contracts, and are supported by Governors' Decision No. 08–7, attached to the Notice and originally filed in Docket No. CP2008–4. *Id.* at 1, Attachment 3. The Notice explains that Order No. 86, which established GEPS 1 as a product, also authorized functionally equivalent agreements to be included within the product, provided that they meet the requirements of 39 U.S.C. 3633. *Id.* at 2. In Order No. 290, the Commission approved the GEPS 2 product.[2] In Order No. 503, the Commission approved the GEPS 3 product. Additionally, the Postal Service requested to have the contract in Docket No. CP2010–71 serve as the baseline contract for future functional equivalence analyses of the GEPS 3 product.

The instant contracts. The Postal Service filed the instant contracts pursuant to 39 CFR 3015.5. In addition,

[1] Notice of United States Postal Service of Filing Six Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreements and Application For Non-Public Treatment of Materials Filed Under Seal, October 19, 2010 (Notice).

[2] Docket No. CP2009–50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290).

the Postal Service contends that each contract is in accordance with Order No. 86. The term of each contract is one year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received. Notice at 3.

In support of its Notice, the Postal Service filed four attachments as follows:

- Attachments 1A through 1F—redacted copies of the six contracts and applicable annexes;
- Attachments 2A through 2F—certified statements required by 39 CFR 3015.5(c)(2) for each contract;
- Attachment 3—a redacted copy of Governors' Decision No. 08–7 which establishes prices and classifications for GEPS contracts, a description of applicable GEPS contracts, formulas for prices, an analysis of the formulas, and certification of the Governors' vote; and
- Attachment 4—an application for non-public treatment of materials to maintain redacted portions of the contracts and supporting documents under seal.

The Notice advances reasons why the instant GEPS 3 contracts fit within the Mail Classification Schedule language for the GEPS 3 product. The Postal Service identifies customer-specific information and general contract terms that distinguish the instant contracts from the baseline GEPS 3 agreement. *Id.* at 4–5. It states that the differences, which include price variations based on updated costing information and volume commitments, do not alter the contracts' functional equivalency. *Id.* at 3–4. The Postal Service asserts that "[b]ecause the agreements incorporate the same cost attributes and methodology, the relevant characteristics of these six GEPS contracts are similar, if not the same, as the relevant characteristics of previously filed contracts." *Id.* at 4.

The Postal Service concludes that its filings demonstrate that each of the new GEPS 3 contracts complies with the requirements of 39 U.S.C. 3633 and is functionally equivalent to the baseline GEPS 3 contract. Therefore, it requests that the instant contracts be included within the GEPS 3 product. *Id.* at 5.

II. Notice of Filing

The Commission establishes Docket Nos. CP2011–20 through CP2011–25 for consideration of matters related to the contracts identified in the Postal Service's Notice.

These dockets are addressed on a consolidated basis for purposes of this order. Filings with respect to a particular contract should be filed in that docket.

Interested persons may submit comments on whether the Postal Service's contracts are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642. Comments are due no later than October 28, 2010. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned proceedings.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. CP2011–20 through CP2011–25 for consideration of matters raised by the Postal Service's Notice.
2. Comments by interested persons in these proceedings are due no later than October 28, 2010.
3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–26982 Filed 10–25–10; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. RM2010–14; Order No. 550]

Periodic Reporting Rules

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice addresses the Postal Service request for semi-permanent exceptions to certain recently-adopted service performance measurement reporting requirements.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system. Commenters who cannot submit filings electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for advice on alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, *stephen.sharfman@prc.gov* or 202–789–6820.

SUPPLEMENTARY INFORMATION: On September 30, 2010, the Postal Service filed a request for a semi-permanent exception from periodic reporting of service performance measurement for Applications and Mailing Permits, pursuant to Commission Order No. 465 and 39 CFR 3055.3.[1]

Rule 3055.3 provides the Postal Service an opportunity to request that a product, or component of a product, be excluded from service performance measurement reporting upon demonstration that:

1. The cost of implementing a measurement system would be prohibitive in relation to the revenue generated by the product, or component of a product;
2. The product, or component of a product, defies meaningful measurement; or
3. The product, or component of a product, is in the form of a negotiated service agreement with substantially all components of the agreement included in the measurement of other products.

The Postal Service explains that Applications and Mailing Permits comprise nothing more than a transaction intended to establish or renew permission to enter bulk mailings. The Postal Service contends that this service defies meaningful measurement and falls within the 39 CFR 3055(a)(2) exception from reporting of service performance measurements. Request at 3.

The Commission establishes Docket No. RM2010–14 for consideration of matters related to the proposed semi-permanent exception from periodic reporting of service performance measurement identified in the Postal Service's Request.

Interested persons may submit comments on whether the Postal Service's Request is consistent with the policies of 39 U.S.C. 3652(a)(2) and 39 CFR 3055.3.[2] Comments are due no later than October 15, 2010. The Postal Service's Request can be accessed via the Commission's Web site (*http:www.prc.gov*).

The Commission appoints Katrina Martinez to serve as Public Representative in the captioned proceedings.

It is ordered:

1. The Commission establishes Docket No. RM2010–14 for consideration of matters raised by the Postal Service's Request.
2. Comments by interested persons in these proceedings are due no later than October 15, 2010.

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[1] United States Postal Service Request for Semi-Permanent Exception from Periodic Reporting of Service Performance Measurement, September 30, 2010 (Request); *see also* Docket No. RM2009–11, Order Establishing Final Rules Concerning Periodic Reporting of Service Performance Measurements and Customer Satisfaction, May 25, 2010, at 22 (Order No. 465).

[2] Those who cannot submit comments by the filing deadline should contact Mr. Sharfman.

3. Pursuant to 39 U.S.C. 505, Katrina Martinez is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–26981 Filed 10–25–10; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding five (5) Information Collection Requests (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR(s) describe the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

1. *Title and purpose of information collection:* 3220–0136, Public Service Pension Questionnaires.

Public Law 95–216 amended the Social Security Act of 1977 by providing, in part, that spouse or survivor benefits may be reduced when the beneficiary is in receipt of a pension based on employment with a Federal, State, or local governmental unit. Initially, the reduction was equal to the full amount of the government pension.

Public Law 98–21 changed the reduction to two-thirds of the amount of the government pension. Public Law 108–203 amended the Social Security Act by changing the requirement for exemption to public service offset, that Federal Insurance Contributions Act (FICA) taxes be deducted from the public service wages for the last 60 months of public service employment, rather than just the last day of public service employment.

Sections 4(a)(1) and 4(f)(1) of the Railroad Retirement Act (RRA) provides that a spouse or survivor annuity should be equal in amount to what the annuitant would receive if entitled to a like benefit from the Social Security Administration. Therefore, the public service pension (PSP) provisions apply to RRA annuities. RRB Regulations pertaining to the collection of evidence relating to public service pensions or worker's compensation paid to spouse or survivor applicants or annuitants are found in 20 CFR 219.64c.

The RRB utilizes Form G–208, Public Service Pension Questionnaire, and Form G–212, Public Service Monitoring Questionnaire, to obtain information used to determine whether an annuity reduction is in order. The RRB proposes a non-burden impacting editorial change to G–208 and no changes to Form G–212. The RRB estimates the completion time for Form G–208 at 16 minutes and G–212 at 15 minutes. If a respondent fails to complete the form(s), the RRB may be unable to pay them benefits. One response is required from a respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (75 FR 51117 on August 18, 2010) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Public Service Pension Questionnaires.

OMB Control Number: 3220–0136.

Form(s) submitted: G–208, Public Service Pension Questionnaire; G–212, Public Service Monitoring Questionnaire.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or households.

Abstract: A spouse or survivor annuity under the Railroad Retirement Act may be subjected to a reduction for a public service pension. The questionnaires obtain information needed to determine if the reduction applies and the amount of such reduction.

The burden estimate for the ICR is as follows:

Estimated annual number of respondents: 1,170.

Total annual responses: 1,170.

Total annual reporting hours: 294.

2. *Title and Purpose of Information Collection:* 3220–0138, Self-Employment and Substantial Service Questionnaire. Section 2 of the Railroad Retirement Act (RRA) provides for payment of annuities to qualified employees and their spouses. In order to receive an age and service annuity, Section 2(e)(3) states that an applicant must stop all railroad work and give up any rights to return to such work. However, applicants are not required to stop non-railroad work or self-employment. The RRB considers some work claimed as "self-employment" to actually be employment for an employer. Whether the RRB classifies a particular activity as self-employment or as work for an employer depends upon the circumstances of each case. These circumstances are prescribed in 20 CFR 216.

Under the 1988 amendments to the RRA, an applicant is no longer required to stop work for a "Last Pre-Retirement Nonrailroad Employer" (LPE). However, section 2(f)(6) of the RRA requires that a portion of the employee's Tier II benefit and supplemental annuity be deducted for earnings from a "LPE" employer.

"*LPE*" is defined as the last person, company or institution with whom the employee or spouse applicant was employed concurrently with, or after, the applicant's last railroad employment and before their annuity beginning date. If a spouse never worked for a railroad, the LPE employer is the last person for whom he or she worked.

The RRB utilizes Form AA–4, *Self-Employment and Substantial Service Questionnaire,* when an applicant claims to be self-employed to obtain information needed to determine if the applicant's work is LPE, railroad service or self-employment. If the work is self-employment, the questionnaire identifies any months in which the applicant did not perform substantial service. The RRB proposes no changes to Form AA–4. Completion time is estimated at between 40 and 70 minutes. If a respondent fails to complete Form AA–4, the RRB may be unable to pay them benefits. One response is received from each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (75 FR 51117 on August 18, 2010) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Self-Employment and Substantial Service Questionnaire.

OMB Control Number: 3220–0138.

Form(s) submitted: AA–4.

Type of request: Extension of a currently approved collection.

Affected public: Individuals or households.

Abstract: Section 2 of the Railroad Retirement Act provides for payment of annuities to qualified employees and their spouses. Work for a Last Pre-Retirement Nonrailroad Employer (LPE), and work in self-employment affect payments in different ways. This collection obtains information to determine whether claimed self-employment is really self-employment, and not work for a railroad or LPE.

The burden estimate for the ICR is as follows:

Estimated annual number of respondents: 600.

Total annual responses: 600.

Total annual reporting hours: 415.

3. *Title and Purpose of Information Collection:*3220–0184, Earnings Information Request.

Under Section 2 of the Railroad Retirement Act, an annuity is not payable, or is reduced for any month(s) in which the beneficiary works for a railroad or earns more than prescribed amounts. The provisions relating to the reduction or non-payment of annuities by reason of work are prescribed in 20 CFR 230.

To obtain the information needed to determine if an annuity is not payable to an *applicant* because of earnings in excess of prescribed amounts, the RRB uses a series of basic application forms used to request specific information related to an annuitant's past, present and future earnings. To determine information needed for determining reductions in, or non-payment of, annuities currently being paid to *annuitants,* the RRB primarily relies on earnings information received from the Social Security Administration under the terms of a computer matching agreements.

The RRB utilizes Form G–19–F, *Earnings Information Request,* to obtain earnings information that either had not been previously reported or erroneously reported by a beneficiary. The RRB proposes no changes to Form G–19–F. Completion time is estimated at 8 minutes. If respondent fails to complete the form, the RRB may be unable to pay them benefits. One response is required from a respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (75 FR 41557 on July 16, 2010) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Earnings Information Request.

OMB Control Number: 3220–0184.

Form(s) submitted: G–19F.

Type of request: Extension of a currently approved collection.

Affected public: Individuals or households.

Abstract: Under Section 2 of the Railroad Retirement Act, an annuity is not payable or is reduced for any month(s) in which the beneficiary works for a railroad or earns more than prescribed amounts. The collection obtains earnings information not previously or erroneously reported by a beneficiary.

The burden estimate for the ICR is as follows:

Estimated annual number of respondents: 900.

Total annual responses: 900.

Total annual reporting hours: 120.

4. *Title and Purpose of Information Collection:*3220–0196, Investigation of Claim for Possible Days of Employment.

Under Section 1(k) of the Railroad Unemployment Insurance Act (RUIA), unemployment and sickness benefits are not payable for any day with respect to which remuneration is payable or accrues to the claimant. Also Section 4(a–1) of the RUIA provides that unemployment or sickness benefits are not payable for any day the claimant receives the same benefits under any law other than the RUIA. Under Railroad Retirement Board (RRB) regulations, 20 CFR 322.4(a), a claimant's certification or statement on an RRB provided claim form that he or she did not work on any day claimed and did not receive income such as vacation pay or pay for time lost shall constitute sufficient evidence unless there is conflicting evidence. Further, under 20 CFR 322.4(b), when there is a question raised as to whether or not remuneration is payable or has accrued to a claimant with respect to a claimed day or days, investigation shall be made with a view to obtaining information sufficient for a finding.

The RRB utilizes Form ID–5S(SUP), Report of Cases for Which All Days Were Claimed During a Month Credited Per an Adjustment Report, to collect information about compensation credited to an employee during a period when the employee claimed either unemployment or sickness benefits from a railroad employer. The request is generated as a result of a computer match that compares data which is maintained in the RRB's RUIA Benefit Payment file with data maintained in the RRB's records of service. The ID–5S(SUP) is generated annually when the computer match indicates that an employee(s) of the railroad employer was paid unemployment or sickness benefits for every day in one or more months for which creditable compensation was adjusted due to the receipt of a report of creditable compensation adjustment (RRB FORM BA–4, OMB Approved 3220–0008) from their railroad employer.

The computer generated Form ID–5S(SUP) includes pertinent identifying information, the BA–4 adjustment process date and the claimed months in question. Space is provided on the report for the employer's use in supplying the information requested in the computer generated transmittal letter, Form ID–5S, which accompanies the report. The RRB proposes no changes to Form ID–5S(SUP) and Form ID–5S. The RRB estimates the completion time for Form ID–5S(SUP) at 10 minutes. Completion is voluntary. One response is requested of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (72 FR 8206–8207 on February 23, 2007) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request Details (ICR)

Title: Investigation of Claim for Possible Days of Employment.

OMB Control Number: 3220–0196.

Form(s) submitted: ID–5S(SUP).

Type of request: Extension of a currently approved collection.

Affected public: Business or other for-profit.

Abstract: Under the Railroad Unemployment Insurance Act, unemployment or sickness benefits are not payable for any day in which remuneration is payable or accrues to the claimant. The collection obtains information about compensation credited to an employee during a period when the employee claimed unemployment or sickness benefits from their railroad employer.

The burden estimate for the ICR is as follows:

Estimated annual number of respondents: 80.

Total annual responses: 80.

Total annual reporting hours: 13.

5. *Title and Purpose of Information Collection:* 3220–0200, Designation of Contact Officials.

Coordination between railroad employers and the RRB is essential to properly administer the payment of benefits under the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA). In order to enhance timely coordination activity, the RRB utilizes Form G–117a, Designation of Contact Officials. Form

G–117a is used by railroad employers to designate employees who are to act as point of contact with the RRB on a variety of RRA and RUIA-related matters. The RRB proposes no changes to Form G–117A. Completion time is estimated at 15 minutes. Completion is voluntary. One response is requested from each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (75 FR 38565 on July 2, 2010) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Designation of Contact Officials.

OMB Control Number: 3220–0200.

Form(s) submitted: G–117A.

Type of request: Extension of a currently approved collection.

Affected public: Business or other for profit.

Abstract: The Railroad Retirement Board (RRB) requests that railroad employers designate employees to act as liaison with the RRB on a variety of Railroad Retirement Act and Railroad Unemployment Insurance Act matters.

The burden estimate for the ICR is as follows:

Estimated annual number of respondents: 100.

Total annual responses: 100.

Total annual reporting hours: 25.

FOR FURTHER INFORMATION CONTACT: Copies of the form and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be addressed to Patricia A. Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Patricia.Henaghan@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 2010–26997 Filed 10–25–10; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, October 28, 2010 at 9:30 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Thursday, October 28, 2010 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: October 22, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27218 Filed 10–22–10; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63139; File No. SR–ISE–2010–99]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Adopt ISE Rule 421 Relating to Proxy Voting

October 20, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 6, 2010, the International Securities Exchange, LLC ("ISE" or "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 substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to adopt Rule 421 (Proxy Voting), in accordance with the provisions of Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt ISE Rule 421 (Proxy Voting), in accordance with the provisions of Section 957 of the Dodd-Frank Act, to prohibit Members from voting uninstructed shares if the matter voted on relates to (i) the election of a member of the board of directors of an issuer (other than an uncontested election of a director of an investment company registered under the Investment Company Act of 1940 (the "Investment Company Act")), (ii) executive compensation, or (iii) any other significant matter, as determined by the Commission, by rule.

Section 957 of the Dodd-Frank Act amends Section 6(b)[3] of the Act to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

require the rules of each national securities exchange to prohibit any member organization that is not the beneficial owner of a security registered under Section 12 [4] of the Act from granting a proxy to vote the security in connection with certain stockholder votes, unless the beneficial owner of the security has instructed the member organization to vote the proxy in accordance with the voting instructions of the beneficial owner. The stockholder votes covered by Section 957 include any vote with respect to (i) the election of a member of the board of directors of an issuer (other than an uncontested election of a director of an investment company registered under the Investment Company Act), (ii) executive compensation, or (iii) any other significant matter, as determined by the Commission, by rule.

Accordingly, in order to carry out the requirements of Section 957 of the Dodd-Frank Act, the Exchange proposes to adopt proposed ISE Rule 421 to prohibit any Member from giving a proxy to vote stock that is registered in its name, unless: (i) Such Member is the beneficial owner of such stock; (ii) pursuant to the written instructions of the beneficial owner; or (iii) pursuant to the rules of any national securities exchange or association of which it is a member provided that the records of the Member clearly indicate the procedure it is following. The Exchange is proposing to adopt these rules because other national securities exchanges and associations do allow proxy voting under certain limited circumstances while the current Exchange Rules are silent on such matters. Therefore, a Member that is also a member of another national securities exchange or association may vote the shares held for a customer when allowed under its membership at another national securities exchange or association, provided that the records of the Member clearly indicate the procedure it is following.

More specifically, a Member that is not the beneficial owner of a security registered under Section 12 of the Act is prohibited from granting a proxy to vote the security in connection with a shareholder vote with respect to the election of a member of the board of directors of an issuer (except for a vote with respect to uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act), executive compensation, or any other significant matter, as determined by the Commission, by rule, unless the beneficial owner of the security has instructed the Member to vote the proxy in accordance with the voting instructions of the beneficial owner.

Because Section 957 of the Dodd-Frank Act does not provide for a transition phase, the Exchange is proposing to adopt the proposed rule change pursuant to Section 19(b) of the Act to comply with Section 957 of the Dodd-Frank Act and is requesting that the Commission approve the proposal on an accelerated basis. Additionally, proposed ISE Rule 421(a) is based on NYSE Arca, Inc. ("NYSE Arca") rule 9.4 and Financial Industry Regulatory Authority ("FINRA") rule 2251 and proposed ISE Rule 421(b) is based on Nasdaq rule 2251(d).

2. Statutory Basis

The basis under the Act for these proposed rule changes is the requirement under Section 6(b)(5) [5] to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange is adopting this proposed rule change to comply with the requirements of Section 957 of the Dodd-Frank Act, and therefore believes the proposed rule change to be consistent with the Act, particularly with respect to the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. 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–ISE–2010–99 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–ISE–2010–99. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of ISE. 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–ISE–2010–99 and should be submitted on or before November 16, 2010.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

In its filing, ISE requested that the Commission approve the proposal on an accelerated basis so that the Exchange could immediately comply with the requirements imposed by the Dodd-Frank Act, and because the proposed rule text is based upon NYSE Arca Rule 9.4, FINRA Rule 2251, and Nasdaq Rule 2251(d). After careful consideration, the Commission finds that the proposed

[4] 15 U.S.C. 781.

[5] 15 U.S.C. 78f(b)(5).

rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6]

The Commission believes that proposed Rule 421(a) is consistent with Section 6(b)(5)[7] of the Act, which provides, among other things, that the rules of the Exchange must be designed to promote just and equitable principles of trade, 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, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Under proposed Rule 421(a), a Member shall be prohibited from voting uninstructed shares unless: (1) That member is the beneficial owner of the stock; (2) pursuant to the written instructions of the beneficial owner; or (3) pursuant to the rules of any national securities exchange or association of which it is also a member, provided that the member's records clearly indicate the procedure it is following. This provision is based upon NYSE Arca Rule 9.4 and FINRA Rule 2251, which were previously approved by the Commission.[8] The Commission notes that the proposed change to Rule 421(a) will provide clarity to ISE members going forward on whether broker discretionary voting is permitted by ISE members under limited circumstances when the ISE member is also a member of another national securities exchange that permits broker discretionary voting. In approving this portion of the ISE proposal, the Commission notes that it does not go outside the scope of the rules of other national securities exchanges or national securities association, and for ISE members who are not also members of another national securities exchange prohibits broker discretionary voting on any matter, consistent with investor protection and the public interest.

The Commission believes that proposed Rule 421(b) is consistent with Section 6(b)(10)[9] of the Act, which requires that national securities exchanges adopt rules prohibiting members that are not beneficial holders of a security from voting uninstructed proxies with respect to the election of a member of the board of directors of an issuer (except for uncontested elections of directors for companies registered under the Investment Company Act), executive compensation, or any other significant matter, as determined by the Commission by rule.

The Commission believes that proposed Rule 421(b) is consistent with Section 6(b)(10) of the Act because it adopts revisions that comply with that section. As noted in the accompanying Senate Report, Section 957, which enacted Section 6(b)(10), reflects the principle that "final vote tallies should reflect the wishes of the beneficial owners of the stock and not be affected by the wishes of the broker that holds the shares."[10] The proposed rule change will make ISE compliant with the new requirements of Section 6(b)(10) by specifically prohibiting, in ISE's rule language, broker-dealers, who are not beneficial owners of a security, from voting uninstructed shares in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission by rule, unless the member receives voting instructions from the beneficial owner of the shares.[11]

The Commission also believes that proposed Rule 421(b) is consistent with Section 6(b)(5)[12] of the Act, which provides, among other things, that the rules of the Exchange must be designed to promote just and equitable principles of trade, 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, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the rule assures that shareholder votes on the election of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940) and on executive compensation matters are made by those with an economic interest in the company, rather than by a broker that has no such economic interest, which should enhance corporate governance and accountability to shareholders.[13]

Based on the above, the Commission finds that the ISE proposal will further the purposes of Sections 6(b)(5) and 6(b)(10) of the Act because it should enhance corporate accountability to shareholders while also serving to fulfill the Congressional intent in adopting Section 6(b)(10) of the Act.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,[14] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission believes that good cause exists to grant accelerated approval to proposed Rule 421(a), because this proposed rule will conform the ISE rule to NYSE Arca Rule 9.4 and FINRA Rule 2251, which were published for public comment in the **Federal Register** and approved by the Commission, and for which no comments were received.[15] Because proposed Rule 421(a) is substantially similar to the NYSE Arca and FINRA rules, it raises no new regulatory issues.

The Commission also believes that good cause exists to grant accelerated approval to proposed Rule 421(b), which conforms the ISE rules to the requirements of Section 6(b)(10) of the Act. Section 6(b)(10) of the Act, enacted under Section 957 of the Dodd-Frank Act, does not provide for a transition phase, and requires rules of national securities exchanges to prohibit broker voting on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission by rule. The Commission believes that good cause exists to grant

[6] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* Securities Exchange Act Release No. 48735 (October 31, 2003), 68 FR 63173 (November 7, 2003) (SR–PCX–2003–50); 61052 (November 23, 2009), 74 FR 62857 (December 1, 2009) (SR–FINRA–2009–066) (finding that the proposed rule change was consistent with the Act because the Rule "will continue to provide FINRA members with guidance on the forwarding of proxy and other issuer-related materials.").

[9] 15 U.S.C. 78f(b)(10).

[10] *See* S. Rep. No. 111–176, at 136 (2010).

[11] The Commission has not, to date, adopted rules concerning other significant matters where uninstructed broker votes should be prohibited, although it may do so in the future. Should the Commission adopt such rules, we would expect ISE to adopt coordinating rules promptly to comply with the statute.

[12] 15 U.S.C. 78f(b)(5).

[13] As the Commission stated in approving NYSE rules prohibiting broker voting in the election of directors, having those with an economic interest in the company vote the shares, rather than the broker who has no such economic interest, furthers the goal of enfranchising shareholders. *See* Securities Exchange Act Release No. 60215 (July 1, 2009), 74 FR 33293 (July 10, 2009) (SR–NYSE–2006–92).

[14] 15 U.S.C. 78s(b)(2).

[15] *See* note 8 *supra.*

accelerated approval to proposed Rule 421(b), because it will conform the ISE rules to the requirements of Section 6(b)(10) of the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–ISE–2010–99) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–26993 Filed 10–25–10; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63137; File No. SR–NYSEArca–2010–92]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. To Expand the $0.50 Strike Price Program

October 20, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 18, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .04 to NYSE Arca Options Rule 6.4 to expand the $.50 Strike Price Program as described below. The text of the proposed rule change is available at the Exchange, on the Commission's Web site at *http://www.sec.gov,* at the Commission's Public Reference Room, and *http://www.nyse.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt Rule provisions similar to those proposed for use by NASDAQ OMX PHLX ("Phlx") [3] that will amend Commentary .04 to NYSE Arca Options Rule 6.4, Series of Options Open for Trading, specifically the Exchange's $.50 Strike Price Program (the "$.50 Strike Program" or "Program") [4] to: (i) Expand the $.50 Strike Program for strike prices below $1.00; (ii) extend the $.50 strike program to strike prices that are $5.50 or less; (iii) extend the prices of the underlying security to at or below $5.00; and (iv) extend the number of options classes overlying 20 individual stocks. The purpose of this proposed rule change is to expand the $.50 Strike Program in order to provide investors with opportunities and strategies to minimize losses associated with owning a stock declining in price.

The Exchange is proposing to establish strike price intervals of $.50, beginning at $.50 for certain options classes where the strike price is $5.50 or less and whose underlying security closed at or below $5.00 in its primary market on the previous trading day and that have national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation ("OCC") during the preceding three calendar months. The Exchange also proposes to limit the listing of $.50 strike prices to options classes overlying no more than 20 individual stocks as specifically designated by the Exchange.

Currently, Exchange Rule 6.4 at Commentary .04 permits strike price intervals of $.50 or greater beginning at $1.00 where the strike price is $3.50 or less, but only for option classes whose underlying security closed at or below $3.00 in its primary market on the previous trading day and that have national average daily volume that equals or exceeds 1,000 contracts per day as determined by the OCC during the preceding three calendar months. Further, the listing of $.50 strike prices is limited to options classes overlying no more than 5 individual stocks as specifically designated by the Exchange. The Exchange is currently restricted from listing series with $1 intervals within $0.50 of an existing strike price in the same series, except that strike prices of $2, $3, and $4 shall be permitted within $0.50 of an existing strike price for classes also selected to participate in the $0.50 Strike Program.[5]

The number of $.50 strike options traded on the Exchange has continued to increase since the inception of the Program. There are now approximately 18 of the $.50 strike price option classes listed and traded across all options exchanges including the Exchange, five of which are classes chosen by the Exchange for the $0.50 Strike Program. The proposal would expand $.50 strike offerings to market participants, such as traders and retail investors, and thereby enhance their ability to tailor investing and hedging strategies and opportunities in a volatile market place.

By way of example, if an investor wants to invest in 5,000 shares of Sirius Satellite ("SIRI") at $0.9678,[6] the only choice the investor would have today would be to buy out-of-the-money calls, at the $1.00 strike, or to invest in the underlying stock with a total outlay of $.96 per share or $4,800. However, if a $.50 strike series were available, an investor may be able to invest in 5,000 shares by purchasing an exercisable in-the-money $.50 strike call option. It is reasonable to assume that with SIRI trading at $.96, the $.50 strike call option would trade at an estimated price of $.46 to $.48 under normal circumstances. This would allow the investor to manage 5,000 shares with the same upside potential return for a cost of only $2,350 (assuming $.47 as a call price).

Similarly, if an investor wanted to spend $4,800 for 5,000 shares of SIRI, a $.50 put option that would trade for

[3] *See* Exchange Act Release No. 62799 (August 30, 2010) 75 FR 54662 (September 8, 2010) (SR–Phlx–2010–118).

[4] *See* Securities Exchange Act Release No. 61920, (April 15, 2010), 75 FR 21902 (April 22, 2010) (SR–NYSEArca–2010–29) (notice of filing and immediate effectiveness permitting the concurrent listing of $3.50 and $4 strikes for classes that participate in both the $0.50 Strike and $1 Strike Programs).

[5] *See* Exchange Rule 6.4, Commentary .04(a), referring to the $1 Strike Program.

[6] SIRI was trading at $ 0.9678 on July 13, 2010.

$.01 to $.05 would provide protection against a declining stock price in the event that SIRI dropped below $.50 per share. In a down market, where high volume widely held shares drop below $1.00, investors deserve the opportunity to hedge downside risk in the same manner as investors have with stocks greater than $1.00.

Increasing the threshold from $3.00 to $5.00 and expanding the number of $0.50 strikes available for stocks under $5.00 further aids investors by offering opportunities to manage risk and execute a variety of option strategies to improve returns. For example, today an investor can enhance their yield by selling an out-of-the-money call. Using an example of an investor who wants to hedge Citigroup ("C") which is trading at $4.24,[7] that investor would be able to choose the $4.50 strike, which is 6% out-of-the-money, or they would be able to choose the $5.00 strike, which is 17.92% out-of-the-money, under this proposal. Today, this investor only has the latter choice. Beyond that, this investor today may choose the $6.00 strike, which is 41% out-of-the-money, and offers significantly less premium. Pursuant to this proposal, if this investor had a choice to hedge with a $5.50 strike option, the investor would have the opportunity to sell the option at only 29% out-of-the-money and would improve their return by gaining more premium, while also benefiting from 29% of upside return in the underlying equity.

By increasing the number of securities from 5 individual stocks to 20 individual stocks would allow the Exchange to offer investors additional opportunities to use the $0.50 strike program. The Exchange notes that $0.50 strikes have had no impact on capacity. Further, the Exchange has observed the popularity of $0.50 strikes. The open interest in the $2.50 August strike series for Synovus Financial Corp. ("SNV"), which closed at $2.71 on July 13, 2010, was 12,743 options; whereas open interest in the $2 and $3 August strike series was a combined 318 options. The open interest in the August $1.50 strike series for Ambac Financial Group, Inc. ("ABK"), which closed at $0.7490 on July 13, 2010, was 15,879 options compared to 8,174 options for the $2 strike series. The August $2.50 strike series had open interest of 22,280 options, also more than the traditional $2 strike series.

By expanding the $.50 Strike Program, investors would be able to better enhance returns and manage risk by providing investors with significantly greater flexibility in the trading of equity options that overlie lower price stocks by allowing investors to establish equity options positions that are better tailored to meet their investment, trading and risk management goals.

The Exchange also proposes making a corresponding amendment to Commentary .04(a) of NYSE Arca Options Rule 6.4 to add $5 to $1 Strike Program language that addresses listing series with $1 intervals within $0.50 of an existing strike price in the same series. Currently, and to account for the overlap with the $.50 Strike Program, the following series are excluded from this prohibition: strike prices of $2, $3, and $4. The Exchange proposes to add $5 and $6 to that list to account for the proposal to expand the $.50 Strike Program to a strike price of $5.50.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934[8] (the "Act") in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that amending the current $.50 Strike Program would result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities. Investors would be provided with an opportunity to minimize losses associated with declining stock prices which do not exist today. With the increase in active, low-prices securities, the Exchange believes that amending the $.50 Strike Program to allow a $.50 strike interval below $1 for strike prices of $5.50 or less is necessary to provide investors with additional opportunity to minimize and manage risk.

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 does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[12] Therefore, the Commission designates the proposal operative upon filing.[13]

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:

[7] This was the price for C on July 14, 2010.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 satisfied this requirement.

[12] *See* Securities Exchange Act Release No. 63132 (October 19, 2010) (SR–Phlx–2010–118) (order approving expansion of $0.50 Strike Price Program).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–92 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–92. 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–2010–92 and should be submitted on or before November 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

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[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63140; File No. SR–Phlx–2010–141]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit Certain FLEX Options To Trade Under the FLEX Trading Procedures for a Limited Time on a Closing Only Basis

October 20, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], and Rule 19b–4 [2] thereunder, notice is hereby given that on October 7, 2010, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend Phlx Rule 1079 (FLEX Index, Equity and Currency Options) to permit certain exchange-traded flexible options ("FLEX Options") [3] to continue to trade under the FLEX trading procedures for a limited time on a closing only basis.

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b–4(f)(6)(iii).[4]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FLEX Options are flexible exchange-traded index, equity, or currency option contracts that provide investors the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options may have expiration dates within five years. *See* Phlx Rule 1079. FLEX currency option contracts traded on the Exchange are also known as FLEX World Currency Options ("WCO") or FLEX Foreign Currency Options ("FCO") contracts.

[4] 17 CFR 240.19b–4(f)(6)(iii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Phlx Rule 1079 to allow certain FLEX Options, which are identical in all terms to an underlying security or index option ("Non-FLEX Option"), to continue to trade on a closing only basis using the FLEX trading procedures for the balance of the trading day on which the Non-FLEX Option is added as an intra-day add.

The Exchange recently adopted rule changes to allow FLEX Options to expire on or within two business days of a third-Friday-of-the-month expiration ("Expiration FLEX Options").[5] Such FLEX Options could have either an American or European-style exercise. Among other things, the rule change also provided that Expiration FLEX Options will be permitted before (but not after) Non-FLEX Options with identical terms are listed. Once and if an option series is listed for trading as a Non-FLEX Option series, (i) all existing open positions established under the FLEX trading procedures shall be fully fungible with transactions in the respective Non-FLEX Option series, and (ii) any further trading in the series would be as Non-FLEX Options subject to the Non-FLEX trading procedures and rules.

The Options Clearing Corporation ("OCC") became concerned that, in certain circumstances, in the event a Non-FLEX Option is listed with identical terms to an existing FLEX Option, OCC could not net the positions in the contracts until the next business day. If the Non-FLEX Option were listed intra-day, and an investor with a position in the FLEX Option attempted

[5] *See* Securities Exchange Act Release No. 60679 (September 16, 2009), 74 FR 48619 (September 23, 2009)(SR–Phlx–2009–81)(notice of filing and immediate effectiveness).

to close the position using the Non-FLEX Option, the investor would be technically long in one contract and short in the other contract. This would expose the investor to assignment risk until the next day despite having offsetting positions. The limited circumstances are:

—The Non-FLEX Option is listed intra-day.
—The FLEX contract is for American-style exercise.
—All other terms are identical and the contracts are otherwise fungible.

The risk does not occur in expiration Friday FLEX Option positions during the five days prior to expiration, as no new Non-FLEX Option series may be listed within five days of expiration. It also does not exist for FLEX Option positions that will be identical to Non-FLEX series to be added after expiration, as those new series are added "overnight" and OCC will convert the FLEX position to the Non-FLEX Option series at the time the Non-FLEX series is created. Further, it does not exist for most FLEX Index Options listed on the Exchange, as most Non-FLEX Index options currently traded on the Exchange are European-style exercise,[6] and thus the Non-FLEX Index Options cannot be exercised on the day the series is listed.

As an example, suppose underlying issue XYZ, trading around $25 per share, has options listed on the March cycle, and in February an investor wishes to buy just-out-of-the-money call options that expire in May. Since the Non-FLEX May Options will not be listed until after the March expiration, the investor enters a FLEX Option order in February to buy 250 Call 30 options expiring on the third Friday of May. If, as expected, the Non-FLEX May 30 call options are listed on the Monday after March expiration, the investor's open FLEX position will be converted by OCC over the weekend following March expiration to the Non-FLEX series.

However, if XYZ stock should decline between the time of the FLEX transaction and March expiration, the May 30 calls may not be added after March expiration. If that were to occur, the May 30 calls may be added sometime later. Suppose the Exchange receives a request to add the May 30 calls on the morning of the Wednesday after expiration, and the Exchange lists them immediately. The investor with the FLEX position may then decide it is an opportune time to close his position.

Under the current rules, the investor would be required to close the position by entering a sell order in the new Non-FLEX Option series. However, when the Non-FLEX transaction is reported to OCC, the investor is considered short in the Non-FLEX Option series, and is still long in the FLEX Option. OCC cannot aggregate the FLEX positions into the Non-FLEX series until after exercise and assignment processing. If a buyer in the new Non-FLEX series were to exercise the options, the original investor who had attempted to close the FLEX position with an offsetting Non-FLEX trade would be at risk of being assigned on the technically short Non-FLEX position.

Because of this risk, OCC will not clear an American-style expiration Friday FLEX option. The Exchange has spoken with OCC and OCC has agreed that allowing an option position in a FLEX contract to be closed using a FLEX Option in such circumstances will mitigate the risk.

The assignment risk does not exist if the Non-FLEX Option is to be added the next trading day. In situations where OCC is aware that a series will be added overnight, they can convert the FLEX position to a Non-FLEX position before the next trading day. However, OCC cannot guarantee that an identical Non-FLEX series will not be added intra-day, and thus will not clear such American-style FLEX Options.

The Exchange is proposing a limited exception to the requirement that the trading in such options be under the Non-FLEX trading procedures. The Exchange proposes that, in the event a Non-FLEX Option is listed intra-day, a FLEX Option position with identical terms could be closed under the FLEX trading procedures, but only for the balance of the trading day on which the series is added. Under the proposed rule change, both sides of the FLEX transaction would have to be closing only positions.

This change will allow a FLEX Option to be traded in such a manner to mitigate assignment risk.

The Exchange has the regulatory responsibility for reviewing the conformity of FLEX trades to the terms and specifications contained in Rule 1079, as applicable. In the event a Non-FLEX series, having the same terms as an existing expiration Friday FLEX Option, is listed intra-day, the Exchange will review any subsequent FLEX transactions in that series and verify that the transaction is being executed for the purpose of closing out an existing FLEX position. With respect to FLEX trades occurring pursuant to the proposed rule change, the Exchange will make an announcement that the FLEX series is now restricted to closing transactions; a FLEX Request for Quotes may not be disseminated for any order representing a FLEX series having the same terms as a Non-FLEX series, unless such FLEX Order is a closing order (and it is the day the Non-FLEX series has been added); and only responses that were closing out an existing FLEX position would be permitted. Any transactions that occur that do not conform to these requirements would be nullified by the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system by giving Exchange members and investors additional tools to trade customized options in a regulated exchange environment while allowing a FLEX position to be traded in such a manner as to mitigate inadvertent assignment risk.

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 rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-

[6] Of the indexes that are currently listed and traded on the Exchange, two have American-style exercise and eleven have European-style exercise.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

regulatory organization has given 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission notes that the proposed rule change is substantially similar to a proposed rule change previously submitted by NYSE Arca which was published for notice and comment in the **Federal Register**.[12] The Commission notes that it did not receive any comments on the NYSE Arca proposal, and does not believe the Exchange's proposal raises any new or novel issues. Further, as noted above, because of the inadvertent assignment risk, market participants could not trade previously approved American style FLEX Options expiring on Expiration Friday. The proposal seeks to mitigate such assignment risks by limiting certain FLEX transactions to closing only, thereby allowing the trading of previously approved FLEX Options. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and therefore, designates the proposed rule change operative upon filing.[13]

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.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *See* Securities Exchange Act Release No. 62321 (June 17, 2010), 75 FR 36130 (June 24, 2010) (SR–NYSEArca–2010–46).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–Phlx–2010–141 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–141. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2010–141 and should be submitted on or before November 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27066 Filed 10–25–10; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63138; File No. SR–CBOE–2010–092]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the $.50 Strike Price Program

October 20, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 12, 2010, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend Rule 5.5 to: (i) Expand the $0.50 Strike Program for strike prices below $1.00; (ii) extend the $0.50 Strike Program to strike prices that are $5.50 or less; (iii) extend the prices of the underlying security to at or below $5.00; and (iv) extend the number of options classes overlying 20 individual stocks. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to modify Interpretation and Policy .01 to Rule 5.5 to expand the $0.50 Strike Program in order to provide investors with opportunities and strategies to minimize losses associated with owning a stock declining in price.

The Exchange is proposing to establish strike price intervals of $0.50, beginning at $0.50 for certain options classes where the strike price is $5.50 or less and whose underlying security closed at or below $5.00 in its primary market on the previous trading day and which have national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation ("OCC") during the preceding three calendar months. The Exchange also proposes to limit the listing of $0.50 strike prices to options classes overlying no more than 20 individual stocks as specifically designated by the Exchange.

Currently, Rule 5.5.01(b) permits strike price intervals of $0.50 or greater beginning at $1.00 where the strike price is $3.50 or less, but only for option classes whose underlying security closed at or below $3.00 in its primary market on the previous trading day and which have national average daily volume that equals or exceeds 1,000 contracts per day as determined by OCC during the preceding three calendar months. Further, the listing of $0.50 strike prices is limited to options classes overlying no more than 5 individual stocks as specifically designated by the Exchange. The Exchange is currently restricted from listing series with $1 intervals within $0.50 of an existing strike price in the same series, except that strike prices of $2, $3, and $4 shall be permitted within $0.50 of an existing strike price for classes also selected to participate in the $0.50 Strike Program.[5]

The number of $0.50 strike options traded on the Exchange has continued to increase since the inception of the Program. There are now approximately 25 classes that participate in the $0.50 Strike Program listed, and traded, across all options exchanges including CBOE; 2 of which are classes chosen by CBOE for the $0.50 Strike Program. The current proposal would expand $0.50 strike offerings to market participants, such as traders and retail investors, and thereby enhance their ability to tailor investing and hedging strategies and opportunities in a volatile marketplace.

By way of example, suppose an investor wanted to invest in 5,000 shares of Sirius Satellite ("SIRI") on July 13, 2010. The closing price for SIRI on that day was $ 0.9678. If the investor wanted to buy a call option as an alternative to purchasing the shares outright for about $4,800, the lowest strike price available was the $1 strike, an out-of-the money option. However, if a $0.50 strike series had been available, the investor would have been able to control 5,000 shares by purchasing 50 exercisable in-the-money $0.50 strike call options. The Exchange notes that a 3-month SIRI call option with an implied volatility of 50 has a theoretical value of $0.47,[6] or $47 per contract. Thus, the investor could have benefitted from the same upside potential as the stock purchase, but at a cost of only $2,350 ($47 per contract times 50 contracts).

Similarly, if an investor wanted to hedge a position in SIRI stock with put options, the lowest available strike price was the $1 strike, an in-the-money option. If a $0.50 strike series had been available, the investor could have used 50 out-of-the-money puts for a fraction of the cost of buying 50 put options with a $1 strike price. The Exchange believes that investors deserve the opportunity to hedge downside risk in stocks trading less than $1.00 in the same manner as investors have with stocks trading greater than $1.00.

Increasing the threshold from $3.00 to $5.00 and expanding the number of $0.50 strikes available for stocks under $5.00 further aids investors by offering opportunities to manage risk and execute a variety of option strategies to improve returns. For example, today an investor can enhance their yield by selling an out-of-the-money call. Using an example of an investor who wants to hedge Citigroup ("C") which is trading at $4.24,[7] that investor would be able to choose the $4.50 strike which is 6% out-of-the-money or they would be able to choose the $5.00 strike which is 17.92% out-of-the-money, under this proposal. Today, this investor only has the latter choice. Beyond that, this investor today may choose the $6.00 strike which is 41% out-of-the-money and offers significantly less premium. Pursuant to this proposal, if this investor had a choice to hedge with a $5.50 strike option, the investor would have the opportunity to sell the option at only 29% out-of-the-money and would improve her return by gaining more premium, while also benefitting from 29% of upside return in the underlying equity.

By increasing the number of securities from 5 individual stocks to 20 individual stocks would allow the Exchange to offer investors additional opportunities to use the $0.50 Strike Program. The Exchange notes that $0.50 strikes have had no impact on capacity. Further, the Exchange has observed the popularity of $0.50 strikes.

By expanding the $0.50 Strike Program investors would be able to better enhance returns and manage risk by providing investors with significantly greater flexibility in the trading of equity options that overlie lower price stocks by allowing investors to establish equity options positions that are better tailored to meet their investment, trading and risk. The Exchange also proposes making a corresponding amendment to Rule 5.5.01(a)(2) to add $5 and $6 to $1 Strike Program language that addresses listing series with $1 intervals within $0.50 of an existing strike price in the same series. Currently, and to account for the overlap with the $0.50 Strike Program, the following series are excluded from this prohibition: Strike prices of $2, $3, and $4. The Exchange proposes to add $5 and $6 to that list to account for the proposal to expand the $0.50 Strike Program to a strike price of $5.50.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act[8] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of

[5] *See* Rule 5.5.01(a)(2) referring to $1 Strike Program.

[6] Using a Black Scholes pricing model.

[7] This was the price for C on July 14, 2010.

[8] 15 U.S.C. 78s(b)(1).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that amending the current $0.50 Strike Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities. Investors would be provided with an opportunity to minimize losses associated with declining stock prices which do not exist today. With the increase in active, low-prices securities, the Exchange believes that amending the $0.50 Strike Program to allow a $0.50 strike interval below $1 for strike prices of $5.50 or less is necessary to provide investor additional opportunity to minimize and manage risk.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition 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 does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[13] Therefore, the Commission designates the proposal operative upon filing.[14]

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–CBOE–2010–092 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2010–092. 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–CBOE–2010–092 and should be submitted on or before November 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27009 Filed 10–25–10; 8:45 am]

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[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 the Exchange to give the Commission written notice of the Exchange's 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 satisfied this requirement.

[13] *See* Securities Exchange Act Release No. 63132 (October 19, 2010) (SR–Phlx–2010–118) (order approving expansion of $0.50 Strike Price Program).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63136; File No. SR–NYSEAmex–2010–98]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC To Expand the $0.50 Strike Price Program

October 20, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 18, 2010, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .06 to NYSE Amex Options Rule 903 to expand the $.50 Strike Price Program as described below. The text of the proposed rule change is available at the Exchange, on the Commission's Web site at *http://www.sec.gov,* at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt Rule provisions similar to those proposed for use by NASDAQ OMX PHLX ("Phlx") [3] that will amend Commentary .06 to NYSE Amex Options Rule 903, Series of Options Open for Trading, specifically the Exchange's $.50 Strike Price Program (the "$.50 Strike Program" or "Program") [4] to: (i) Expand the $.50 Strike Program for strike prices below $1.00; (ii) extend the $.50 strike program to strike prices that are $5.50 or less; (iii) extend the prices of the underlying security to at or below $5.00; and (iv) extend the number of options classes overlying 20 individual stocks. The purpose of this proposed rule change is to expand the $.50 Strike Program in order to provide investors with opportunities and strategies to minimize losses associated with owning a stock declining in price.

The Exchange is proposing to establish strike price intervals of $.50, beginning at $.50 for certain options classes where the strike price is $5.50 or less and whose underlying security closed at or below $5.00 in its primary market on the previous trading day and that have national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation ("OCC") during the preceding three calendar months. The Exchange also proposes to limit the listing of $.50 strike prices to options classes overlying no more than 20 individual stocks as specifically designated by the Exchange.

Currently, Exchange Rule 903 at Commentary .06 permits strike price intervals of $.50 or greater beginning at $1.00 where the strike price is $3.50 or less, but only for option classes whose underlying security closed at or below $3.00 in its primary market on the previous trading day and that have national average daily volume that equals or exceeds 1000 contracts per day as determined by the OCC during the preceding three calendar months. Further, the listing of $.50 strike prices is limited to options classes overlying no more than 5 individual stocks as specifically designated by the Exchange. The Exchange is currently restricted from listing series with $1 intervals within $0.50 of an existing strike price in the same series, except that strike prices of $2, $3, and $4 shall be permitted within $0.50 of an existing strike price for classes also selected to participate in the $0.50 Strike Program.[5]

The number of $.50 strike options traded on the Exchange has continued to increase since the inception of the Program. There are now approximately 18 of the $.50 strike price option classes listed and traded across all options exchanges including the Exchange, two of which are classes chosen by the Exchange for the $0.50 Strike Program. The proposal would expand $.50 strike offerings to market participants, such as traders and retail investors, and thereby enhance their ability to tailor investing and hedging strategies and opportunities in a volatile market place.

By way of example, if an investor wants to invest in 5,000 shares of Sirius Satellite ("SIRI") at $0.9678,[6] the only choice the investor would have today would be to buy out-of-the-money calls, at the $1.00 strike, or to invest in the underlying stock with a total outlay of $.96 per share or $4,800. However, if a $.50 strike series were available, an investor may be able to invest in 5,000 shares by purchasing an exercisable in-the-money $.50 strike call option. It is reasonable to assume that with SIRI trading at $.96, the $.50 strike call option would trade at an estimated price of $.46 to $.48 under normal circumstances. This would allow the investor to manage 5,000 shares with the same upside potential return for a cost of only $2,350 (assuming $.47 as a call price).

Similarly, if an investor wanted to spend $4,800 for 5,000 shares of SIRI, a $.50 put option that would trade for $.01 to $.05 would provide protection against a declining stock price in the event that SIRI dropped below $.50 per share. In a down market, where high volume widely held shares drop below $1.00, investors deserve the opportunity to hedge downside risk in the same manner as investors have with stocks greater than $1.00.

Increasing the threshold from $3.00 to $5.00 and expanding the number of $0.50 strikes available for stocks under $5.00 further aids investors by offering opportunities to manage risk and execute a variety of option strategies to improve returns. For example, today an investor can enhance their yield by selling an out-of-the-money call. Using an example of an investor who wants to hedge Citigroup ("C") which is trading at $4.24,[7] that investor would be able to choose the $4.50 strike, which is 6% out-of-the-money, or they would be able to choose the $5.00 strike, which is 17.92% out-of-the-money, under this proposal. Today, this investor only has the latter choice. Beyond that, this investor today may choose the $6.00 strike, which is 41% out-of-the-money, and offers significantly less premium. Pursuant to this proposal, if this investor had a choice to hedge with a $5.50 strike option, the investor would have the opportunity to sell the option at only 29% out-of-the-money and would improve their return by gaining more premium, while also benefiting from 29% of upside return in the underlying equity.

By increasing the number of securities from 5 individual stocks to 20 individual stocks would allow the Exchange to offer investors additional opportunities to use the $0.50 strike program. The Exchange notes that $0.50 strikes have had no impact on capacity. Further, the Exchange has observed the popularity of $0.50 strikes. The open interest in the $2.50 August strike series for Synovus Financial Corp. ("SNV"), which closed at $2.71 on July 13, 2010, was 12,743 options; whereas open interest in the $2 and $3 August strike series was a combined 318 options. The open interest in the August $1.50 strike series for Ambac Financial Group, Inc. ("ABK"), which closed at $0.7490 on July 13, 2010, was 15,879 options compared to 8,174 options for the $2 strike series. The August $2.50 strike series had open interest of 22,280

[3] *See* Exchange Act Release No. 62799 (August 30, 2010) 75 FR 54662 (September 8, 2010) (SR–Phlx–2010–118).

[4] *See* Securities Exchange Act Release No. 61921, (April 15, 2010), 75 FR 21074 (April 22, 2010) (SR–NYSEAmex–2010–38) (notice of filing and immediate effectiveness permitting the concurrent listing of $3.50 and $4 strikes for classes that participate in both the $0.50 Strike and $1 Strike Programs).

[5] *See* Exchange Rule 903, Commentary .06(b), referring to the $1 Strike Program.

[6] SIRI was trading at $0.9678 on July 13, 2010.

[7] This was the price for C on July 14, 2010.

options, also more than the traditional $2 strike series.

By expanding the $.50 Strike Program, investors would be able to better enhance returns and manage risk by providing investors with significantly greater flexibility in the trading of equity options that overlie lower price stocks by allowing investors to establish equity options positions that are better tailored to meet their investment, trading and risk management goals.

The Exchange also proposes making a corresponding amendment to Commentary .06(b) of NYSE Amex Options Rule 903 to add $5 to $1 Strike Program language that addresses listing series with $1 intervals within $0.50 of an existing strike price in the same series. Currently, and to account for the overlap with the $.50 Strike Program, the following series are excluded from this prohibition: strike prices of $2, $3, and $4. The Exchange proposes to add $5 and $6 to that list to account for the proposal to expand the $.50 Strike Program to a strike price of $5.50.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 [8] (the "Act") in general, and furthers the objectives of Section 6(b)(5) of the Act [9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that amending the current $.50 Strike Program would result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities. Investors would be provided with an opportunity to minimize losses associated with declining stock prices which do not exist today. With the increase in active, low-price securities, the Exchange believes that amending the $.50 Strike Program to allow a $.50 strike interval below $1 for strike prices of $5.50 or less is necessary to provide investors with additional opportunity to minimize and manage risk.

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.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[12] Therefore, the Commission designates the proposal operative upon filing.[13]

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:

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 satisfied this requirement.

[12] *See* Securities Exchange Act Release No. 63132 (October 19, 2010) (SR–Phlx–2010–118) (order approving expansion of $0.50 Strike Price Program).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2010–98 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–98. 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–NYSEAmex–2010–98 and should be submitted on or before November 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27006 Filed 10–25–10; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63134; File No. SR–Phlx–2010–149]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to the $0.50 Strike Price Program

October 20, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 19, 2010, NASDAQ OMX PHLX LLC ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 1012, Series of Options Open for Trading, to correct a minor error related to a previous rule change regarding the $0.50 Strike Program.[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes amending Rule 1012, Series of Options Open for Trading, to add additional language to Rule 1012 related to the Exchange's ability to list a strike price of $6.00 within $.50 of an existing strike price for classes selected to participate in the $0.50 Strike Program.[4] The Exchange filed a rule change to expand the $0.50 Strike Program.[5] Specifically, the Exchange amended its $0.50 Strike Program to establish strike price intervals of $.50, beginning at $.50 for certain options classes where the strike price is $5.50 or less and whose underlying security closed at or below $5.00 in its primary market on the previous trading day and which have national average daily volume that equals or exceeds 1000 contracts per day as determined by The Options Clearing Corporation ("OCC") during the preceding three calendar months. The Exchange also amended Exchange Rule 1012 to increase the number of classes permitted in the $.50 Strike Program from 5 to 20 individual stocks.[6]

At that time, the Exchange made an additional amendment to Commentary .05(a)(i)(B) of Exchange Rule 1012 to add language to the $1 Strike Program that addresses listing series with $1 intervals within $.50 of an existing strike price in the same series. Specifically, the Exchange added $5 to the listed strike prices of $2, $3 and $4 to account for the overlap with the $0.50 Strike Program amendments.

The Exchange proposes to add $6 to that list to account for existing amendments to the $0.50 Strike Program to allow for a strike price of $5.50. The Exchange intended to expand this language originally to account for all possible strike prices as a result of its recent filing. This minor amendment was not made at that time as a result of an oversight. The Exchange proposes this language to correct that oversight.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5) of the Act [8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by correcting a minor error in a previous rule change to account for recent amendments to the $0.50 Strike Program. This amendment will clarify Exchange Rule 1012 by adding $6 to the list of strike prices permitted within $.50 of an existing strike price for classes selected to participate in the $0.50 Strike Program. This amendment will clarify Exchange Rule 1012 to correct the minor error.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63132 (October 19, 2010) (SR–Phlx–2010–118).

[4] *See* Securities Exchange Act Release No. 63132 (October 19, 2010) (SR–Phlx–2010–118).

[5] *See* Securities Exchange Act Release Nos. 60694 (September 18, 2009), 74 FR 49048 (September 25, 2009) (SR–Phlx–2009–65) (order approving); and 61630 (March 2, 2010), 75 FR 11211 (March 10, 2010) (SR–Phlx-2010–26) (notice of filing and immediate effectiveness allowing concurrent listing of $3.50 and $4 strikes for classes that participate in both the $0.50 Strike Program and the $1 Strike Program).

[6] *See* Securities Exchange Act Release No. 63132 (October 19, 2010) (SR–Phlx–2010–118).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 Commission has waived the five-day pre-filing requirement in this case.

waiver of the operative delay is consistent with the protection of investors and the public interest because doing so will permit immediate correction of the Exchange's error in their prior filing revising the terms of the $0.50 Strike Price Program. Therefore, the Commission designates the proposal operative upon filing.[11]

At any time within 60-days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–Phlx–2010–149 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–149. 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–Phlx–2010–149 and should be submitted on or before November 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27003 Filed 10–25–10; 8:45 am]

BILLING CODE 8011–01–P

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63135; File No. SR–NASDAQ–2010–131]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the NASDAQ Stock Market, LLC To Expand the $0.50 Strike Price Program

Date: October 20, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 13, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASDAQ Stock Market LLC proposes to amend Chapter IV titled Securities Traded on NOM, Sec. 6 (Series of Options Contracts Open for Trading), specifically the Exchange's $.50 Strike Price Program (the "$.50 Strike Program" or "Program")[3] to: (i) Expand the $.50 Strike Program for strike prices below $1.00; (ii) extend the $.50 Strike Program to strike prices that are $5.50 or less; (iii) extend the prices of the underlying security to at or below $5.00; and (iv) extend the number of options classes overlying 20 individual stocks.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to modify Supplementary Material of Chapter IV, Section 6 at .05 to expand the $.50 Strike Program in order to provide investors with opportunities and strategies to minimize losses associated with owning a stock declining in price.

The Exchange is proposing to establish strike price intervals of $.50, beginning at $.50 for certain options classes where the strike price is $5.50 or less and whose underlying security closed at or below $5.00 in its primary market on the previous trading day and which have national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation ("OCC") during the preceding three calendar months. The Exchange also proposes to limit the listing of $.50 strike prices to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 59277 (November 6, 2009), 74 FR 59277 (November 17, 2009 (SR–NASDAQ–2009–099) (order approving); and 61736 (March 18, 2010), 75 FR 14229 (March 24, 2010) (SR–NASDAQ–2010–038) (notice of filing and immediate effectiveness allowing concurrent listing of $3.50 and $4 strikes for classes that participate in both the $0.50 Strike Program and the $1 Strike Program).

options classes overlying no more than 20 individual stocks as specifically designated by the Exchange.

Currently, Supplementary Material of Chapter IV, Section 6 at .05 permits strike price intervals of $.50 or greater beginning at $1.00 where the strike price is $3.50 or less, but only for option classes whose underlying security closed at or below $3.00 in its primary market on the previous trading day and which have national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation during the preceding three calendar months. Further, the listing of $.50 strike prices is limited to options classes overlying no more than 5 individual stocks as specifically designated by the Exchange. The Exchange is currently restricted from listing series with $1 intervals within $0.50 of an existing strike price in the same series, except that strike prices of $2, $3, and $4 shall be permitted within $0.50 of an existing strike price for classes also selected to participate in the $0.50 Strike Program.[4]

The number of $.50 strike options traded on the Exchange has continued to increase since the inception of the Program. There are now approximately 19 of the $.50 strike price option classes listed, and traded, across all options exchanges including NOM; 1 of which is a class chosen by NOM for the $0.50 Strike Program. The proposal would expand $.50 strike offerings to market participants, such as traders and retail investors, and thereby enhance their ability to tailor investing and hedging strategies and opportunities in a volatile market place.

By way of example, if an investor wants to invest in 5,000 shares of Sirius Satellite ("SIRI") at $ 0.9678,[5] the only choice the investor would have today would be to buy out-of–the-money calls, at the $1.00 strike, or to invest in the underlying stock with a total outlay of $.96 per share or $4,800. However, if a $.50 strike series were available, an investor may be able to invest in 5,000 shares by purchasing an exercisable in-the-money $.50 strike call option. It is reasonable to assume that with SIRI trading at $.96, the $.50 strike call option would trade at an estimated price of $.46 to $.48 under normal circumstances. This would allow the investor to manage 5,000 shares with the same upside potential return for a cost of only $2,350 (assuming $.47 as a call price).

Similarly, if an investor wanted to spend $4,800 for 5,000 shares of SIRI, a $.50 put option that would trade for $.01 to $.05 would provide protection against a declining stock price in the event that SIRI dropped below $.50 per share. In a down market, where high volume widely held shares drop below $1.00, investors deserve the opportunity to hedge downside risk in the same manner as investors have with stocks greater than $1.00.

Increasing the threshold from $3.00 to $5.00 and expanding the number of $0.50 strikes available for stocks under $5.00 further aids investors by offering opportunities to manage risk and execute a variety of option strategies to improve returns. For example, today an investor can enhance their yield by selling an out-of-the-money call. Using an example of an investor who wants to hedge Citigroup ("C") which is trading at $4.24,[6] that investor would be able to choose the $4.50 strike which is 6% out-of-the-money or they would be able to choose the $5.00 strike which is 17.92% out-of-the-money, under this proposal. Today, this investor only has the latter choice. Beyond that, this investor today may choose the $6.00 strike which is 41% out-of-the-money and offers significantly less premium. Pursuant to this proposal if this investor had a choice to hedge with a $5.50 strike option, the investor would have the opportunity to sell the option at only 29% out-of-the-money and would improve their return by gaining more premium, while also benefitting from 29% of upside return in the underlying equity.

By increasing the number of securities from 5 individual stocks to 20 individual stocks would allow the Exchange to offer investors additional opportunities to use the $0.50 Strike Program. The Exchange notes that $0.50 strikes have had no impact on capacity. Further, the Exchange has observed the popularity of $0.50 strikes. The open interest in the $2.50 August strike series for Synovus Financial Corp. ("SNV"), which closed at $2.71 on July 13, 2010, was 12,743 options; whereas open interest in the $2 and $3 August strike series was a combined 318 options. The open interest in the August $1.50 strike series for Ambac Financial Group, Inc. ("ABK"), which closed at $0.7490 on July 13, 2010, was 15,879 options compared to 8,174 options for the $2 strike series. The August $2.50 strike series had open interest of 22,280 options, also more than the traditional $2 strike series.

By expanding the $.50 Strike Program investors would be able to better enhance returns and manage risk by providing investors with significantly greater flexibility in the trading of equity options that overlie lower price stocks by allowing investors to establish equity options positions that are better tailored to meet their investment, trading and risk

The Exchange also proposes making a corresponding amendment to Supplementary Material of Chapter IV, Section 6 at 02(b) to add $5 and $6 to $1 Strike Program language that addresses listing series with $1 intervals within $0.50 of an existing strike price in the same series. Currently, and to account for the overlap with the $.50 Strike Program, the following series are excluded from this prohibition: Strike prices of $2, $3, and $4. The Exchange proposes to add $5 and $6 to that list to account for the proposal to expand the $.50 Strike Program to a strike price of $5.50.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that amending the current $.50 Strike Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities. Investors would be provided with an opportunity to minimize losses associated with declining stock prices which do not exist today. With the increase in active, low-prices securities, the Exchange believes that amending the $.50 Strike Program to allow a $.50 strike interval below $1 for strike prices of $5.50 or less is necessary to provide investor additional opportunity to minimize and manage risk.

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.

[4] *See* Supplementary Material of Chapter IV, Section 6 at 02(b) referring to the $1 Strike Program.

[5] SIRI was trading at $0.9678 on July 13, 2010.

[6] This was the price for C on July 14, 2010.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[11] Therefore, the Commission designates the proposal operative upon filing.[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–NASDAQ–2010–131 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–131. 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–NASDAQ–2010–131 and should be submitted on or before November 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27005 Filed 10–25–10; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 satisfied this requirement.

[11] *See* Securities Exchange Act Release No. 63132 (October 19, 2010) (SR–Phlx–2010–118) (order approving expansion of $0.50 Strike Price Program).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12349 and #12350]

Minnesota Disaster Number MN–00028

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Minnesota (FEMA–1941–DR), dated 10/13/2010.

Incident: Severe Storms and Flooding.

Incident Period: 09/22/2010 through 10/14/2010.

DATES: *Effective Date:* 10/14/2010.

Physical Loan Application Deadline Date: 12/13/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 07/13/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of MINNESOTA, dated 10/13/2010, is hereby amended to establish the incident period for this disaster as beginning 09/22/2010 and continuing through 10/14/2010.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Cynthia G. Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2010–27082 Filed 10–25–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12353 and # 12354]

North Carolina Disaster Number NC–00030

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–1942–DR), dated 10/14/2010.

Incident: Severe Storms, Flooding, and Straight-line Winds associated with remnants of Tropical Storm Nicole.

Incident Period: 09/27/2010 through 10/01/2010.

DATES: *Effective Date:* 10/19/2010.

Physical Loan Application Deadline Date: 12/13/2010.

EIDL Loan Application Deadline Date: 07/14/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of North Carolina, dated 10/14/2010 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (*Physical Damage and Economic Injury Loans*): Brunswick, Jones, Pender, Pitt.

Contiguous Counties: (Economic Injury Loans Only):

North Carolina: Bladen, Columbus, Edgecombe, Greene, New Hanover, Sampson, Wilson.

South Carolina: Horry.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Cynthia G. Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2010–27090 Filed 10–25–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12349 and #12350]

Minnesota Disaster Number MN–00028

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Minnesota (FEMA–1941–DR), dated 10/13/2010.

Incident: Severe Storms and Flooding.

Incident Period: 09/22/2010 through 10/14/2010.

DATES: *Effective Date:* 10/19/2010.

Physical Loan Application Deadline Date: 12/13/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 07/13/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Minnesota, dated 10/13/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Brown, Carver, Le Sueur, Nicollet, Nobles, Redwood, Sibley, Yellow Medicine.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Cynthia G. Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2010–27086 Filed 10–25–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12359]

Ohio Disaster #OH–00025 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Ohio, dated 10/19/2010.

Incident: Toxic Algae Bloom in Grand Lake St. Marys.

Incident Period: 06/21/2010 and continuing.

DATES: *Effective Date:* 10/19/2010.

EIDL Loan Application Deadline Date: 07/19/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury 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: Auglaize, Mercer.

Contiguous Counties:

Ohio: Allen, Darke, Hardin, Logan, Shelby, Van Wert.

Indiana: Adams, Jay.

The Interest Rates are:

	Percent
Businesses and 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 economic injury is 123590.

The States which received an EIDL Declaration # are Ohio, Indiana.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: October 19, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–27087 Filed 10–25–10; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Office of the Commissioner

[Docket No. SSA–2010–0054]

Cost-of-Living Increase and Other Determinations for 2011

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: Under title II of the Social Security Act (Act), there will be no cost-of-living increase in Social Security benefits effective for December 2010. As a result, the following items will remain at their 2010 levels:

(1) The maximum Federal Supplemental Security Income (SSI) monthly benefit amounts for 2011, under title XVI of the Act, will remain $674 for an eligible individual, $1,011 for an eligible individual with an eligible spouse, and $338 for an essential person;

(2) The special benefit amount under title VIII of the Act for certain World War II veterans will remain $505.50 in 2011;

(3) The student earned income exclusion under title XVI of the Act will remain $1,640 per month in 2011, but not more than $6,600 in all of 2011;

(4) The dollar fee limit for services performed as a representative payee will

remain $37 per month ($72 per month in the case of a beneficiary who is disabled and has an alcoholism or drug addiction condition that leaves him or her incapable of managing benefits) in 2011;

(5) The dollar limit on the administrative-cost assessment charged to attorneys representing claimants will remain $83 in 2011;

(6) The Old-Age, Survivors, and Disability Insurance (OASDI) contribution and benefit base will remain $106,800 for remuneration paid in 2011 and self-employment income earned in taxable years beginning in 2011;

(7) The monthly exempt amounts under the Social Security retirement earnings test for taxable years ending in calendar year 2011 will remain $1,180 and $3,140;

(8) The "old-law" contribution and benefit base under title II of the Act will remain $79,200 for 2011; and

(9) The monthly amount deemed to constitute substantial gainful activity for statutorily blind individuals in 2011 will remain $1,640.

The national average wage index for 2009 is $40,934.93. This index affects the following items:

(1) The dollar amounts ("bend points") used in the primary insurance amount benefit formula for workers who become eligible for benefits, or who die before becoming eligible, in 2011 will be $753 and $4,542;

(2) The bend points used in the formula for computing maximum family benefits for workers who become eligible for benefits, or who die before becoming eligible, in 2011 will be $963, $1,390, and $1,812;

(3) The amount of taxable earnings a person must have to be credited with a quarter of coverage in 2011 will be $1,120;

(4) The monthly amount deemed to constitute substantial gainful activity for non-blind disabled persons will be $1,000 in 2011;

(5) The earnings threshold establishing a month as a part of a trial work period will be $720 for 2011; and

(6) Coverage thresholds for 2011 will be $1,700 for domestic workers and $1,500 for election officials and election workers.

FOR FURTHER INFORMATION CONTACT: Susan C. Kunkel, Office of the Chief Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3016. Information relating to this notice is available on our Internet site at *http://www.socialsecurity.gov/oact/cola/index.html.* For information on eligibility or claiming benefits, call 1–800–772–1213, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Act, we must publish on or before November 1 the national average wage index for 2009 (section 215(a)(1)(D)), the amount of earnings required to be credited with a quarter of coverage in 2011 (section 213(d)(2)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 2011 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 2011 (section 203(a)(2)(C)).

Cost-of-Living Increases

General

There will be no cost-of-living increase for benefits under titles II and XVI of the Act.

Computation

By law a cost-of-living increase for benefits is determined based on the percentage increase, if any, in the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers from the last computation quarter that resulted in a cost-of-living increase to the third quarter of the current year. Computation quarters are third calendar quarters. Because the last cost-of-living increase became effective for those eligible to receive Title II benefits for December 2008, the last computation quarter is the third quarter of 2008.

Section 215(i)(1) of the Act provides that the CPI for a cost-of-living computation quarter shall be the arithmetic mean of this index for the 3 months in that quarter. In accordance with 20 CFR 404.275, we round the arithmetic mean, if necessary, to the nearest 0.001. The CPI for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 2008, is: For July 2008, 216.304; for August 2008, 215.247; and for September 2008, 214.935. The arithmetic mean for that calendar quarter is 215.495. The corresponding CPI for each month in the quarter ending September 30, 2010, is: For July 2010, 213.898; for August 2010, 214.205; and for September 2010, 214.306. The arithmetic mean for this calendar quarter is 214.136. Thus, because the CPI for the calendar quarter ending September 30, 2010, is not greater than the CPI for the calendar quarter ending September 30, 2008, the calendar quarter ending September 30, 2010, is not a cost-of-living computation quarter and there is no cost-of-living increase.

Program Amounts That Change Based on the Cost-of-Living Increase

Several program amounts adjust based on the cost-of-living increase. These include the maximum Federal SSI benefit amounts under title XVI, the title VIII benefit amount, the student earned income exclusion, the fee for services performed by a representative payee, and the attorney assessment fee. Because there will be no cost-of-living increase, these program amounts will not increase in 2011, but rather will remain at their 2010 levels.

Program Amounts That May Increase Based on the Change in the National Average Wage Index, but Only If There Is a Cost-of-Living Increase

Certain other program amounts are adjusted annually based on the change in the national average wage index, rather than the CPI increase, but only if there also is a cost-of-living increase for benefits (as determined under section 215(i) of the Act). Moreover, these amounts cannot decrease even if there is a decrease in the national average wage index. These amounts include the OASDI contribution and benefit base, the retirement earnings test exempt amounts, the "old-law" contribution and benefit base, and the substantial gainful activity amount for individuals who are statutorily blind. Because there is no cost-of-living increase this year, these amounts will remain at their 2010 levels for 2011.

Program Amounts That May Change Based on the Change in the National Average Wage Index, Without Regard to the Cost-of-Living Increase

Some program amounts are adjusted annually based on the change (increase or decrease) in the national average wage index whether there is a cost-of-living increase in that year or not. These include:

- The dollar amounts ("bend points") in the formulae used to compute the primary insurance amount and maximum family benefit for workers who become eligible for benefits, or die before becoming eligible, in 2011;
- The amount of taxable earnings required to earn a quarter of coverage;
- The substantial gainful activity amount for non-blind disabled individuals;
- The earnings threshold to establish a trial work period;
- The domestic employee coverage threshold; and

• The coverage threshold for election officials and election workers.

In the sections that follow, we explain the calculation of the national average wage and the corresponding changes in each of these program amounts.

National Average Wage Index for 2009

Computation

We have determined the national average wage index for calendar year 2009 based on the 2008 national average wage index of $41,334.97 announced in the **Federal Register** on October 28, 2009 (74 FR 55614), along with the percentage change in the average wage from 2008 to 2009 measured by annual wage data. We tabulate the annual wage data, including contributions to deferred compensation plans, as required by section 209(k) of the Act. The average amounts of wages calculated directly from these data were $39,652.61 and $39,268.85 for 2008 and 2009, respectively. To determine the national average wage index for 2009 at a level that is consistent with the national average wage indexing series for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), we multiply the 2008 national average wage index of $41,334.97 by the percentage change in the average wage from 2008 to 2009 (based on SSA-tabulated wage data) as follows, with the result rounded to the nearest cent.

Amount

Multiplying the national average wage index for 2008 ($41,334.97) by the ratio of the average wage for 2009 ($39,268.85) to that for 2008 ($39,652.61) produces the 2009 index, $40,934.93. The national average wage index for calendar year 2009 is about 0.97 percent lower than the 2008 index.

Computing Benefits After 1978

General

The Social Security Amendments of 1977 provided a method for computing benefits that generally applies when a worker first becomes eligible for benefits after 1978. This method uses the worker's "average indexed monthly earnings" (AIME) to compute the primary insurance amount. We adjust the computation formula each year to reflect changes in general wage levels, as measured by the national average wage index.

We also adjust, or "index," a worker's earnings to reflect the change in the general wage levels that occurred during the worker's years of employment. Such indexing ensures that a worker's future benefit level will reflect the general rise in the standard of living that will occur during his or her working lifetime. To compute the average indexed monthly earnings, we first determine the required number of years of earnings. Then we select that number of years with the highest indexed earnings, add the indexed earnings for those years, and divide the total amount by the total number of months in those years. We then round the resulting average amount down to the next lower dollar amount. The result is the AIME.

Computing the Primary Insurance Amount

The primary insurance amount is the sum of three separate percentages of portions of the AIME. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. We call the dollar amounts in the formula governing the portions of the average indexed monthly earnings the "bend points" of the formula. Thus, the bend points for 1979 were $180 and $1,085.

To obtain the bend points for 2011, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2009 to that average for 1977. We then round these results to the nearest dollar. Multiplying the 1979 amounts of $180 and $1,085 by the ratio of the national average wage index for 2009 ($40,934.93) to that for 1977 ($9,779.44) produces the amounts of $753.45 and $4,541.61. We round these to $753 and $4,542. Accordingly, the portions of the AIME to be used in 2011 are the first $753, the amount between $753 and $4,542, and the amount over $4,542.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 2011, or who die in 2011 before becoming eligible for benefits, their primary insurance amount will be the sum of:

(a) 90 percent of the first $753 of their AIME, plus

(b) 32 percent of their AIME over $753 and through $4,542, plus

(c) 15 percent of their AIME over $4,542.

We round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment described above are contained in section 215(a) of the Act.

Maximum Benefits Payable to a Family

General

The 1977 amendments continued the long established policy of limiting the total monthly benefits that a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but changed the method of computing the maximum amount of benefits that may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub.L. 96–265) established a formula for computing the maximum benefits payable to the family of a disabled worker. This formula applies to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, we compute the family maximum payable the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum

The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. We refer to such dollar amounts in the formula as the "bend points" of the family-maximum formula.

To obtain the bend points for 2011, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2009 to that average for 1977. Then we round this amount to the nearest dollar. Multiplying the amounts of $230, $332, and $433 by the ratio of the national average wage index for 2009 ($40,934.93) to that for 1977 ($9,779.44) produces the amounts of $962.74, $1,389.69, and $1,812.46. We round these amounts to $963, $1,390, and $1,812. Accordingly, the portions of the primary insurance amounts to be used in 2011 are the first $963, the amount between $963 and $1,390, the amount between $1,390 and $1,812, and the amount over $1,812.

Consequently, for the family of a worker who becomes age 62 or dies in 2011 before age 62, we will compute the total amount of benefits payable to them so that it does not exceed:

(a) 150 percent of the first $963 of the worker's primary insurance amount, plus

(b) 272 percent of the worker's primary insurance amount over $963 through $1,390, plus

(c) 134 percent of the worker's primary insurance amount over $1,390 through $1,812, plus

(d) 175 percent of the worker's primary insurance amount over $1,812.

We then round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment described above are contained in section 203(a) of the Act.

Quarter of Coverage Amount

General

The amount of earnings required for a quarter of coverage in 2011 is $1,120. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, we generally credited an individual with a quarter of coverage for each quarter in which wages of $50 or more were paid, or with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, employers generally report wages on an annual basis instead of a quarterly basis. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978, up to a maximum of 4 quarters of coverage for the year.

Computation

Under the prescribed formula, the quarter of coverage amount for 2011 shall be the larger of: (1) the 1978 amount of $250 multiplied by the ratio of the national average wage index for 2009 to that for 1976; or (2) the current amount of $1,120. Section 213(d) further provides that if the resulting amount is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Quarter of Coverage Amount

Multiplying the 1978 quarter of coverage amount ($250) by the ratio of the national average wage index for 2009 ($40,934.93) to that for 1976 ($9,226.48) produces the amount of $1,109.17. We then round this amount to $1,110. Because $1,110 is less than the current amount of $1,120, the quarter of coverage amount is $1,120 for 2011.

Substantial Gainful Activity Amount for Non-Blind Disabled Individuals

General

A finding of disability under titles II and XVI of the Act requires that a person, except for a title XVI disabled child, be unable to engage in substantial gainful activity (SGA). A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability. Section 223(d)(4)(A) of the Act specifies a higher SGA amount for statutorily blind individuals under title II while Federal regulations (20 CFR 404.1574 and 416.974) specify a lower SGA amount for non-blind individuals.

Computation

The monthly SGA amount for non-blind disabled individuals for 2011 shall be the larger of: (1) Such amount for 2000 multiplied by the ratio of the national average wage index for 2009 to that for 1998; or (2) such amount for 2010. If the resulting amount is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Amount

Multiplying the 2000 monthly SGA amount for non-blind individuals ($700) by the ratio of the national average wage index for 2009 ($40,934.93) to that for 1998 ($28,861.44) produces the amount of $992.83. We then round this amount to $990. Because $990 is less than the current amount of $1,000, the monthly SGA amount for non-blind disabled individuals is $1,000 for 2011.

Trial Work Period Earnings Threshold

General

During a trial work period, a beneficiary receiving Social Security disability benefits may test his or her ability to work and still be considered disabled. We do not consider services performed during the trial work period as showing that the disability has ended until services have been performed in at least 9 months (not necessarily consecutive) in a rolling 60-month period. In 2010, any month in which earnings exceed $720 is considered a month of services for an individual's trial work period. In 2011, this monthly amount remains at $720.

Computation

The method used to determine the new amount is set forth in our regulations at 20 CFR 404.1592(b). Monthly earnings in 2011, used to determine whether a month is part of a trial work period, is such amount for 2001 ($530) multiplied by the ratio of the national average wage index for 2009 to that for 1999, or, if larger, such amount for 2010. If the amount so calculated is not a multiple of $10, we round it to the nearest multiple of $10.

Amount

Multiplying the 2001 monthly earnings threshold ($530) by the ratio of the national average wage index for 2009 ($40,934.93) to that for 1999 ($30,469.84) produces the amount of $712.03. We then round this amount to $710. Because $710 is less than the current amount of $720, the monthly earnings threshold is $720 for 2011.

Domestic Employee Coverage Threshold

General

The minimum amount a domestic worker must earn so that such earnings are covered under Social Security or Medicare is the domestic employee coverage threshold. For 2011, this threshold is $1,700. Section 3121(x) of the Internal Revenue Code provides the formula for increasing the threshold.

Computation

Under the formula, the domestic employee coverage threshold amount for 2011 shall be equal to the 1995 amount of $1,000 multiplied by the ratio of the national average wage index for 2009 to that for 1993. If the resulting amount is not a multiple of $100, it shall be rounded to the next lower multiple of $100.

Domestic Employee Coverage Threshold Amount

Multiplying the 1995 domestic employee coverage threshold amount ($1,000) by the ratio of the national average wage index for 2009 ($40,934.93) to that for 1993 ($23,132.67) produces the amount of $1,769.57. We then round this amount to $1,700. Accordingly, the domestic employee coverage threshold amount is $1,700 for 2011.

Election Official and Election Worker Coverage Threshold

General

The minimum amount an election official and election worker must earn so that such earnings are covered under Social Security or Medicare is the election official and election worker coverage threshold. For 2011, this threshold is $1,500. Section 218(c)(8)(B) of the Act provides the formula for increasing the threshold.

Computation

Under the formula, the election official and election worker coverage threshold amount for 2011 shall be equal to the 1999 amount of $1,000 multiplied by the ratio of the national average wage index for 2009 to that for 1997. If the amount so determined is not a multiple of $100, it shall be rounded to the nearest multiple of $100.

Election Official and Election Worker Coverage Threshold Amount

Multiplying the 1999 coverage threshold amount ($1,000) by the ratio of the national average wage index for 2009 ($40,934.93) to that for 1997 ($27,426.00) produces the amount of $1,492.56. We then round this amount to $1,500. Accordingly, the election official and election worker coverage threshold amount is $1,500 for 2011.

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

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. 2010–26983 Filed 10–25–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 7215]

60-Day Notice of Proposed Information Collection: R/PPR Evaluation and Measurement Unit, Evaluation Survey Question Bank

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* R/PPR Evaluation and Measurement Unit Survey Question Bank.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Office of the Under Secretary for Public Diplomacy and Public Affairs' Office of Policy, Planning and Resources Evaluation and Measurement Unit (R/PPR EMU).
- *Form Number:* Survey numbers generated as needed.
- *Respondents:* Participants in Public Diplomacy (PD) programs, selected users of PD products and services, and others engaged in Department of State Public Diplomacy efforts.
- *Estimated Number of Respondents:* 40,000 annually.
- *Estimated Number of Responses:* 40,000 annually.
- *Average Hours per Response:* 30 minutes per response.
- *Total Estimated Burden:* 20,000 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

DATES: The Department will accept comments from the public up to 60 days from October 26, 2010.

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

- *E-mail: DullesJF@state.gov.*
- *Mail (paper, disk, or CD–ROM submissions):* Juliet Dulles, R/PPR EMU 2200 C Street, NW., SA–5 5th Floor, Washington, DC 20037.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Juliet Dulles, R/PPR EMU 2200 C Street, NW., SA–5 5th Floor, Washington, DC 20037, who may be reached on 202–632–3344 or at *DullesJF@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

This generic collection is for performance measurement, program evaluation, customer satisfaction and attitudinal evaluation surveys. Included in this collection are questions designed to measure and evaluate the performance of programs, products and services provided by the Bureau of International Information Programs (IIP), and the Office of the Under Secretary for Public Diplomacy and Public Affairs, Office of Policy, Planning and Resources (R/PPR). Survey respondents include participants in PD programs, selected users of PD products and services, and others engaged in Department of State efforts.

Methodology

95% of the data collection conducted by R/PPR EMU uses electronic collection methodologies except when the infrastructure of the foreign country does not permit electronic data collection, or when data are being collected through focus groups. Technology is used in nearly every survey in which safety, security, programmatic, cultural or political concerns are not of sufficient magnitude to pose a negative impact on the respondent. Survey instruments are distributed via web-based or e-mail technology in PDF format, allowing the respondent to complete the survey and return it anytime during the survey period.

Additional Information

None.

Dated: October 15, 2010.

Cherreka Montgomery,

Director, R/PPR EMU, Department of State.

[FR Doc. 2010–27070 Filed 10–25–10; 8:45 am]

BILLING CODE 4710–10–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice Regarding the 2010 Annual Product Review: Acceptance of Product Petitions

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) received petitions in connection with the 2010 GSP Annual Review to modify the list of products that are eligible for duty-free treatment under the GSP program ("2010 GSP Annual Product Review"). This notice announces the petitions accepted for review and sets the date of the public hearing and schedule for submitting comments on the petitions, requests to participate in the public hearing, pre-hearing and post-hearing briefs, and comments on the U.S. International Trade Commission's (USITC) report on probable economic effects. The petitions accepted for review are listed below. More information on these petitions can

be found at: *http://www.ustr.gov/node/6058* and at *http://www.regulations.gov,* Docket Number USTR–2010–0017.

FOR FURTHER INFORMATION CONTACT: Tameka Cooper, GSP Program, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. The telephone number is (202) 395–6971, the fax number is (202) 395–9674, and the e-mail address is *Tameka_Cooper@ustr.eop.gov.*

DATES: The GSP regulations (15 CFR Part 2007) provide the schedule of dates for conducting an annual review unless otherwise specified in a notice published in the **Federal Register**. The schedule for the 2010 GSP Annual Product Review is set forth below. Notice of any other changes will be published in the **Federal Register**.

November 18, 2010—Due date for submission of pre-hearing briefs and requests to appear at the GSP Subcommittee Public Hearing on all product petitions accepted for the 2010 GSP Annual Product Review.

November 30, 2010—GSP Subcommittee Public Hearing on all product petitions accepted for the 2010 GSP Annual Product Review, to be held in Rooms 1 and 2, 1724 F St., NW., Washington, DC 20508, beginning at 9:30 a.m.

December 13, 2010—Due date for submission of product petition post-hearing briefs.

February 2011—The USITC is scheduled to issue a confidential report to USTR providing advice on the potential impacts on U.S. industry and consumers based on the product petitions accepted in the 2010 GSP Annual Product Review. USTR has directed USITC to then publish a public version of that report as soon as possible. Comments on that public version are due 10 calendar days after the date of USITC's publication of that version.

June 30, 2011—Modifications to the list of articles eligible for duty-free treatment under the GSP resulting from the 2010 Annual Review will be announced on or about June 30, 2011, in the **Federal Register**, and any changes will take effect on the effective date announced. Notification of any changes to this date will be published in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The GSP program provides for the duty-free importation of designated articles when imported from designated beneficiary developing countries. The GSP program is authorized by Title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended (the "1974 Act"), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

Petitions Requesting Modifications of Product Eligibility

In a notice published in the **Federal Register** on July 15, 2010 (75 FR 41274), USTR announced that the deadline for the filing of product petitions, other than those requesting waivers of "competitive need limitations" (CNLs), for the 2010 GSP Annual Review was August 3, 2010. The deadline for the filing of product petitions requesting waivers of the CNLs was announced to be November 16, 2010.

The product petitions that were received in response to this notice requested modifications to the list of GSP-eligible products by adding new products for eligibility from all GSP beneficiaries, or by removing products from eligibility when imported from all or from specific GSP-eligible countries. The interagency GSP Subcommittee of the Trade Policy Staff Committee (TPSC) has reviewed the product petitions, and the TPSC has decided to accept for review the following product petitions:

(1) A petition submitted by Exxel Outdoors, Inc., of Haleyville, Alabama for withdrawal from GSP eligibility of certain types of sleeping bags (9404.30.80 of the Harmonized Tariff Schedule of the United States (HTS)); and

(2) A petition submitted by the Pressure Sensitive Tape Council of Naperville, Illinois, and others, for withdrawal from GSP eligibility, from Indonesia only, of two types of self-adhesive plastic tape (HTS 3919.10.20 and 3919.10.50).

More information on these two petitions can be found in "List of Petitions Accepted in the 2010 GSP Annual Product Review" posted on the USTR Web site (*http://www.ustr.gov/node/6058)* and available on Regulations.gov docket number USTR–2010–0017. That list sets forth, for each type of change requested: the case number, the HTS subheading number(s), a brief description of the product (*see* the HTS available on the U.S. International Trade Commission Web site *http://www.usitc.gov/tata/hts/* for an authoritative description), and the petitioner for each petition included in this review. Acceptance of a petition for review does not indicate any opinion with respect to the disposition on the merits of the petition. Acceptance indicates only that the listed petitions have been found eligible for review by the TPSC and that such review will take place.

The GSP Subcommittee of the TPSC invites interested persons to testify at the public hearing, based on receipt of requests to testify, and comments in support of or in opposition to any petition which has been accepted for the 2010 GSP Annual Product Review. Submissions should comply with 15 CFR part 2007, except as modified below. All submissions should identify the subject article(s) in terms of the case number and eight-digit HTS subheading number, if applicable, as shown in the "List of Petitions Accepted in the 2010 GSP Product Annual Review" referenced above.

Requirements for Submissions

Submissions in response to this notice (including requests to testify, written comments, and pre-hearing briefs) must be submitted electronically by 5 p.m., Thursday, November 18, 2010, or by 5 p.m., Monday, December 13, 2010 (post-hearing briefs and statements only) using *http://www.regulations.gov,* docket number USTR–2010–0017. Instructions for submitting business confidential versions are provided below. Hand-delivered submissions will not be accepted. Submissions must be submitted in the English language to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, by the applicable deadlines set forth in this notice.

To make a submission using *http://www.regulations.gov,* enter docket number USTR–2010–0017 on the home page in the "Enter keyword or ID" field on the right side of the screen. The site will provide a search-results page listing all documents associated with this docket. Locate the reference to this notice by selecting "Notices" under "Document Type". In the results table below, click on the "Send a Comment" balloon that corresponds to this notice. Follow the instructions given on the screen to submit the comment. The *http://www.regulations.gov* website offers the option of providing comments by filling in a "Type Comment" field or by attaching a document. While both options are acceptable, USTR prefers submissions in the form of an attachment.

Comments must be in the English language, with the total submission not to exceed 30 single-spaced, standard letter-size pages in 12-point type, including attachments. Any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Any person or party making a submission is strongly advised to review the GSP regulations and GSP Guidebook (both of which are available at: *http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/gsp-program-inf)*

Business Confidential Submissions

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such, the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page, and the submission should indicate, via brackets, the specific information that is confidential. Additionally, "Business Confidential" must be included in the "Type Comment & Upload File" field. Submit your Business Confidential version as a separate document from the public version. Anyone submitting a comment containing business confidential information must also submit as a separate submission a non-confidential version of the confidential submission, indicating where confidential information has been redacted. The non-confidential version will be placed in the docket and open to public inspection.

Notice of Public Hearing

A hearing will be held by the GSP Subcommittee of the TPSC on Tuesday, November 30, 2010, for product petitions accepted for the 2010 GSP Annual Review (*i.e.,* for product petitions other than those requesting CNL waivers) beginning at 9:30 a.m. at the Office of the U.S. Trade Representative, Rooms 1 and 2, 1724 F St., NW., Washington, DC 20508. The hearing will be open to the public, and a transcript of the hearing will be made available for public inspection or can be purchased from the reporting company. No electronic media coverage will be allowed.

All interested parties wishing to make an oral presentation at the hearing must submit, consistent with the "Requirements for Submissions" set out above, the name, address, telephone number, facsimile number, and e-mail address (if available), of the witness(es) representing their organization to William Jackson, Chair of the GSP Subcommittee, by 5 p.m., Thursday, November 18, 2010. Requests to present oral testimony in connection with the public hearing must be accompanied by a written brief or statement, in the English language, and also must be received by 5 p.m., Thursday, November 18, 2010. Oral testimony before the GSP Subcommittee will be limited to five-minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. Post-hearing briefs or statements will be accepted if they conform with the regulations cited above and are submitted, in the English language, by 5 p.m., Monday, December 13, 2010, consistent with the "Requirements for Submissions" set out above. Parties not wishing to appear at the public hearing may submit pre-hearing briefs or statements, in the English language, by 5 p.m., November 18, 2010, and post-hearing written briefs or statements, in the English language, by 5 p.m., December 13, 2010, also in accordance with the "Requirements for Submissions" set out above.

Receipt of Advice From the USITC

With respect to the petitions for removal included in the "List of Product Petitions Accepted in the 2010 GSP Annual Review," and in accordance with authority delegated to the U.S. Trade Representative by the President, the U.S. Trade Representative has requested, pursuant to section 332(g) of the Tariff Act of 1930, that the USITC provide its advice on the probable economic effect of such removals on U.S. industries producing like or directly competitive articles and on total U.S. imports and U.S. consumers. Comments by interested persons on the USITC Report prepared as part of the product review (other than those requesting CNL waivers) should be submitted to USTR by 5 p.m., 10 calendar days after the date of USITC publication of the public version of its report.

William D. Jackson,

Deputy Assistant U.S. Trade Representative for the Generalized System of Preferences, Office of the U.S. Trade Representative.

[FR Doc. 2010–27093 Filed 10–25–10; 8:45 am]

BILLING CODE 3190–W1–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending October 8, 2010

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations. (*See* 14 CFR 301.201 *et. seq.*).

The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2010–0246.

Date Filed: October 5, 2010.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 26, 2010.

Description: Application of Kuwait Airways Corporation requesting a foreign air carrier permit and exemption authority to provide foreign air transportation of persons, property and mail between Kuwait and the United States to the full extent allowed by the Air Transport Agreement between the Government of the United States of America and the Government of the State of Kuwait.

Docket Number: DOT–OST–2010–0254.

Date Filed: October 8, 2010.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 29, 2010.

Description: Application of Swiss International Air Lines Ltd. ("Swiss") requesting issuance of an amended foreign air carrier permit to the full extent authorized by the Air Transport Agreement between the United States of America and The Swiss Confederation to conduct: (i) Scheduled and charter foreign air transportation of persons, property and mail from any point or points behind Switzerland via Switzerland and intermediate points to any point or points in the United States and beyond; (ii) all-cargo service between the United States and any point or points; and (iii) other foreign air transportation of persons, property and

mail pursuant to the prior approval requirements under 14 CFR part 212. Swiss further requests a corresponding exemption to enable it to provide the service described above pending issuance of the amended foreign air carrier permit and such additional or other relief as the Department may deem necessary or appropriate.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2010–27034 Filed 10–25–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending October 2, 2010

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations(See 14 CFR 301.201 *et seq.*).

The due date for Answers, Conforming Applications, or Motions to ModifyScope are set forth below for each application. Following the Answer periodDOT may process the application by expedited procedures. Such proceduresmay consist of the adoption of a show-cause order, a tentative order, or inappropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2010–0242.

Date Filed: September 28, 2010.

*Due Date for Answers, Conforming Applications, or Motion To Modify Scope:*October 19, 2010.

Description:

Application of Compass Airlines, Inc. ("Compass") requesting the Department ofTransportation disclaim jurisdiction over the corporate reorganization of Compass inwhich Compass will be converted from a Delaware corporation to a Delaware limitedliability company bearing the name Compass Airlines, LLC, and immediately thereaftertransfer Compass's certificate of public convenience and necessity, exemptions, designations,and any related operating authorities to Compass Airlines LLC, a Delaware Limited LiabilityCompany.

Renee V. Wright,

Program Manager, Docket Operations,Federal Register Liaison.

[FR Doc. 2010–27022 Filed 10–25–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessityand Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q)During the Week Ending October 16, 2010

The following Applications for Certificates of Public Convenience and Necessityand Foreign Air Carrier Permits were filed under subpart B(formerly subpart Q) of the Department of Transportation's Procedural Regulations(*See* 14 CFR 301.201 *et seq.*).

The due date for Answers, Conforming Applications, or Motions to ModifyScope are set forth below for each application. Following the Answer periodDOT may process the application by expedited procedures. Such proceduresmay consist of the adoption of a show-cause order, a tentative order, or inappropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2010–0258.

Date Filed: October 14, 2010.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:*November 4, 2010.

*Description:*Joint application of Centurion Air Cargo, Inc. ("Centurion"), Sky Lease I, Inc.d/b/a TradeWinds Airlines ("Sky Lease") and Arrow Air, Inc. ("Arrow") requestingapproval of the de facto transfer of the international certificate and exemption authoritycurrently held by Arrow.

Docket Number: DOT–OST–2010–0260.

Date Filed: October 15, 2010.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:*November 5, 2010.

*Description:*Application of Air Charter, Inc. dba Air Flamenco requesting authority to conductscheduled passenger operations as a commuter air carrier.

Renee V. Wright,

Program Manager, Docket Operations,Federal Register Liaison.

[FR Doc. 2010–27038 Filed 10–25–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending October 8, 2010

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2010–0249.

Date Filed: October 8, 2010.

Parties: Members of the International Air Transport Association.

Subject: TC3 Special Passenger Amending Resolution 010a from Korea (Rep. of) to South East Asia (except Guam, Northern Mariana Islands) (Memo 1404). Intended effective date: 20 October 2010.

Docket Number: DOT–OST–2010–0250.

Date Filed: October 8, 2010.

Parties: Members of the International Air Transport Association.

Subject: TC3 Special Passenger Amending Resolution 010b from Korea (Rep. of) to Japan (Memo 1405). Intended effective date: 20 October 2010.

Docket Number: DOT–OST–2010–0251.

Date Filed: October 8, 2010.

Parties: Members of the International Air Transport Association.

Subject: TC3 Special Passenger Amending Resolution 010z from Korea (Rep. of) to South Asian Subcontinent (Memo 1406). Intended effective date: 20 October 2010.

Docket Number: DOT–OST–2010–0252.

Date Filed: October 8, 2010.

Parties: Members of the International Air Transport Association.

Subject: TC23 Special Passenger Amending Resolution 010c from Korea (Rep. of) to Middle East (Memo 0452). Intended effective date: 20 October 2010.

Docket Number: DOT–OST–2010–0253.

Date Filed: October 8, 2010.

Parties: Members of the International Air Transport Association.

Subject: TC23 Special Passenger Amending Resolution 010d from Korea (Rep. of) to Africa (Memo 0450).

Intended effective date: 20 October 2010.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2010–27020 Filed 10–25–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Modification of Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before November 10, 2010.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue SE., Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 6, 2010.

Donald Burger,

Chief, Special Permits and Approvals Branch.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit
MODIFICATION SPECIAL PERMITS				
10529–M		LND, Inc., Oceanside, NY	49 CFR 173.302; 175.3	To modify the special permit to authorize additional Division 2.1 and 2.2 gases
11579–M		Dyno Nobel, Inc., Salt Lake City, UT.	49 CFR 177.848(e) (2); 177.848(g)(3).	To modify the special permit to authorize a one year extension of the redundant battery cut-off requirement from January 1,2011 to January 1, 2012.
14457–M		Amtrol Alfa Metalomecanica, SA, Portugal.	49 CFR 173.304a(a)(1); 175.3.	To modify the special permit to add an additional Division 2.1 hazardous material.
14922–M special		Peninsula Airways Inc. (PenAir), Anchorage, AK.	49 CFR 173.302(f)	To reissue the permit originally issued on an emergency basis authorizing the transportation incommerce of compressed oxygen without rigid outer packaging when no other means of transportation exist.

[FR Doc. 2010–26725 Filed 10–25–10; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before November 26, 2010.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 19, 2010.

Donald Burger,

Chief, Special Permits and Approvals Branch.

NEW SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
15112–N		Explo Systems.com MINDEN, LA.	49 CFR 173.62	To authorize the transportation of a Division 1.3 explosive (M6 solid propellant) in alternative packaging (supersack). (Mode 1).
15135–N		Product Quest Mfg, LLC Daytona Beach, FL.	49 CFR 173.306 (a)(3)(v) transportation in.	To authorize the commerce of certain DOT 2P non-refillable aerosol containers that are leak tested by an alternative method in lieu of the required hot water bath. (Modes 1, 2, 3, 4, 5).
15136–N		Luxfer Gas Cylinders RIVERSIDE, CA.	49 CFR 173.302a(a), 173.304a(a), 175.3 and 180.205.	To authorize the manufacture, marking, sale and use of a non-DOT specification fully-wrapped carbon fiber composite cylinder with a seamless aluminum liner designed, manufactured and tested in accordance with ISO 11119 part 2. (Modes 1, 2, 3, 4, 5).
15141–N		Material Innovations, Inc. Knoxville, TN.	49 CFR 172.101 Column (9), Part 172 except for air, and 173.302a.	To authorize the manufacture, marking, sale and use of non-DOT specification metal containers containing Boron Trifluoride, classed as Division 2.3 for use in radiation detectors. (Modes 1, 2, 3, 4, 5).
15143–N		Warbelow's Air Ventures, Inc.-FC Fairbanks, AK.	49 CFR 173.302(f) (3) and (f)(4) and 173.304(f)(3) and (f)(4).	To authorize the transportation in commerce of cylinders containing oxidizing gases without outer packaging capable of passing the Flame Penetration and Resistance Test and the Thermal Resistance Test when no other practical means of transportation exist. (Mode 4).
15146–N		ITW Tech Spray LLC AMARILLO, TX.	49 CFR 173.304(d)	To authorize the transportation in commerce of a refrigerant gas in a DOT 2Q container. (Modes 1, 2, 3, 4).
15149–N		American Spraytech North Branch, NJ.	49 CFR 173.306 (a)(3)(v)	To authorize the transportation in commerce of certain aerosols containing a Division 2.2 compressed gas in certain non-refillable aerosol containers which are not subject to the hot water bath test. (Mode 1).
15150–N		National Aeronautics and Space Administration (NASA) Kennedy Space Center, FL.	49 CFR 180.205	To authorize the transportation in commerce of certain cylinders that are retesting using acoustic emissions and are tested every 10 years rather than every five years. (Modes 1, 2, 3, 4, 5).
15156–N		Ludlum Measurements Inc. Sweetwater, TX.	49 CFR 173.302a, 173.306(a)(2), 172.400 except for air transportation and 172.504.	To authorize the manufacture, marking, sale and use of a non-specification plastic pressure vessel for transportation of non-flammable compressed gases. (Modes 1, 2, 3, 4, 5, 6).
15161–N		Exide Technologies Milton, GA.	49 CFR 173.159(e)	To authorize the transportation in commerce of lead batteries from more than one shipper without voiding the exception in § 173.159(e). (Mode 1).
15162–N		Billings Flying Service, Inc. Billings, MT.	49 CFR 172.101 Column (9B), 172.204(c)(3), 175.30(a)(1) and Part 178.	To authorize the transportation in commerce of certain explosives that are forbidden for transportation by cargo aircraft in alternative packaging when transported in Part 133 sling load operations. (Mode 4).
15163–N		Peninsula Airways Inc. (PenAir) Anchorage, AK.	49 CFR 173.302 (f)(3) and (f)(4) and 173.304(f)(3) and (f)(4).	To authorize the transportation in commerce of cylinders containing oxidizing gases without without outer packaging capable of passing the Flame Penetration and Resistance Test and the Thermal Resistance Test when no other practical means of transportation exist. (Modes 4, 5).

[FR Doc. 2010–26726 Filed 10–25–10; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Tri-Cities Regional Airport, Blountville, TN.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for Public Comment.

SUMMARY: The Federal Aviation Administration is requesting public comment on the release of land at the Tri-Cities Regional Airport in the city of Blountville, Tennessee. This property, approximately 2.413 acres in Tract 45 and .0324 acres in Tract 65, will change to a non-aeronautical use. This action is taken under the provisions of Section 125 of the Wendell H. Ford Aviation

Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before *November 26, 2010.*

ADDRESSES: Documents are available for review at the Tri-Cities Regional Airport, 2525 Highway 75, Suite 301, Blountville, TN 37617 and the FAA Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118. Written comments on the Sponsor's request must be delivered or mailed to: Mr. Phillip J. Braden, Manager, Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Thompson, Program Manager, Federal Aviation Administration, Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118. The application may be reviewed in person at this same location, by appointment.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to release property at the Tri-Cities Regional Airport, Blountville, TN under the provisions of AIR 21(49 U.S.C. 47107(h)(2)).

On October 5, 2010, the FAA determined that the request to release property at Tri-Cities Regional Airport submitted by the Tri-Cities Regional Airport's Director of Operations meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no later than *November 26, 2010.*

The following is a brief overview of the request:

The Tri-Cities Regional Airport is proposing the release of approximately 2.445 acres of airport property so the property can be used to accommodate the widening of Tennessee State Highway 75.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon appointment and request, inspect the request, notice and other documents germane to the request in person at the Tri-Cities Regional Airport.

Issued in Memphis, TN on October 6, 2010.

Phillip J. Braden,

Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 2010–26952 Filed 10–25–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Washington State

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, US Highway 12, beginning near the town of Wallula and proceeding east to an area known as the Frenchtown Vicinity, in the County Walla Walla, State of Washington. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before April 24, 2011. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Ms. Liana Liu, Area Engineer, Federal Highway Administration, 711 5. Capital Way, Suite 501, Olympia, WA 98501; telephone 360753–9553; e-mail *liana.liu@dot.gov.* The FHWA Washington Division Office's normal business hours are 7 a.m. to 4:30 p.m. (Pacific time). For WSDOT: Jason W. Smith, Environmental Manager, South Central Region, P.O. Box 12560, Yakima, WA 98909–2560; telephone 509–577–1750; e-mail *smithjw@wsdot.wa.gov.* The WSDOT South Central Region's normal business hours are 8 a.m. to 4:30 p.m. (Pacific time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of Washington. The project will construct a 21 mile long, full access-controlled four-lane divided highway with both at-grade and grade-separated intersections. It will begin near the town of Wallula and proceed east to an area known as the Frenchtown Vicinity, where it will tie-in to the existing US Highway 12 outside of the City of Walla Walla, Washington. Except for the termini, and a two mile long portion of existing US 12, the entire project will be on new alignment. The project's Federal Aid Number is TCSP–0012(201). The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project, approved on February 10, 2010, in the FHWA Finding of No Significant Impact (FONSI) issued on September 2, 2010, and in other documents in the FHWA project records. The EA, FONSI, and other project records are available by contacting FHWA or the Washington State Department of Transportation at the addresses provided above. The FHWA EA and FONSI can be viewed and downloaded from the project Web site at: *http://www.wsdot.wa.gov/Projects/US12/PlanningStudy/Environmental.htm.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536].

3. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*].

(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.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: October 15, 2010.

Daniel M. Mathis,

Division Administrator, Olympia, Washington.

[FR Doc. 2010–26729 Filed 10–25–10; 8:45 am]

BILLING CODE 4910–RY–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifteenth Plenary Meeting, RTCA Special Committee 205/EUROCAE WG 71: Software Considerations in Aeronautical Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 205/EUROCAE WG 71:

Software Considerations in Aeronautical Systems meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 205/ EUROCAE WG 71: Software Considerations in Aeronautical Systems.

DATES: The meeting will be held November 8–12, 2010.

ADDRESSES: The meeting will be held at The Boeing Company, 3855 Lakewood Blvd., Long Beach, California 90808, United States of America.

FOR FURTHER INFORMATION CONTACT: The Secretaries need a complete list of proposed attendees no later than October 31, 2010 in order to assist Boeing with their logistics. Boeing Security has indicated that they need at least one week's notice in order to clear attendees. Please register your intention to attend the meeting and details here at *https://www.faaconsultants.com/SC205/Registration/AddRegistration.asp.* RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 205: EUROCAE WG 71: Software Considerations in Aeronautical Systems meeting. The agenda will include:

Day 1—Monday November 8, 2010

- 7:30 a.m.—Registration
- 8 a.m.—Facilities Review
- Chair's Introductory Remarks
- Recognition of the FAA Federal and EASA Representatives
- Review of Meeting Agenda and Agreement of Previous Minutes
- 8:30 a.m.—Acceptance of Documents
- ED–12B/DO–178B, Software Considerations in Airborne Systems and Equipment Certification
- ED–94B/DO–248B, Final Annual Report for Clarification of ED–94B/DO–178B "Software Considerations In Airborne Systems And Equipment Certification"
- ED–109/DO–278, Guidelines for CNS/ATM Systems Software Integrity Assurance
- 10 a.m.—Break
- 10:15 a.m.—278a Text Approval
- 12 p.m.—Lunch
- 1 p.m.—MB Text Approval
- 3 p.m.—Break
- 3:15 p.m.—Work Teams 178/278
- 5:30 p.m.—Close of Day
- 8 p.m.—Post Changes to the Web/Read

Day 2—Tuesday, November 9, 2010

- 7:30 a.m.—Mandatory Reading Session
- 8 a.m.—Text Approval
- 10 a.m.—Break
- 10:15 a.m.—Tools Text Approval
- 12 p.m.—Lunch
- 1 p.m.—FM Text Approval
- 3 p.m.—Break
- 3:15 p.m.—Work Teams
- 8 p.m.—Post Changes to the Web/Read

Day 3—Wednesday, November 10, 2010

- 7:30 a.m.—Mandatory Reading Session
- 8 a.m.—Text Approval
- 10 a.m.—Break
- 10:15 a.m.—OO Text Approval
- 12 p.m.—Lunch
- 1 p.m.—248 Text Approval
- 3 p.m.—Break
- 3:15 p.m.—Work Teams
- 6 p.m.—Social Event
- 8 p.m.—Post Changes to the Web/Read

Day 4—Thursday, November 11, 2010

- 7:30 a.m.—Mandatory Reading Session
- 8 a.m.—Text Approval
- 10 a.m.—Break
- 10:15 a.m.—Work Teams
- 12 p.m.—Lunch
- 1 p.m.—Text Approval
- 3 p.m.—Break
- 3:15 p.m.—Work Teams
- 8 p.m.—Post Changes to the Web/Read

Day 5—Friday, November 12, 2010

- 7:30 a.m.—Mandatory Reading Session
- 8 a.m.—Text Approval
- 10 a.m.—Break
- 10:15 a.m.—Text Approval
- 12:45 p.m.—Meeting Evaluation (Round Robin)
- 1 p.m.—Closing Remarks
- 1–4 p.m.—Editorial and Executive Committee Meets (Closed Session)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 19, 2010.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2010–26946 Filed 10–25–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice Regarding Consideration and Processing of Applications for Financial Assistance Under the Railroad Rehabilitation and Improvement Financing (RRIF) Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice; technical correction.

SUMMARY: By this document, FRA is issuing a technical correction to the notice published in the **Federal Register** on September 29, 2010 (75 FR 60165) regarding consideration and processing of applications for financial assistance under the RRIF Program.

FOR FURTHER INFORMATION CONTACT: Barbara Amani, Chief of the Credit Programs Division, Office of Railroad Development, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: (202) 493–6051; fax: (202) 493–6333; and e-mail: *Barbara.Amani@dot.gov*); or Casey Symington, Attorney Advisor, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: (202) 493–6349; fax: (202) 493–6068; and e-mail: *Casey.Symington@dot.gov*).

SUPPLEMENTARY INFORMATION: FRA published a notice in the **Federal Register** on September 29, 2010 (75 FR 60165) regarding FRA's consideration and processing of applications for financial assistance under the RRIF Program. On page 60166 of the notice, FRA inadvertently misstated information concerning loans that have been made under the RRIF Program since the enactment of the Transportation Equity Act for the 21st Century of 1998, Public Law 105–178 (1998) (TEA–21). FRA is hereby correcting that information, stated in the first column, second paragraph on page 60166 of the notice, to read as follows: "A total of 28 loans in an aggregate, initial principal amount of approximately $1.01 billion have been made under the RRIF Program since TEA–21 was enacted. Of these, a total of 3 loans have been repaid in full." The notice is otherwise unchanged.

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

Joseph C. Szabo,

Administrator.

[FR Doc. 2010–26942 Filed 10–25–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 21, 2010.

The Department of the Treasury will submit the following public information collection requirement to OMB for review and clearance under the **Paperwork Reduction Act of 1995, Public Law 104–13** on or after the date of publication of this notice. A copy of the submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before November 26, 2010 to be assured of consideration.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0141.

Type of Review: Revision of a currently approved collection.

Title: Investigative Forms.

Form: PD F 5518, 5519, 5520, and 5521.

Abstract: Information requested is in support of background investigations conducted by the Bureau of the Public Debt.

Respondents: Individuals and Households.

Estimated Total Burden Hours: 361 hours.

Bureau Clearance Officer: Bruce Sharp, Bureau of the Public Debt, 200 Third Street, Parkersburg, West Virginia 26106; (304) 480–8112.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2010–27083 Filed 10–25–10; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 21, 2010.

The Department of Treasury will submit the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the publication date of this notice. A copy of the submission may be obtained by calling the Bureau Information Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

Dates: Written comments should be received on or before November 26, 2010 to be assured of consideration.

Community Development Financial Institutions (CDFI) Fund

OMB Number: 1559–0016.

Type of Review: Revision a currently approved collection.

Title: New Markets Tax Credit (NMTC) Program Allocation Application.

Form: CDFI 0020.

Description: The New Markets Tax Credit (NMTC) Program will provide an incentive to investors in the form of a tax credit, which is expected to stimulate investment in private capital that, and in turn, will facilitate economic and community development in low-income communities. In order to qualify for an allocation of tax credits under the NMTC Program an entity must be certified as a qualified community development entity and submit an allocation application to the CDFI Fund. Upon receipt of such applications, the CDFI Fund will conduct a competitive review process to evaluate applications for the receipt of NMTC allocations.

Respondents: Private Sector: Businesses or other for-profits, Not-for-profit institutions; State, Local, and Tribal Governments.

Estimated Total Burden Hours: 62,001 hours.

CDFI Fund Clearance Officer: Michael Jones, Community Development Financial Institutions Fund, Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005; (202) 622–2461.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2010–27084 Filed 10–25–10; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 21, 2010.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the **Paperwork Reduction Act of 1995, Public Law 104–13** on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before November 26, 2010 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0137.

Type of Review: Extension without change to a currently approved collection.

Title: Contract Coverage Under Title II of the Social Security Act.

Form: 2032.

Abstract: U.S. citizens and resident aliens employed abroad by foreign affiliates of American employers are exempt from social security taxes. Under Internal Revenue Code section 3121(1), American employers may file an agreement on Form 2032 to waive this exemption and obtain social security coverage for U.S. citizens and resident aliens employed abroad by their foreign affiliates. The American employers can later file Form 2032 to cover additional foreign affiliates as an amendment to their original agreement.

Respondents: Individuals and Households.

Estimated Total Burden Hours: 973 hours.

OMB Number: 1545–0409.

Type of Review: Revision of a currently approved collection.

Title: Application for Reward for Original Information.

Form: 211.

Abstract: Forms 211 is the official application form used by persons

requesting rewards for submitting information concerning alleged violations of the tax laws by other persons. Such rewards are authorized by Internal Revenue Code Section 7623. The data is used to determine and pay rewards to those persons who voluntarily submit information.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 5,000 hours.

OMB Number: 1545–0575.

Type of Review: Extension without change of a currently approved collection.

Title: Return of Excise Taxes Related to Employee Benefit Plans.

Form: 5330.

Abstract: Code sections 4971, 4972, 4973(a)(3), 4975, 4976, 4977, 4978, 4978A, 4978B, 4979, 4979A and 4980 impose various excise taxes in connection with employee benefit plans. Form 5330 is used to compute and collect these taxes.

Respondents: Private Sector: Businesses or other for-profit.

Estimated Total Burden Hours: 540,145 hours.

OMB Number: 1545–0715.

Type of Review: Extension without change of a currently approved collection.

Title: Proceeds From Broker and Barter Exchange Transactions.

Form: 1099–B.

Abstract: Form 1099–B is used by brokers and barter exchanges to report proceeds from transactions to the Internal Revenue Service. The form will be used by IRS to verify compliance with the reporting rules and to verify that the recipient has included the proper amount of income on his or her return.

Respondents: Private Sector: Businesses or other for-profit.

Estimated Total Burden Hours: 3,104 hours.

OMB Number: 1545–0807.

Type of Review: Extension without change of a currently approved collection.

Title: LR 2013 (TD 7533) Final, Disc Rules on Procedure and Administration; Rules on Export Trade Corporations, and EE–155–78 (TD 7896), Final, Income from Trade Shows.

Abstract: Section 1.6071–1(b) requires that when a taxpayer files a late return for a short period, proof of unusual circumstances for late filing must be given to the District Director. Section 1.6072(b), (c), (d), and (e) of the IRC deals with the filing dates of certain corporate returns. Regulation section 1.6072–2 provides additional information concerning these filing dates. The information is used to insure timely filing of corporate income tax returns.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 39,988,038 hours.

OMB Number: 1545–1056.

Type of Review: Extension without change of a currently approved collection.

Title: REG–209020–86 (formerly INTL–61–86) NPRM & Temporary Foreign Tax Credit; Notification and Adjustment Due to Foreign Tax Redeterminations.

Abstract: Section 905(c) requires that a taxpayer notify the Internal Revenue Service of a change in the taxpayer's foreign income tax liability that may affect its foreign tax credit. Section 1.905–4T provides rules concerning the time, manner, and contents of such notification. Should the taxpayer fail to notify the IRS, penalties under section 6689 may be imposed. Respondents are U.S. taxpayers that claim a foreign tax credit under section 901, 902, or 960.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 54,000 hours.

OMB Number: 1545–1265.

Type of Review: Extension without change of a currently approved collection.

Title: IA–120–86 Capitalization of Interest (TD 8584)(Final).

Abstract: The regulations require taxpayers to maintain contemporaneous written records of estimates, to file a ruling request to segregate activities in applying the interest capitalization rules, and to request the consent of the Commissioner to change their methods of accounting for the capitalization of interest.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 116,767 hours.

OMB Number: 1545–1596.

Type of Review: Extension without change of a currently approved collection.

Title: Request for Innocent Spouse Relief.

Forms: 8857, 8857(SP).

Abstract: Section 6103(e) of the Internal Revenue Code allows taxpayers to request, and IRS to grant, "innocent spouse" relief when: taxpayer filed a joint return with tax substantially understated; taxpayer establishes no knowledge of or benefit from, the understatement; and it would be inequitable to hold the taxpayer liable.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 240,500 hours.

OMB Number: 1545–1613.

Type of Review: Extension without change of a currently approved collection.

Title: REG–209446–82 (TD8852) (Final) Pass-through of Items of an S Corporation to its Shareholders.

Abstract: Section 1366 requires shareholders of an S corporation to take into account their pro rata share of separately stated items of the S corporation and non-separately computed income or loss. The regulations provide guidance regarding this reporting requirement.

Respondents: Private Sector: Businesses or other for-profit.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1545–1883.

Type of Review: Extension without change of a currently approved collection.

Title: Announcement 2004–38, Election of Alternative Deficit Reduction Contribution.

Abstract: This announcement describes the election that must be made in order for certain employers to take advantage of the alternative deficit reduction contribution described in section 102 of H.R. 3108.

Respondents: Private Sector: Businesses or other for-profit.

Estimated Total Burden Hours: 800 hours.

OMB Number: 1545–1893.

Type of Review: Extension without change of a currently approved collection.

Title: Section 1045 Application to Partnerships.

Abstract: The collection of information is in § 1.1045–1(b)(4)(ii). Any partner who recognizes all or a part of the partner's distributive share of partnership section 1045 gain must notify the partnership of the amount of the partnership section 1045 gain that is recognized. This information will be used by the partnership to make necessary adjustments to the basis of the replacement qualified small business stock.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 1,000 hours.

OMB Number: 1545–2061.

Type of Review: Extension without change of a currently approved collection.

Title: Supplemental Attachment to Schedule M–3.

Form: 8916–A.

Abstract: The Form 8916–A is a detailed schedule that reconciles the amount of the cost of goods sold, interest income and interest expense reported on Schedule M–3 for the Form 1065, Form 1120, 1120–S, 1120–L, or 1120–PC.

Respondents: Private Sector: Businesses or other for-profit.

Estimated Total Burden Hours: 5,049,720 hours.

Bureau Clearance Officer: R. Joseph Durbala, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 6129, Washington, DC 20224; (202) 622–3634.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2010–27085 Filed 10–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Current Value of Funds Rate

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of rate for use in Federal debt collection and discount and rebate evaluation.

SUMMARY: Pursuant to section 11 of the Debt Collection Act of 1982, as amended, (31 U.S.C. 3717), the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts owed to the Government. Treasury's Cash Management Requirements (TFM Volume I, Part 6, Chapter 8000) prescribe use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. In addition, 5 CFR 1315.8 of the Prompt Payment rule on "Rebates" requires that this rate be used in determining when agencies should pay purchase card invoices when the card issuer offers a rebate. Notice is hereby given that the applicable rate is 1.00 percent for calendar year 2011.

DATES: The rate will be in effect for the period beginning on January 1, 2011, and ending on December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Agency Enterprise Solutions Division, Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, DC 20227 (Telephone: 202–874–9428).

SUPPLEMENTARY INFORMATION: The rate reflects the current value of funds to the Treasury for use in connection with Federal Cash Management systems and is based on investment rates set for purposes of Public Law 95–147, 91 Stat. 1227. Computed each year by averaging Treasury Tax and Loan (TT&L) investment rates for the 12-month period ending every September 30, rounded to the nearest whole percentage, for applicability effective each January 1, the rate is subject to quarterly revisions if the annual average, on a moving basis, changes by 2 percentage points. The rate in effect for the calendar year 2011 reflects the average investment rates for the 12-month period that ended September 30, 2010.

Dated: October 14, 2010.

Sheryl R. Morrow,

Assistant Commissioner, Payment Management.

[FR Doc. 2010–26815 Filed 10–25–10; 8:45 am]

BILLING CODE 4810–35–M

Federal Register

Tuesday,
October 26, 2010

Part II

Department of Education

34 CFR Parts 206, 642, 643, et al.

High School Equivalency Program and College Assistance Migrant Program, The Federal TRIO Programs, and Gaining Early Awareness and Readiness for Undergraduate Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 206, 642, 643, 644, 645, 646, 647, and 694

RIN 1840–AD01

[Docket ID ED–2010–OPE–0002]

High School Equivalency Program and College Assistance Migrant Program, The Federal TRIO Programs, and Gaining Early Awareness and Readiness for Undergraduate Program

AGENCY: Office of Postsecondary Education and Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations, and establishes new regulations, for the High School Equivalency Program and College Assistance Migrant Program (HEP and CAMP); the Federal TRIO programs (TRIO programs—Training program for Federal TRIO programs (Training), Talent Search (TS), Educational Opportunity Centers (EOC), Upward Bound (UB), Student Support Services (SSS), and the Ronald E. McNair Postbaccalaureate Achievement (McNair) programs); and the Gaining Early Awareness and Readiness for Undergraduate (GEAR UP) program.

The purpose of HEP is to help migrant and seasonal farmworkers and their immediate family members obtain a general educational development (GED) credential, while CAMP assists students from this background to complete their first academic year of college and continue in postsecondary education. The Federal TRIO programs consist of five postsecondary educational opportunity outreach and support programs designed to motivate and assist low-income individuals, first-generation college students, and individuals with disabilities to enter and complete secondary and postsecondary programs of study and enroll in graduate programs, and a training program for project staff working in one or more of the Federal TRIO programs. The purpose of the GEAR UP program is to increase the number of low-income students who are prepared to enter and succeed in postsecondary education.

These regulations are needed to implement provisions of the Higher Education Act of 1965, as amended (HEA) by the Higher Education Opportunity Act of 2008 (HEOA) that relate to the HEP and CAMP, Federal TRIO programs, and GEAR UP program.

DATES: *Effective Date:* These regulations are effective December 27, 2010.

FOR FURTHER INFORMATION CONTACT: For general information, Pamela J. Maimer, U.S. Department of Education, 1990 K Street, NW., room 8014, Washington, DC 20006–8014. Telephone: (202) 502–7704 or via the Internet at: *Pamela.Maimer@ed.gov.*

For information related to HEP and CAMP issues, Nathan Weiss, U.S. Department of Education, Office of Migrant Education, 400 Maryland Ave. SW., room 3E–321, Washington, DC 20202–6135. Telephone: (202) 260–7496 or via the Internet at: *Nathan.Weiss@ed.gov.*

For information related to Federal TRIO issues, Frances Bergeron, U.S. Department of Education, 1990 K Street, NW., room 7059, Washington, DC 20006–7059. Telephone: (202) 502–7528 or via the Internet at *Frances.Bergeron@ed.gov.*

For information related to GEAR UP issues, James Davis, U.S. Department of Education, 1990 K Street, NW., room 6109, Washington, DC 20006–6109. Telephone: (202) 502–7802 or via the Internet at: *James.Davis@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to any of the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: On March 23, 2010, the Secretary published a notice of proposed rulemaking (NPRM) for the HEP and CAMP, the Federal TRIO programs, and the GEAR UP program in the **Federal Register** (75 FR 13814). In the preamble to the NPRM, the Secretary discussed on pages 13816 through 13859 the major changes proposed in that document to strengthen and improve the administration of the HEP and CAMP, the Federal TRIO programs, and the GEAR UP program authorized under the HEA.

These final regulations implement changes made by the HEOA to discretionary grant programs authorized by title IV of the HEA, including:

HEP and CAMP:

- Amending § 206.3(a)(1) for HEP and CAMP to allow students to qualify for the program through their own qualifying work, or that of an immediate family member, rather than only through their own work or that of a parent, as the statute previously held (see section 418A(b)(B)(i) of the HEA).
- Amending § 206.5(c) to define the term *immediate family member* to include only individuals who are dependent upon a migrant or seasonal farmworker (see section 418A(b)(B)(i) of the HEA).
- Amending § 206.5(c) to revise the definition of the term *seasonal farmworker* to clarify that the individual's primary employment in migrant and seasonal farmwork must occur for at least 75 days within the past 24 months (see section 418A(b)(1)(B)(i) of the HEA).
- Amending the authorized HEP services section in § 206.10(b) to (1) provide that permissible HEP services include preparation for college entrance examinations; (2) provide that permissible HEP services include all stipends—not only weekly stipends—for HEP participants; (3) add transportation and child care as examples of essential supportive services; and (4) specify that HEP services include other activities to improve persistence and retention in postsecondary education (see section 418A(b) of the HEA).
- Amending CAMP services in § 206.10(b)(2) to specify that: (1) Permissible CAMP services include supportive and instructional services to improve placement, persistence, and retention in postsecondary education; (2) these supportive services include personal, academic, career, economic education, or personal finance counseling as an ongoing part of the program, and (3) permissible CAMP services include internships (see section 418A(c)(1) of the HEA).
- Amending § 206.11(b) to specify that follow-up CAMP services include: (1) Referring CAMP students to on-campus or off-campus providers of counseling services, academic assistance, or financial aid, and coordinating those services, assistance, and aid with other non-program services, assistance, and aid, including services, assistance, and aid provided by community-based organizations, which may include mentoring and guidance, and (2) for students attending two-year institutions of higher education, encouraging the students to transfer to four-year institutions of higher education, where appropriate, and monitoring the rate of transfer of these students (see section 418A(c)(2) of the HEA).
- Amending § 206.20(b)(2) to specify that the Secretary must not allocate an amount less than $180,000 for HEP and CAMP grants (see section 418A(e) of the HEA).

• Adding § 206.31 to the HEP and CAMP program regulations to specify the criteria the Department considers in evaluating prior experience (see section 418A(f) of the HEA).

Federal TRIO Programs

• Amending §§ 643.7(b) (TS), 644.7(b) (EOC), 645.6(b) (UB), 646.7(b) (SSS), and 647.7(b) (McNair) to revise or add definitions for *different campus* and *different population,* which change the prior regulatory definitions of these terms for the SSS program and the Department's administrative practice with regard to the number of applications an eligible entity may submit under each of the TRIO programs (see section 402A(h)(1) and (h)(2) of the HEA).

• Adding new §§ 642.11 and 642.12 (Training) and amending § 643.4 (TS), part 645 (UB, Upward Bound Math and Science (UBMS), and Veterans Upward Bound (VUB)) § 646.4 (SSS), and § 647.4 (McNair) to specify the services or activities that projects funded under the Federal TRIO programs must provide and the services or activities that these projects may provide.

• Amending §§ 643.7(b) (TS), 644.7(b) (EOC), 645.6(b) (UB), and 646.7(b) (SSS) to add new categories of participants (foster care youth and homeless children and youth) for whom projects funded under these programs are to provide services (see section 402A(e)(3) of the HEA).

• Amending newly redesignated § 642.22 (Training) and §§ 643.22 (TS), 644.22 (EOC), 645.32 (UB), 646.22 (SSS), and 647.22 (McNair) to align prior experience determinations with statutorily revised outcome criteria (see section 402A(f)(3)(A) of the HEA (TS), section 402A(f)(3)(B) of the HEA (UB), section 402A(f)(3)(C) of the HEA (SSS), section 402A(f)(3)(D) of the HEA (McNair), and section 402A(f)(3)(E) of the HEA (EOC)).

• Adding §§ 642.25 (Training), 643.24 (TS), 644.24 (EOC), 645.35 (UB), 646.24 (SSS), and 647.24 (McNair) to provide a new procedure to allow unsuccessful grant applicants to request a review of alleged technical, administrative, or scoring errors that affected the applicant's application.

• Amending newly redesignated § 642.6(b) (Training) and §§ 643.7(b) (TS), 644.7(b) (EOC), 645.6(b) (UB), 646.7(b) (SSS), and 647.7(b) (McNair) to revise definitions for some terms and to add new definitions to implement amendments to the HEA by the HEOA:

• *Financial and economic literacy* (§§ 643.7(b) (TS), 644.7(b) (EOC), 645.6(b) (UB), 646.7(b) (SSS), and 647.7(b) (McNair)) (see section 402B(b)(6) of the HEA (TS), section 402C(b)(6) of the HEA (UB), section 402D(b)(4) of the HEA (SSS), section 402E(c)(1) of the HEA (McNair)), and section 402F(b)(5) of the HEA (EOC)).

• *Foster care youth* and *homeless children and youth* (newly redesignated § 642.6(b) (Training) and §§ 643.7(b) (TS), 644.7(b) (EOC), 645.6(b) (UB), and 646.7(b) (SSS)) (see sections 402A(e)(3) and 402B(c)(7) of the HEA (TS), section 402C(d)(7) of the HEA (UB), section 402D(a)(3) and (c)(6) of the HEA (SSS), section 402F(b)(11) of the HEA (EOC), and section 402G(b)(5) of the HEA (Training)).

• *Graduate center; groups underrepresented in graduate school;* and *research and scholarly activities* (§ 647.7(b) (McNair)) (see sections 101 and 102 of the HEA and section 402E(d)(2) of the HEA (McNair)).

• *Individual with a disability* (newly redesignated § 642.6(b) (Training) and §§ 643.7(b) (TS), 644.7(b) (EOC), 645.6(b) (UB), and 646.7(b) (SSS)) (see section 402B(c)(7) of the HEA (TS), section 402C(d)(7) of the HEA (UB), section 402D(a)(3) and (c)(6) of the HEA (SSS), section 402F(b)(11) of the HEA (EOC), and section 402G(b)(5) of the HEA (Training)).

• *Individual who has a high risk for academic failure* and *veteran who has a high risk for academic failure* (§ 645.6(b) (UB and VUB)) (see sections 402A(f)(3)(B)(iii) and (iv) and 402C(e)(2) of the HEA (UB)).

• *Institution of higher education* (newly redesignated § 642.6(b) (Training) and §§ 643.7(b) (TS), 644.7(b) (EOC), 645.6(b) (UB), 646.7(b) (SSS), and 647.7(b) (McNair)) (see sections 101 and 102 of the HEA).

• *Regular secondary school diploma* and *rigorous secondary school program of study* (§§ 643.7(b) (TS) and 645.6(b) (UB)) (see section 402A(f)(3)(A)(iii) and (iv) of the HEA (TS) and section 402A(f)(3)(B) of the HEA (UB)).

• *Veteran* (newly redesignated § 642.6(b) (Training) and §§ 643.7(b) (TS), 644.7(b) (EOC), and 645.6 (b) (UB)) (see section 402A(h)(5) of the HEA (TS, EOC, and UB)).

Additionally, the regulations for the TRIO programs were amended to reflect other changes made by the HEOA, other amendments to the HEA, and established administrative practices. These changes include the following:

• Amending the project period for the TRIO programs in newly redesignated § 642.4 (Training) and §§ 643.5 (TS), 644.5 (EOC), 645.34 (UB), 646.5 (SSS), and 647.5 (McNair) to define the project period as two years for Training and five years for TS, EOC, UB, SSS, and McNair (see section 402A(b)(2)(B) and (C) of the HEA).

• Revising the selection criteria related to "Objectives" for the following TRIO pre-college and college programs: TS (§ 643.21(b)); EOC (§ 644.21(b)); UB (§ 645.31(b)(1), VUB (§ 645.31(b)(2)); SSS (§ 646.21(b)); and McNair (§ 647.21(b)) (see section 402A(f)(3)(A) of the HEA (TS), section 402A(f)(3)(B) of the HEA (UB), section 402A(f)(3)(C) of the HEA (SSS), section 402A(f)(3)(D) of the HEA (McNair), and section 402A(f)(3)(E) of the HEA (EOC)).

• Removing the minimum number of participants in the regulations for TS, EOC, UB, UBMS, and VUB projects (see sections 402A(f), 402A(b)(3), 402B (TS), 402C (UB), 402F (EOC) of the HEA). For each grant competition, the Department will establish the minimum number of participants to be served by a grantee through the **Federal Register** notice inviting applications.

• Amending newly redesignated §§ 642.22 and 642.24 of the TRIO Training regulations to reflect current law and practice regarding: (1) The need for the project selection criteria and the process for ranking applications by priority; (2) the use of prior experience points in the ranking of applications for funding; and (3) the number of prior experience points that can be earned (see section 402G(2) of the HEA).

GEAR UP

• Redesignating § 694.15 as § 694.19 to accommodate the proposed addition of other regulatory provisions. Amending newly redesignated § 694.19 to provide that the Secretary award competitive preference priority points to an eligible applicant for a State GEAR UP grant that has both carried out a successful State GEAR UP grant prior to August 14, 2008, and demonstrated a prior commitment to early intervention leading to college access through collaboration and replication of successful strategies; and to specify how the Department determines whether a State GEAR UP grant has been "successful" (see section 404A(b)(3) of the HEA).

• Adding § 694.20 to explain when a GEAR UP grantee is allowed to provide services to students attending an institution of higher education (see section 404A(b)(2) of the HEA).

• Adding new § 694.24 to require grantees that continue to provide services to students through their first year of attendance at an institution of higher education, to the extent practicable, to coordinate with other campus programs in order not to duplicate services (see section 404A(b)(2) of the HEA).

• Amending § 694.7(a)(2) to require that a GEAR UP grantee make substantial progress towards meeting the matching percentage stated in its approved application for each year of the project period. Grantees are no longer required to meet the matching requirement each year of the project period (section 404C(b)(1) of the HEA).

• Adding new § 694.8 to: (1) Provide authority for the Secretary to approve a Partnership applicant's request for a waiver of up to 50 or 75 percent of the matching requirement for up to two years under certain circumstances; and (2) create a multiple-tiered system for different types of waiver requests (see section 404C(b)(2) of the HEA).

• Adding new § 694.8(b)(3) to specify that at the time of application, the Secretary may provide tentative approval of a Partnership applicant's request for a 50-percent waiver for the entire project period so that a Partnership applicant that meets the conditions for such a waiver has an opportunity to apply for a grant without needing to identify additional sources of match funding in the later years of the project period (see section 404C(b)(2) of the HEA).

• Adding new §§ 694.21 and 694.22 to specify required and allowable activities and separate these required and allowable activities into multiple regulatory sections (section 404D of the HEA).

• Adding new § 694.22(e) to specify that GEAR UP grantees may provide activities that support participating students to develop graduation and career plans, including career awareness and planning assistance as they relate to a rigorous academic curriculum (see section 404D(b)(5)(D) of the HEA).

• Adding newly redesignated §§ 694.13 and new 694.14 to clarify that GEAR UP funds may be used to support the costs of administering a scholarship program as well as the costs of the scholarships themselves (see sections 404E(a)(1) and 404D(b)(7) of the HEA).

• Adding new § 694.24 to describe the types of services that a grantee may provide to students in their first year of attendance at an institution of higher education and listing examples of these services (see section 404D of the HEA).

• Amending newly redesignated § 694.13(a) to specify the minimum amount of scholarship funding for an eligible student, and provide that the State or Partnership awarding the GEAR UP scholarship may reduce the scholarship amount if an eligible student who is awarded a GEAR UP scholarship attends an institution of higher education on a less than full-time basis during any award year (see section 404E(d) of the HEA).

• Adding new § 694.14(b) to incorporate the statutory definition of the term *eligible student* (from section 404E(g) of the HEA) in the program regulations.

• Clarifying in new § 694.14(c)(2) the amount of funds that State grantees that do not receive a waiver of the requirement that States must expend at least 50 percent of their GEAR UP funding on scholarships must hold in reserve for scholarships and how States must use these funds (see section 404E(e) of the HEA).

• Clarifying in newly redesignated § 694.13(c) that scholarships must be made to all students who are eligible under the definition in § 694.13(d) and that a grantee may not impose additional eligibility criteria that would have the effect of limiting or denying a scholarship to an eligible student (see section 404E(e) and (g) of the HEA).

• Adding new 694.14(e) to specify that States awarding scholarships must provide information on the eligibility requirements for the scholarships to all participating students upon the students' entry into the GEAR UP program (see section 404E(c) of the HEA).

• Adding new 694.14(f) to specify that States must provide scholarship funds to all eligible students who attend an institution of higher education in the State, and may provide these scholarship funds to eligible students who attend institutions of higher education outside the State (see section 404E(e) and (g) of the HEA).

• Specifying in new § 694.14(g) that a State or Partnership that chooses to participate in the scholarship component in accordance with section 404E of the HEA may award continuation scholarships in successive award years to each student who received an initial scholarship and who is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of higher education (see section 404E of the HEA).

• Amending newly redesignated § 694.15 to specify that a GEAR UP Partnership that does not participate in the GEAR UP scholarship component may provide financial assistance for postsecondary education using non-Federal funds, and those funds may be used to comply with the program's matching requirement (see section 404C(b) of the HEA).

• Adding new § 694.16 to specify the requirements for the return of scholarship funds. Specifically, (1) providing that scholarship funds held in reserve by States under §§ 694.12(b)(1) or 694.12(c) or by Partnerships under section 404D(b)(7) of the HEA that are not used by an eligible student within six years of the student's scheduled completion of secondary school may be redistributed by the grantee to other eligible students; (2) requiring the return of remaining Federal funds within 45 days after the six-year period for expending the scholarship funds expires; (3) requiring grantees to annually furnish information, as the Secretary may require, on the amount of Federal and non-Federal funds reserved and held for GEAR UP scholarships and the disbursement of those funds to eligible students until these funds are fully expended or returned to the Secretary; and (4) providing that a scholarship fund under the GEAR UP program is subject to audit or monitoring by authorized representatives of the Secretary throughout the life of the fund (see section 404E(e)(4) of the HEA).

• Adding new § 694.25 to require grantees that receive initial grant awards after the passage of the HEOA to continue to serve students from a previous grant received by the grantee (see section 404A(b)(3)(B) of the HEA).

• Adding new § 694.25(a) to clarify whom a grantee must serve if not all students in the cohort attend the same school after the cohort completes the last grade level offered by the school at which the cohort began to receive GEAR UP services (see section 404B(d) of the HEA).

• Amending newly redesignated § 694.18 to specify that 21st Century Scholarship Certificates are to be provided by the grantees (rather than by the Secretary to the grantees), and must indicate the estimated amount of any scholarship that a student may be eligible to receive.

Analysis of Comments and Changes

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under title IV of the HEA, the Secretary must obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. The negotiated rulemaking committee did not reach consensus on the proposed regulations that were published on March 23, 2010. The Secretary invited comments on the proposed regulations by April 22, 2010. In response to the Secretary's invitation in the NPRM to the proposed

regulations, 455 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes, suggested changes that the law does not authorize the Secretary to make, or comments pertaining to issues that were not within the scope of the NPRM.

Part 206—Special Educational Programs for Students Whose Families Are Engaged in Migrant and Other Seasonal Farmwork—High School Equivalency Program (HEP) and College Assistance Migrant Program (CAMP)

Who May Benefit From HEP and CAMP? (34 CFR Part 206)

Comment: One commenter inquired as to whether HEP would only benefit farm workers and their families and stated that there were others, not necessarily in that group, who could potentially be helped by this program.

Discussion: We appreciate the commenter's view that HEP could potentially help individuals who are not migrant and seasonal farmworkers. However, section 418A of the HEA, which authorizes both HEP and CAMP, requires that program activities focus on migrant and seasonal farmworkers and their immediate family. The Department does not have the authority to expand this statutorily prescribed requirement.

Changes: None.

Types of Services for CAMP Projects (§ 206.10(b)(2))

Comment: None.

Discussion: In our review of § 206.10(b)(2), we realized that § 206.10(b)(2)(iv) contained a typographical error and we have corrected it.

Changes: In § 206.10(b)(2)(iv), we have removed the word "student" and added, in its place, the word "students" to correct a typographical error.

Prior Experience in HEP and CAMP (§ 206.31(a))

Comment: One commenter suggested that the Department revise the wording of a note that was included in the NPRM's preamble discussion of prior experience under HEP and CAMP. Specifically, the commenter suggested deleting the phrase "for the priority" from the following note, which appeared on page 13820 of the NPRM (75 FR 13814, 13820):

"**Note:** The TRIO programs have had a longstanding requirement that only applicants with an expiring TRIO project are eligible for the priority for prior experience. Consequently, in providing the same degree of consideration for prior experience as provided under the Federal TRIO programs, we view this aspect of proposed § 206.31(a) to be statutorily required."

Discussion: We appreciate the commenter's concern for clarifying this language from the preamble of the NPRM. In this notice of final regulations, we make changes, if appropriate, to the regulations themselves, not language from the preamble of the NPRM. Moreover, we do not believe that any change to the regulations themselves is necessary because § 206.31(a) refers only to the Secretary considering the applicant's experience in implementing an expiring HEP project; it does not use the phrase "for the priority".

Changes: None.

Federal TRIO Programs—34 CFR Parts 642 (Training Program for Federal TRIO Programs), 643 (Talent Search), 644 (Educational Opportunity Centers), 645 (Upward Bound Program), 646 (Student Support Services Program), 647 (Ronald E. McNair Postbaccalaureate Achievement Program)

Section 403(a) of the HEOA amended section 402A of the HEA to include a number of new requirements that apply across the Federal TRIO programs (*i.e.,* the Talent Search (TS), Upward Bound (UB), Student Support Services (SSS), Ronald E. McNair Postbaccalaureate Achievement (McNair), Educational Opportunity Centers (EOC), and Staff Development Activities (Training) programs). Additionally, section 403(b) through (g) of the HEOA amended sections 402B, 402C, 402D, 402E, 402F, and 402G, to make specific changes to the TS, UB, SSS, McNair, EOC, and Training programs, respectively.

We have organized the discussion of comments received on and responses to the proposed changes to the specific Federal TRIO program regulations by first addressing crosscutting issues by subject matter and then discussing program-specific issues on a program-by-program basis.

Our discussion of comments applicable to specific programs follows the order of the Department's regulations for those programs (*i.e.,* 34 CFR parts 642 (Training), 643 (TS), 644 (EOC), 645 (UB), 646 (SSS), and 647 (McNair)).

Number of Applications an Eligible Entity May Submit To Serve Different Campuses and Different Populations

Comment: One commenter expressed concern that an applicant that submitted a TRIO Program grant application to provide services to one of the different populations identified by the Secretary in the **Federal Register** notice inviting applications for one fiscal year competition would be ineligible to submit an application for a new grant award to continue the existing project if the population served by the existing project was not designated as an eligible population in the notice inviting applications for the next competition. The commenter suggested that the Department include language in the regulations to ensure that an applicant with an expiring grant will be eligible to apply for a new grant in a subsequent competition to serve the same population of students.

Discussion: As part of the HEOA, Congress significantly revised the definition of "eligible population" in section 402A(h)(2) of the HEA. To implement this statutory change, the regulations specify that, for each competition, the Department will designate in the **Federal Register** notice inviting applications for the competition, the different populations for which an entity may submit a separate application (see §§ 642.7 (Training) [1], 643.10(b) (TS), 644.10(b) (EOC), 645.20(b) (UB), 646.10(b) (SSS), and 647.10(b) (McNair).

Under these regulations, therefore, an entity that previously received a grant to serve a particular population would be eligible to submit an application for a new grant to continue serving the same population if that population is included as a designated population in the **Federal Register** notice inviting applications for the new competition. If the population served by the grantee is not designated for the new competition, the entity would not be eligible to apply for a grant to continue to serve the same population it served under the expiring grant. While an entity with an expiring grant serving another population could apply for a grant to serve one of the populations designated in the notice inviting applications for the new competition, the entity would not be eligible for PE points based on its expiring grant.

Changes: None.

[1] For the Training Program, the **Federal Register** notice inviting applications will include the statutory and other priorities that applicants must address for the competition. Training program grantees will provide training on the topics identified in the published priorities.

Designating Different Populations in the Federal Register Notice Inviting Applications

Comment: One commenter questioned whether designating different populations for each competition was consistent with the TRIO programs' goals. The commenter believed that this approach would politicize the application process because it would force applicants to constantly change the focus of their projects to meet the changing requirements of the times. Ultimately, the commenter expressed concern that the proposed approach would destabilize the programs because it would reduce the effectiveness of the grantees.

Discussion: We do not agree that the designation of different populations to be served for each competition will politicize the application process or reduce the effectiveness of the TRIO programs because most of the projects funded under any competition will be for traditional TRIO projects (*i.e.,* projects that provide services to eligible participants—low-income, first-generation college students, and students with disabilities—but that do not focus services on a specific population). For example, during the FY 2010 SSS grant competition only a small percentage of the applicants proposed projects to serve different populations that had distinct needs for specialized services that could not be addressed through a regular SSS project. As discussed in the NPRM, 75 FR at 13821–22, the designation of different populations for each competition will give the Department the flexibility to address changing national needs and to ensure that Federal funds are targeted to areas or populations most in need. The Secretary believes that it is appropriate to change the focus of the TRIO programs if the national needs change. That said, this does not mean that the Department will change the designated populations for each new competition.

Changes: None.

Clarification of the Term "Designated Different Population"

Comment: One commenter asked for clarification regarding what qualifies as a designated different population.

Discussion: Section 402A(c)(5) of the HEA, as amended by section 403(a)(2)(C) of the HEOA, provides that the Secretary may not limit the number of applications submitted by an eligible entity under any Federal TRIO program if the additional applications describe programs serving different populations or different campuses. Section 402A(h)(2) of the HEA defines "different population" as a group of individuals that an eligible entity desires to serve using a Federal TRIO grant and that is separate and distinct from any other population that the entity has applied to serve, or that, while sharing some of the same needs as another population, has distinct needs for specialized services. The definition sections of each of the TRIO program regulations will include the new statutory definition for "different population" for each program to which the term applies. In addition, each of the TRIO program regulations provide that the Secretary will designate, in the **Federal Register** notice inviting applications and other published application materials for each competition, the different populations for which an eligible entity can submit separate applications. Therefore, what qualifies as a designated different population for each grant competition will be determined by the Department and described in the **Federal Register** notice inviting applications for that competition. For example, under the FY 2010 SSS grant competition, the Secretary designated projects that serve five different populations: Individuals with disabilities, individuals for whom English is a second language, individuals pursing science, technology, engineering and math disciplines, individuals pursuing teacher preparation, and individuals pursuing health sciences.

Changes: None.

Definitions Applicable to More Than One Federal TRIO Program Definition of Financial and Economic Literacy (§§ 643.7, 644.7, 645.6, 646.7, 647.7)

Comment: One commenter suggested that providing education or counseling services designed to improve financial and economic literacy should be a required service for all TRIO programs. Multiple commenters noted that EOC projects do not have enough time or resources to provide education or counseling services to improve participants' knowledge about all of the examples of personal financial decision-making listed in the definition of *financial and economic literacy.*

Discussion: Under these regulations, all Federal TRIO programs—other than the Training program—include as a mandatory or permissible activity providing education or counseling services designed to improve the financial and economic literacy of participants (see §§ 643.4(a)(6) TS),[2] 644.4(e) (EOC), 645.11(a)(6) (UB), 646.4(a)(4) (SSS), and 647.4(b)(1) (McNair)). The definition of *financial and economic literacy* is consistent across programs. We intended the proposed definition to include a non-exhaustive list of examples of the types of knowledge that comprise knowledge about personal financial decision-making. We have made minor changes to this definition to make clear that the list of examples is not exhaustive and is not a list of mandatory activities.

Changes: For clarity we have changed the phrase "including but not limited to" to "which may include but is not limited to" in order to emphasize that the list of types of knowledge that may constitute knowledge about personal financial decision-making is not exhaustive and is not a list of mandatory activities.

Comment: A number of commenters recommended changes to the language used for some of the examples included in the definition of the term *financial and economic literacy.* One commenter suggested changing the reference to "secondary education" in § 646.7 (SSS) to "postsecondary education". Other commenters suggested that we add the term "postbaccalaureate" after the reference to "postsecondary", that we change the words "scholarship, grant and loan education" to "financial assistance education," and that we include the word "assistanceships" in the definition of *financial and economic literacy.*

Discussion: We generally agree with these requested changes because we believe that they help to clarify the types of knowledge one should have to be financially and economically literate. Therefore, we have revised §§ 643.7, 644.7, 645.6, 646.7, 647.7 to make these changes. With respect to the request to add the words "financial assistance education," we agree with the concept behind the comment but believe it is more appropriate to refer to "financial assistance" because it is knowledge about financial assistance, not financial assistance education, that is relevant.

Changes: In the definition of *financial and economic literacy* in § 646.7 (SSS), we have changed the reference to "secondary education" to "postsecondary education". In addition, in the definition of *financial and economic literacy* included in the regulations for the TS, EOC, UB, and McNair programs, we have added the term "postbaccalaureate" after the reference to "postsecondary", replaced the words "scholarship, grant and loan education" with the words "financial

[2] In the case of the TS program, projects must provide connections for participants to education or counseling services designed to improve the financial and economic literacy of the participants or the participants' parents, including financial planning for postsecondary education.

assistance," and included "assistanceships" as an example.

Definition of Homeless Children and Youth (§§ 642.6, 643.7, 644.7, 645.6, 646.7)

Comment: Multiple commenters asked for clarification of the definition of "youth". These commenters stated that the McKinney-Vento Homeless Assistance Act defines the age of children and youth as ending prior to being college aged. The commenters expressed concern that this definition would limit the services that TRIO programs could offer to these students. One commenter asked if homeless children and youth will be a separate group of eligible participants like first-generation or low-income students.

Discussion: The McKinney-Vento Act defines "homeless children and youths" in terms of what qualifies the individual as homeless, not by age.[3] Therefore, there is no cut-off age for the definition of "youth" in the McKinney-Vento Homeless Assistance Act.

Those TRIO programs that provide pre-college programs assist students who are individuals covered by the definition of homeless children and youth in the McKinney-Vento Homeless Assistance Act. In the SSS program, however, assistance for securing temporary housing during breaks in the academic year may be provided to students who are homeless children and youths or formerly homeless children or youths (see § 646.30(j)).

Finally, while section 402A(c)(6) of the HEA requires TRIO projects, as appropriate, to make services available to homeless children and youths, homeless children and youths are not a separate group of eligible participants. Therefore, homeless children and youths are only eligible if they also meet the program's participant eligibility criteria (e.g., low-income, first-generation).

Changes: None

Definition of Individual With a Disability (§§ 642.6, 643.7, 644.7, 645.6, and 646.7)

Comment: Multiple commenters requested that we broaden the definition of the term *individuals with disabilities* to mirror the language used in the Americans with Disabilities Act (ADA). Another commenter requested clarification on whether the inclusion of the term "individual with disabilities" means that a student with a documented disability or individualized education plan could participate in a TRIO project even if he or she does not meet one of the other eligibility criteria.

Discussion: The ADA, as revised by the ADA Amendments Act of 2008, defines the term "disability" to mean, with respect to an individual, (A) a physical or mental impairment that substantially limits one or more major life activities of such an individual, (B) a record of such an impairment or (C) being regarded as having such an "impairment." This definition also applies under Section 504 of the Rehabilitation Act of 1973, as amended (Section 504). We agree that it is appropriate to use a definition of an individual with a disability that incorporates the ADA's definition of "disability." Accordingly, we have changed the definition of *individual with disabilities* to be a definition of the term *individual with a disability* and we define *individual with a disability* to mean a person with a disability, as that term is defined in section 12102 of the ADA (42 U.S.C. 12101 *et seq.*).

With respect to the comment seeking clarification on whether the inclusion of the term individual with disabilities in these regulations means that a student with a documented disability or individualized education program could participate in a TRIO project even if he or she does not meet one of the other eligibility criteria, we note that—except under the SSS program—being an individual with a disability is not a separate and additional eligibility criterion, such as being a first-generation or low-income student. Therefore, under all but SSS, being an individual with a disability does not, on its own, make an individual eligible to participate in a TRIO project. It is important to note that adopting the ADA's definition of an individual with a disability does not mean that grant funds under these programs may be used to pay for services required by the ADA that are not directly related to the goals of the TRIO programs. However, this prohibition would not relieve the institution of their obligations under the ADA or Section 504. For example, it would not be appropriate to use SSS program funds to pay for a sign language interpreter for a student who is hard of hearing to participate in his or her Calculus class as required by the ADA or Section 504.

Changes: In §§ 642.6, 643.7, 644.7, 645.6, and 646.7 of the final regulations, we define *individual with a disability* to mean a person with a disability, as that term is defined in section 12102 of the ADA (42 U.S.C. 12101 *et seq.*).

Definition of Veteran (§§ 643.7, 644.7, and 645.6)

Comment: One commenter suggested that the proposed definition of veteran be modified to include National Guard veterans who served on active duty in Iraq and/or Afghanistan given that a large number of these individuals were called to duty in Iraq and Afghanistan and served for long tours of duty.

Discussion: National Guard veterans who served on active duty in Iraq and/or Afghanistan are included in the definition of veteran. These individuals qualify as veterans under the last two paragraphs of that definition (*i.e.,* the individual was a member of a reserve component of the Armed Forces of the United States and was called to active duty for a period of more than 30 days, or the individual was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation on or after September 11, 2011).

Changes: None.

Evaluating Prior Experience—Outcome Criteria Definition of "High Quality Service Delivery" (§§ 642.20(b), 643.20(a)(2)(i), 644.20(a)(2)(i), 645.30(a)(2)(i), 646.20(a)(2)(i), 647.20(a)(2)(i))

Comment: Several commenters expressed concerns about the proposed regulations that would provide that the Secretary would consider an applicant's prior experience of "high quality service delivery" in deciding which new grants to make. Some commenters recommended that the phrase "high quality service delivery" be defined to provide projects with clear expectations and performance standards. Other commenters stated that, because the phrase "high quality service delivery" is

[3] Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act defines "homeless" as follows:

The term "homeless children and youths"—

(A) Means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 103(a)(1)); and

(B) includes—

(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 103(a)(2)(C));

(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(iv) migratory children (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).

not defined, it should not be included in the regulations. One commenter argued that because project performance data is strictly quantitative in nature, a determination of a grantee's quality of service cannot be made.

Discussion: We disagree with the commenters' suggestion that the term "high quality service delivery" needs to be defined in the regulations. We also disagree that a grantee's quality of service cannot be determined based on project performance. As stated in section 402A(f)(1) of the HEA and in these regulations, the determination of an applicant's prior experience of "high quality service delivery" will be based on the outcome criteria for the specific program. Therefore, a grantee that met or exceeded its approved project objectives for its expiring grant would be considered to have delivered high quality services. The Department will use data provided by the grantee in the APR, as well as audit findings, site visit reports, and any other information received by the Department to determine if the grantee met or exceeded these objectives.

Changes: None.

Comment: None.

Discussion: In reviewing proposed §§ 643.20(a)(2)(i), 644.20(a)(2)(i), 645.30(a)(2)(i), 646.20(a)(2)(i), 647.20(a)(2)(i)), we determined that it would be clearer to have these sections refer to "outcome criteria" rather than to "criteria" only. This change aligns the regulatory language more closely with section 402A(f) of the HEA, which refers to the specific outcome criteria to be used to determine an entity's prior experience (PE) points under the TS, UB, SSS, McNair, and EOC programs.

Changes: We have amended §§ 643.20(a)(2)(i), 644.20(a)(2)(i), 645.30(a)(2)(i), 646.20(a)(2)(i), 647.20(a)(2)(i)) by adding the word "outcome" before the word "criteria".

Comment: None.

Discussion: Upon further review of §§ 643.20(a)(2)(i), 644.20(a)(2)(i), 645.30(a)(2)(i), 646.20(a)(2)(i), we determined that technical changes were needed in these sections. Because the HEA now permits entities to submit multiple applications to serve different populations, campuses, or both, it is important that the regulations clarify the conditions under which an entity may receive PE points for applications for new grants (depending on whether the new grant will serve the different populations, campuses, or both served under an expiring grant). The Department has revised these regulations to clarify that PE points are awarded only to the application for a new grant that proposes to continue to serve substantially the same populations *and* campuses that the applicant is serving under an expiring grant. Therefore, an entity will not receive PE points for (a) applications to serve different populations, even if the different populations are on the same campus as the population or populations served by the existing grant, or (b) applications to serve a different campus altogether.

Changes: We have amended §§ 643.20(a)(2)(i), 644.20(a)(2)(i), 645.30(a)(2)(i), and 646.20(a)(2)(i) by replacing the word "or" after the words "same populations" with the word "and."

Incorrect Annual Performance Report (APR) Data (§§ 642.22(a)(3), 643.22(a)(3), 644.22(a)(3), 645.32(a)(3), 646.22(a)(3), 647.22(a)(3))

Comment: The Department received numerous comments on the proposed regulatory language that would permit the Secretary to adjust a PE score or decide not to award PE points if other information indicates that the APR data used to calculate the applicant's PE are incorrect. Several commenters requested that the regulations be revised to take into consideration projects that knowingly provide fraudulent information and those that act in good faith but inadvertently provide data containing errors, so that the Department does not penalize projects for honest mistakes. Several commenters stated that Department officials have acknowledged that numerous projects have made data errors in their APRs, and these commenters believe that it is in the best interest of the Department and the projects to work to correct these errors, rather than not to award PE points to these projects.

Discussion: We understand the commenters' concern about data reporting errors potentially resulting in the loss of PE points for an applicant. The Department does not intend to use this authority to penalize applicants that make reporting errors despite their "good faith" efforts. However, because the Department cannot always tell whether an applicant intentionally provides false data or if the applicant made a mistake in data reporting, we believe it is appropriate for the Department to have the flexibility to address issues of concern in audit findings, site visits, or other information that identifies problems in a grantee's efforts to meet the established objectives on a case-by-case basis. For this reason, we decline to make any changes to the regulations to distinguish between projects that knowingly provide fraudulent information and those that act in good faith but inadvertently provide data containing errors.

Changes: None.

Notification of PE Points Awarded (§§ 642.22, 643.22, 644.22, 645.32, 646.22, 647.22)

Comment: Many commenters requested that the Department notify grantees of their PE points earned each project year within a certain amount of time (*e.g.,* 60 to 90 days) after the end of the grant period. They also recommended that the Department provide relevant comments to grantees that score less than the maximum 15 PE points, to assist the grantees in improving their projects in future years.

Discussion: We appreciate the commenters' suggestions on how to improve communication about project performance between the Department and grantees. The Department provides applicants with standardized objectives for the relevant TRIO program in the application materials for each TRIO competition. Applicants then must specify their performance targets, and grantees report on their progress in achieving approved objectives in their APR. At the conclusion of each competition, grantees receive a summary of the PE scoring by standardized objective for each of the three years assessed. Moreover, the APR for each program is designed so that grantees should be able to calculate their own annual PE scores. However, the Department will continue to perfect its assessment of PE and find ways to provide timely feedback to grantees on their projects' performance.

Changes: None.

PE Points for Financial and Economic Literacy (§§ 642.22, 643.22, 644.22, 645.32, 646.22, 647.22)

Comment: The Department received several comments recommending that PE points be granted for experience providing services to improve participants' financial and economic literacy as well as financial aid application support. Some commenters offered this recommendation for only a specific TRIO program. These commenters argued that services related to financial and economic literacy and financial aid support are required by the HEA, have been incorporated into certain of the TRIO programs' purposes, and are pivotal to helping participants prepare for college. Some commenters also noted that it makes sense to provide PE points for these services, because project staff spend a substantial amount of time engaged in these services.

Discussion: The Secretary acknowledges that the HEA emphasizes the importance of providing or connecting participants to services related to improving a participant's financial and economic literacy. However, the HEA does not list this activity as one of the outcome criteria to be used for PE points. To remain consistent with the statute, which requires that the Secretary determine an entity's prior experience based on the statutory outcome criteria, the Secretary is not adding PE criteria not included in section 402A(f) of the HEA.

Changes: None.

Timeline for Earning PE Points—Postsecondary Completion (§§ 643.22(d)(6) (TS), 645.32(e)(1)(vi) and (e)(2)(v) (UB))

Comment: Several commenters sought clarification on the timeframe in which UB and TS grantees will be eligible to earn the PE points associated with meeting their approved objectives for postsecondary degree completion, particularly if the criterion is evaluated after the second, third, and fourth program years, given the length of time it typically takes a student to complete a postsecondary degree. Some commenters requested an explanation of whether participants under an entity's expired or expiring grant may be counted toward meeting approved objectives for this criterion. One commenter recommended that grantees earn PE points for this criterion based on either postsecondary academic progress (persistence) or completion.

Discussion: We understand the commenters' concern that applicants may not be eligible for all the PE points available for each competition, due to the amount of time it takes to track enrollment in and completion of postsecondary education of the participants served in the applicants' expired or expiring grants. Under the UB program, some applicants would be eligible to earn PE points for participants they served under earlier grants who attain a postsecondary degree within the number of years specified in the approved objective. Because the Department has been collecting individual participant data through the UB APRs for several years, the Department will be able to match participant data from prior years to determine the extent to which UB participants completed programs of postsecondary education.

However, under the TS program, we have not been collecting data on the academic progress of TS participants through postsecondary completion as this is a new outcome criterion for this program. Therefore, the Department will not be able to match participant data from prior years to assess the extent to which TS participants completed programs of postsecondary education. Going forward, the Department will work with grantees to develop a new APR for the TS program that will capture the data needed to award PE points for postsecondary completion. The Department acknowledges that TS projects will not be eligible for the PE points for postsecondary completion for several years.

Finally, we have not accepted the commenter's suggestion that we award PE points under the postsecondary completion criteria based on the extent to which project participants were either still persisting in or had completed a program of postsecondary education because the requirement of the HEA is postsecondary completion, not progress or completion.

Changes: None.

Years Considered in PE Assessment (§§ 643.20(a)(2)(iii), 644.20(a)(2)(iii), 645.30(a)(2)(iii), 646.20(a)(2)(iii) 647.20(a)(2)(iv))

Comment: Multiple commenters expressed concern regarding the proposed regulation that would provide that the Secretary will designate in the **Federal Register** notice inviting applications and other published application materials for a competition which three years of the expiring five year grant period will be considered in the PE assessments for new awards. Several commenters stated that the regulations should specify which three years will be used, while a few others suggested clarifying that the middle three years (*i.e.,* years two through four) of the grant cycle would be considered. These commenters contended that including this information in the regulations would reduce confusion among grantees as to the timeframe evaluated for purposes of determining PE points. One commenter recommended using data for the four years preceding the date of application for the new competition. This commenter noted that such an approach would be consistent with the Department's current system in which the average rates of achievement for the preceding three years are used. Similarly, other commenters had concerns that the proposed use of three years of project data will fail to take into consideration two project years' worth of a project's performance.

Discussion: The HEA now provides that all TRIO grants will be awarded for five years, but the Secretary has determined that PE points should be assessed for only three of the five year project period. In making this determination, the Secretary took several factors into consideration. First, the Department's experience has demonstrated that, for a number of reasons, many first-time or new grantees do not meet their approved objectives for the first year of funding. Not using the first year of the grant cycle for PE points, therefore, will give new grantees time to effectively implement the project prior to having its performance evaluated for purposes of assessing PE. Second, evaluating performance from the last year of a project period to determine PE points for new awards presents a number of challenges. Applications for new grants are due about a year prior to the end of the current grant period and new awards are announced several months prior to the end of the grant period. Thus, it is not possible to consider a project's performance in the fifth year of an expiring grant prior to making funding decisions for the new grant competition because the APR data for the last year of the expiring grant would not be available for calculating PE points until several months after the new grant period begins.

For these reasons, we do not think it is appropriate or possible to use the first and fifth years of the expiring grant cycle to assess PE points for new competitions. Generally, we expect that the published application materials will designate the three middle years of the expiring grant (*i.e.,* project years two through four). However, designating the specific years to be considered in the application materials, rather than in the regulations, will give the Secretary flexibility to address unique situations on a competition-by-competition basis. For example, there may be situations when some grantees started their expiring grant period a year or more later than other grantees. In such a situation, the applicant's performance during the first three years, instead of the middle three years, of the expiring grant would be used to award PE points. The published application materials would designate the project years that would be used for PE (*e.g.,* 2007–08, 2008–09, and 2009–10) for all applicants in the competition.

Changes: None.

Use of Approved Versus Actual Number of Participants Served (§§ 645.32(d), 646.22(d), 647.22(d))

Comment: Some commenters expressed concerns about the proposal that the Secretary will use the approved number of participants, or the actual number of participants served in a given

year if that number of participants is greater than the approved number, as the denominator in calculating whether the applicant has met its approved objectives under its expiring grant to earn PE points for the new grant application. A few commenters argued that a grantee who does not serve the approved number of participants is penalized in two ways: First, by not receiving PE points for the criterion measuring whether the approved number was served, and, second, by not receiving any PE points at all if at least 90 percent of the approved number was not served. These commenters stated that using the approved number instead of actual number as the denominator in PE calculations is unnecessarily punitive. Furthermore, one commenter recommended that either the actual number of participants should be used as the denominator or the number of PE points associated with serving the approved number of participants should be reduced. This commenter argued that the number of points assigned to this criterion, combined with the proposed use of the approved number as the denominator, makes the penalty for projects that do not serve their approved number too severe. The commenter stated that this concern particularly applies to small projects, for which the commenter notes that one or two students can affect an objective by two or more percentage points.

Discussion: Grant award amounts and performance targets are based largely on the number of participants a project is funded to serve each year of the grant period. Therefore, we believe that, for those PE criteria applicable to all participants served in the project year, the denominator should be the greater of the approved number of participants to be served or the actual number of participants served. PE points are rewards, and give projects a competitive advantage in a subsequent grant competition. Therefore, it is reasonable to expect a grantee to meet the performance targets it proposed and that were approved through the grant process to earn the maximum number of PE points. Therefore, we do not accept the commenters' suggestion not to use the approved number as the denominator for calculating PE points for some objectives or to reduce the PE points a project can earn for serving its approved number of participants.

Changes: None.

PE Criterion Related to Number of Participants (§§ 642.22(d) and (e)(1); 643.22(c) and (d)(1); 644.22(c) and (d)(1); 645.32(c), (e)(1)(i), and (e)(2)(i)); 646.22(c) and (e)(1); 647.22(c) and (e)(1))

Comment: Several commenters expressed concern that the phrase "approved number of participants" in the proposed regulations means that a grantee would not receive PE points if the project served more than their approved number of participants. These commenters argued that it is difficult to ensure that a project only serves the exact number of participants that were proposed, as projects often accept more participants than they are funded to serve to ensure that at least the minimum number is met throughout the year. Two commenters further noted that the phrase "met or exceeded the entity's objectives" is used in several areas of the HEOA, suggesting that the spirit of the law is for projects to serve at least the funded number. Several commenters requested that the criterion be revised to reflect that the Department will examine whether the applicant provided services to "at least the approved number of participants" or to "no less than the approved number of participants."

One commenter suggested that PE points for serving the approved number of participants should be commensurate with the percentage of the approved number that was served. Two commenters suggested that the regulatory provision that states that the Secretary does not award PE points to a grantee that does not serve at least 90 percent of the approved number of participants conflicts with the separate regulatory provision that states that the Secretary does not award PE points for the criterion measuring whether the grantee served the approved number if the approved number is not served.

Discussion: The Department agrees that the use of the words "approved number" in the "Number of participants" PE criterion regulations may be confusing. We did not intend for this provision to imply that a project could not serve more than the approved number of participants. Therefore, we have accepted the commenters' recommendations to revise the regulatory language to make it clear that a project can serve more than the approved number of participants.

We note, however, that for a grantee to receive PE points for this criterion, the project must meet or exceed the approved number that it has been funded to serve; no partial credit will be given for this criterion to a grantee that served fewer than the approved number.

The commenters' concern that the PE criteria conflict with each other is based on a misunderstanding. The two criteria are complementary. First, to be eligible to receive *any* PE points for a given year, a grantee must have served at least 90 percent of the participants it was funded to serve. For example, if a project was funded to serve 100 participants but only served 85 participants (85 percent of the approved number), the grantee would receive no PE points for that project year because it did not serve at least 90 percent of its funded number. Second, if a grantee serves at least 90 percent of the number of participants it was funded to serve but did not serve 100 percent of the approved number of participants (*e.g.,* project was funded to serve 100 participants but only served 98 participants), the grantee would not receive any points for the "Number of participants" criterion. However, the grantee would be eligible to earn up to 12 PE points based on whether or not the project achieved its other PE objectives.

Changes: We have amended §§ 642.22(d); 643.22(c); 644.22(c); 645.32(c); 646.22(c); 647.22(c)) to clarify that the Secretary does not award PE points if the applicant did not serve at least the approved number of participants. In addition, we have amended the *Number of participants* criterion in §§ 642.22(e)(1), 643.22(d)(1), 644.22(d)(1), 645.32 (e)(1)(i) and (e)(2)(i); 646.22(e)(1); and 647.22(e)(1) to clarify that the award of PE points for that criterion is based on whether the applicant provided services to no less than the approved number of participants.

Review Process for Unsuccessful Federal TRIO Program Applicants Percentage of Funds Set Aside for Secondary Review Competition (§§ 642.25(d) (Training), 643.24(d) (TS), 644.24(d) (EOC), 645.35(d) (UB), 646.24(d) (SSS), and 647.24(d) (McNair))

Comment: Several commenters requested clarification of some of the procedures and processes proposed for the second review of unsuccessful grant applications. Several commenters wanted to know the percentage of competition funds that would be reserved for the second review or how the Department would determine the percentage of funds set aside for grants after the second review. Commenters also expressed concern that some of the funds reserved for awards after the second review might not be awarded and recommended that the regulations

be modified to allow for and explain the equitable disbursement of unused reserved funds.

Discussion: To implement the new statutory requirement that unsuccessful applicants may request a second review of their applications under certain conditions, the Department proposed and, through these final regulations, adopts a two-slate process. After the peer review of applications and the awarding of PE points, as applicable, the Department will rank all the applications. The Department then will establish a funding band to determine the percentage of the total funds allotted for the competition that will be set aside for the second review (for example, we might set aside six percent of the total funds allotted for the competition). The determination of the percentage of funds to be reserved for the second review and the applications to be included in the funding band will be based on the distribution of application scores. For example, we expect to include in the funding band all applications that scored within two or three points below the initial cut-off score.

The funding band for each competition will include all of the applications with a rank-order score that is below the lowest score of applications funded after the first review and that would be funded if the Secretary had 150 percent of the funds that were set aside for the second review (*e.g.* nine percent of funds).

The first slate of new awards will be made based on the rank-order of the applications using the amount of funds available for the competition minus the amount of funds set aside for the second review of unsuccessful applications (*e.g.,* six percent).

Only those unsuccessful applicants whose applications scored within the funding band will be eligible for the second review. In addition, those applicants eligible for the second review will have to provide evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error (as defined in the regulations) in the review of its application.

If the Department determines that there was an administrative error in the review of an application (which includes mathematical errors in the calculation of PE points or assigning the earned PE points or the peer reviewers' scores to the wrong application) the Department will correct the error and adjust the score assigned to the application as appropriate. If the adjusted score assigned to the application would place the application above the cut-off score for funding under the first slate, the application will be funded (if funds are available) prior to the re-ranking of applications based on the second peer review of unsuccessful applications.

If there is an error in how the peer reviewers scored an application (see §§ 642.25(b)(3) (Training); 643.24(b)(3) (TS); 644.24(b)(3) (EOC); 645.35(b)(3) (UB); 646.24(b)(3) (SSS); and 647.24(b)(3) (McNair)), a second peer review panel will review the application. After all of the second reviews are completed, a second rank-order slate of applications in the funding band will be prepared. The rankings in the second slate will be based on the new reviewers' score for those applications that were read by a second peer review panel; any applicant in the funding band that did not request or receive a second review will be ranked based on its original score. Applications in the funding band will be funded based on the second rank order slate until all the available funds are committed.

The decision to use a funding band and the specific parameters for the funding band are based on the Department's experience. In the past, adjustments for administrative and scoring errors have resulted in a score increase of no more than two or three points; therefore, under these regulations, the funding band will include only those applications that have a reasonable chance of being funded if the second review of the application resulted in an adjustment to the score. By selecting those applications with an original score that is most likely to have a chance of being funded after a second review, the Department will be better able to effectively manage the grant competition and make timely funding decisions.

The funding band approach to the second review process ensures that eligible applicants have a meaningful opportunity to request a second review while ensuring that the Department can provide timely notice of grant awards.

It is important to note that not every application selected for inclusion in the funding band will be awarded a grant. As discussed elsewhere in this preamble, we will put aside an appropriate amount of funds for grants awarded after the second review, but those funds will not be sufficient to provide funding for all applicants in the funding band. However, this process will ensure that we obligate all of the funds available for new grants and that there is no lapse of funds.

Changes: None.

Number of Days To Prepare and Submit a Written Request for a Second Review (§§ 642.25(c)(5) and (6)(Training), 643.24(c)(5) and (c)(6)(TS), 644.24(c)(5) and (c)(6) (EOC), 645.35(c)(5) and (c)(6) (UB), 646.24(c)(5) and (c)(6) (SSS), and 647.24(c)(5) and (c)(6) (McNair))

Comment: Several commenters recommended that the Department revise the proposed regulations by increasing the 15 calendar days to prepare a written request for a second review to 30 to 45 calendar days. These commenters stated that 15 days is not enough time for unsuccessful applicants to receive and review the reader's evaluations and prepare an appropriate request for a secondary review to the Department. Five commenters expressed concern that the amount of time it takes to deliver and receive mail, especially for applicants in the Pacific, would reduce the amount of time applicants would have to respond and request a secondary review. Other commenters gave examples of circumstances that could interfere with an applicant's ability to respond within the proposed 15 day period, such as the need to get appropriate signatures, delays resulting from the institution being closed for vacations or furloughed days, or delays in getting the peer reviewers' comments and the assessments of PE points. Another commenter suggested that the Department provide a grantee with its PE score annually to provide more time in which to do the research needed to appeal the assigned PE score. One commenter also noted that the regulations seemed contradictory in providing that the applicant will have 15 calendar days to submit a written request but then also stating that the written request for a second review must be received by the Department by the due date and time established by the Secretary.

Discussion: We understand the time constraints institutions may face in submitting their request for a second review and supporting information in a timely manner. However, the statutory requirement for a second review process adds several new steps to the competition schedule. Consequently, we must compress many stages of the competition to incorporate these new procedures into the competition schedule so that we meet our legal obligation to commit all appropriated funds by the end of the fiscal year.

The Department will establish internal procedures to ensure that applicants in the funding band receive at least 15 days after receiving notification that their applications were not funded in which to submit a written

request for a second review. At the time of notification, these applicants will receive copies of the peer reviewers' written evaluations and, if applicable, a report detailing how the PE score was calculated. We will use multiple notification methods (*e.g.,* electronic mail, overnight mail) to ensure applicants will have at least 15 days from receipt of the notification in which to respond. Applicants will also be permitted to submit their responses electronically. Further, our Web site will provide applicants with updated information as to when funding decisions might be announced and the proposed schedule for the second review so applicants can ensure that staff are available to prepare a request for a second review, if appropriate.

In establishing a due date and time for receipt of the applicant's written request for a second review, the Department will give applicants at least 15 days in which to respond.

Changes: We have amended §§ 642.25(c)(5), 643.24(c)(5), 644.24(c)(5), 645.35(c)(5), 646.24(c)(5), and 647.24(c)(5) to clarify that unsuccessful applicants who are within the funding band will have at least 15 calendar days in which to submit a written request for a second review.

Technical or Administrative Errors (§§ 642.25(a)(3) (Training), 643.24(a)(3) (TS), 644.24(a)(3) (EOC), 645.35(a)(3) (UB), 646.24(a)(3)(SSS), and 647.24(a)(3) (McNair))

Comment: Three commenters suggested that if a technical or administrative error by the Department or a peer reviewer results in an application not being reviewed, the applicant should automatically receive a grant even if program funds are not available.

Discussion: We cannot accept the suggestion made by the commenters. If correcting a technical or administrative error results in the application receiving a score above the cut-off score for funding under the first slate, the application would be funded prior to the re-ranking of applications based on the second peer review of unsuccessful applications. Therefore, we do not anticipate a situation in which funds would not be available to fund these applications. However, we do not have the legal authority to commit funds that we do not have and the regulations must include the statement "provided funds are available".

Changes: None.

Criteria for Scoring Errors on Applications That Were Reviewed (§§ 642.25(b)(3) (Training), 643.24(b)(3) (TS), 644.24(b)(3) (EOC), 645.35(b)(3) (UB), 646.24(b)(3)(SSS), and 647.24(b)(3) (McNair))

Comment: One commenter argued that the criteria proposed in the regulations for demonstrating scoring errors in the evaluation of the application are too narrow and should include other criteria that take into account possibilities such as human error on the part of the reader. Another commenter asserted that the reader's professional judgment should be considered as a type of scoring error in determining whether or not an application is eligible for a secondary review. This commenter expressed the opinion that readers do not have the appropriate knowledge to adequately judge whether or not an applicant can meet the objectives set forth in the application. Another commenter was concerned about readers who may misread or misinterpret information provided in the application.

Discussion: We do not agree with these comments. We believe that the regulations appropriately define the type of error that should be considered a technical, administrative or scoring error and would warrant a second review of an application. We disagree with the suggestion that the professional judgment of the peer reviewers should be subject to review as a scoring error. The HEA requires that each application be reviewed by a panel of non-Federal peer reviewers. These experts have programmatic knowledge and experience in serving low-income, first-generation students and in administering student assistance programs. As required by Congress, we rely on their expertise to make judgments about the quality of the applications under review. The readers appropriately exercise their judgment in providing scores on the applications and a low score is not evidence of an error by the reviewer. We also do not agree that the reader's interpretation of an application should be a basis for review. It is the applicant's responsibility to make sure the information provided in the application is clear and understandable.

Changes: None.

Timely Notification of Applications Determined To Be Ineligible Because of a Technical or Administrative Error (§§ 642.25(a) (Training), 643.24(a) (TS), 644.24(a) (EOC), 645.35(a) (UB), 646.24(a) (SSS), and 647.24(a) (McNair))

Comment: One commenter asserted that the regulations should require the Secretary to provide timely notification to an applicant whose application was not reviewed because it was determined to be ineligible, so that the applicant would have sufficient time to appeal the decision prior to the conduct of the peer review process.

Discussion: To the extent feasible, the Department notifies applicants who were determined to be ineligible in writing prior to the start of the peer review of applications or as soon as possible thereafter. Under these regulations, if it is determined that the Department or the Department's agent made a technical or administrative error, as defined in the regulations, in making that determination the application will be evaluated and scored. If the total score assigned the application would have resulted in the funding of the application during the competition and the program has funds available, the application will be funded prior to the re-ranking and funding of applications after the second review.

Changes: None.

Final Decision (§§ 642.25(e) (Training), 643.24(e) (TS), 644.24(e) (EOC), 645.35(e) (UB), 646.24(e) (SSS), and 647.24(e) (McNair))

Comment: Two commenters expressed concern that scoring errors also could occur during the secondary review process. For this reason, the commenters suggested that applicants be allowed to appeal the decision of the secondary review process.

Discussion: The Secretary disagrees with the suggestion that an applicant should be permitted to appeal the decision of the secondary review process. The second review provides a formal process for addressing scoring errors made during the first review that might impact the funding of an application. Appealing the decision of the second review is beyond the requirements of the statute and would interfere with the timely awarding of grants under the competition.

Changes: None.

Eliminate the Second Review (§§ 642.25 (Training), 643.24 (TS), 644.24 (EOC), 645.35 (UB), 646.24 (SSS), and 647.24 (McNair))

Comment: One commenter requested that we remove from the regulations the

entire section on the review process for unsuccessful applicants because it would increase the Department's administrative burden and would increase administrative costs, resulting in fewer projects being funded and fewer students being served.

Discussion: The HEA requires the creation of the second review process for unsuccessful applications. The Department does not have the authority to eliminate this statutorily required process.

Changes: None.

Training Program for Federal TRIO Programs (34 CFR part 642) What is the Training Program for Federal TRIO Programs? (§ 642.1)

Comment: One commenter expressed concern that it is difficult for Training Program grantees to meet the minimum requirements for the number of TRIO professionals that they must train. The commenter suggested making awards in a way that allows grantees to structure training sessions to be more focused, such as training for specific programs (*e.g.,* for only Upward Bound staff or Talent Search staff), only new directors or staff, or only seasoned staff, to reduce the competition among grantees for the same audiences. In addition, the commenter urged the Department to ensure that TRIO professionals are able to take advantage of training opportunities by requiring directors to send staff to the trainings.

Discussion: Section 402G(b) of the HEA requires Training Program grantees to offer training annually for new directors of TRIO projects as well as annual training on topics specified in the statute and other topics chosen by the Secretary. If grantees are offering training to the same audiences and are unable to attract appropriate numbers of participants, rather than changing the requirements on the number of project staff a Training grant must serve, the Secretary may consider reducing the number of grants available under this program while still ensuring that training is available throughout the Nation. Although the Secretary hopes that TRIO professionals will be able to take advantage of these training opportunities, the Secretary does not want to require their participation. It is the responsibility of each TRIO director to determine which staff could benefit from the offered training and how much of the project budget should be used for this purpose and to make decisions about staff participation in trainings under the TRIO Training program accordingly.

Changes: None.

What activities does the Secretary assist? (§ 642.11)

Comment: One commenter suggested that the Department remove the requirement that Training Program projects offer training covering strategies for recruiting and serving hard-to-reach populations, as reflected in § 642.11(b)(5). The commenter maintained that it does not make sense to include this requirement because some of the TRIO programs, such as McNair and Upward Bound Math-Science (UBMS), are not required to serve these populations. The commenter suggested that the Department make this a permissible training topic that could be combined with other topics.

Discussion: In section 402G(b)(5) of the HEA, as amended by section 403(g) of the HEOA, Congress added training on strategies for recruiting and serving hard to reach populations to the list of required training that must be offered annually. Therefore, we do not have the authority to remove this requirement or to make it a permissive topic. The **Federal Register** notice inviting applications will provide applicants with additional guidance regarding the types of TRIO staff that should be offered training on this topic.

Changes: None.

How does the Secretary evaluate an application for a new award? (§ 642.20)

Comment: One commenter suggested that, in making awards under the Training Program, the Department should take into consideration the diversity of training topics and the opportunities for TRIO professionals to attend training. The commenter also suggested that the Secretary make only one award for each major training topic to ensure that comprehensive training is available for TRIO staff.

Discussion: For each competition for grants under the Training Program, the notice inviting applications will identify the training priorities (from the list of priorities in § 642.24) for the competition and the expected number of Training projects to be funded under each priority. Under section 402G(b) of the HEA, training must be offered each year for new project directors and for each of the topics listed in paragraphs (b)(1) through (b)(5) of that section and in § 642.11. The required topics provide the appropriate diversity and opportunities for training.

Changes: None.

What are the Secretary's priorities for funding? (§§ 642.7 and 642.24)

Comment: None.

Discussion: Upon further departmental review of § 642.7 and newly redesignated § 642.24, we have determined that the provisions should be clearer with regard to the implementation of the Secretary's authority to select and designate training priorities. Proposed § 642.7 stated that an applicant may submit more than one application for Training grants as long as each application described a project that addresses a different absolute priority designated in the **Federal Register** notice inviting applications. The absolute priorities are from the list of training priorities in newly redesignated § 642.24. We have made a change to § 642.24 to make this clearer. In addition, while § 642.7 states that the Secretary designates the absolute priorities in the **Federal Register** notice inviting applications, newly redesignated § 642.24, as proposed, did not include corresponding language. For the sake of clarity, therefore, we have added language to § 642.24 that states that the Secretary designates one or more of the priorities in § 642.24 in the **Federal Register** notice inviting applications for the competition.

Changes: We have added language to § 642.7 to clarify that the absolute priorities designated in the **Federal Register** notice inviting applications are from the list of training priorities in § 642.24. We also have added paragraph (c) to newly redesignated § 642.24 to clarify that, for each competition, the Secretary designates one or more training priorities in the **Federal Register** notice inviting applications.

Comment: Multiple commenters advocated expanding the Secretary's list of priorities for the Training Program to include additional priorities, such as the provision of counseling services designed to improve financial and economic literacy. The commenters argued that additional priorities should be included as priorities in § 642.24 to reflect the emphasis on these activities in the HEA.

Discussion: Section 642.11(b) reflects the list of training topics required by section 402G(b) of the HEA. Section 642.24 reflects the Secretary's statutory authority to designate—in a notice inviting applications for a competition—one or more subjects as training priorities for grantees. In exercising the authority provided in § 642.24, the Secretary may consider the priorities suggested by the commenters for future competitions.

Changes: None.

Talent Search (TS) Program (34 CFR Part 643)

The Secretary has changed the current TS Program regulations to implement

the changes made to the program by sections 403(a) and (b) of the HEOA. The HEOA made changes to the goals and purposes of the TS program through the addition of statutory outcome criteria and required activities. These HEOA changes require TS grantees to provide more intensive academic interventions than they have in the past.

As we discuss subsequently under the applicable sections of the regulations, the Department received many comments and questions about the new TS program requirements, particularly with regard to the requirements relating to a rigorous secondary school program of study. Numerous commenters expressed concerns that funding levels would be insufficient to provide the required services and activities to the number of students currently being served and recommended that, if additional funding were not available for TS, grantees should be permitted to reduce the number of students to be served. Some commenters suggested that the proposed regulations would require grantees to implement a two-tiered program of service delivery—the first tier would support participants completing a rigorous curriculum and the second tier would provide college preparatory education for those participants not taking a rigorous secondary school program of study.

The Department also received comments requesting additional guidance regarding the Department's expectations for the cost-effective delivery of services for students in a rigorous program of study.

As discussed in the NPRM, in light of the changes made to the HEA, the Department has removed from the regulations the requirement that a TS grantee must serve a specific minimum number of participants. Instead, the Secretary will identify the minimum number of participants a TS grantee must serve each year of a grant cycle in the **Federal Register** notice inviting applications for the grant competition. This approach will give the Department the flexibility to establish the minimum number of participants to be served based on the available resources and other priorities for each competition, and to adjust these numbers for subsequent competitions based on experience, changing priorities, and cost analyses.

Further, the Department acknowledges that some of the proposed regulations with regard to the rigorous program of study would impose a significant burden on grantees and could not be fully implemented without substantial increases in program funding or large reductions in the number of participants served. Therefore, as discussed in more detail in the following sections, we have revised many of the proposed regulations related to the rigorous program of study. For example, instead of requiring TS grantees to provide many of the services a participant may need to complete a rigorous program of study, the Department is encouraging all TS projects to work in a coordinated, collaborative, and cost-effective manner with the target schools or school system and other programs for disadvantaged students to provide TS participants with access to and assistance in completing a rigorous secondary school program of study.

The Department also plans to provide additional guidance to applicants on how to respond to the new program requirements and outcome criteria in the published application materials. In addition, the Department will conduct 10 pre-application workshops to assist persons interested in applying for TS grants and will post a list of frequently asked questions on the TRIO Programs Web site at: *http://www.ed.gov/about/offices/list/ope/trio/index.html.*

What is the Talent Search program? (§ 643.1)

Comment: Several commenters expressed dissatisfaction with the language that the Secretary proposed to add to this section. The commenters expressed concern that it appeared that the TS program is no longer focused on its historically targeted audiences of middle and high school students because TS projects are now expected to also "encourage" persons who have not completed postsecondary education to "complete such programs." The commenters argued that working with persons to complete a program of postsecondary education is beyond the scope of the TS program.

Discussion: We do not have the discretion to make the changes suggested by the commenters because the regulatory language at issue is required by section 402B(a)(3) of the HEA.

Changes: None.

Who is eligible for a grant? (§ 643.2)

Comment: Many commenters questioned the practicality or need to include secondary schools and community-based organizations as eligible grantees for the TS program and suggested that the regulations be modified to exclude these entities from being eligible applicants.

Discussion: We cannot make the changes required by the commenters. Congress amended section 402A(b)(1) of the HEA to eliminate the limitation on the eligibility of secondary schools and to include community-based organizations in the definition of public and private agencies that are eligible for the TS program.

Changes: None.

Who is eligible to participate in a project? (§ 643.3)

Comment: Several commenters recommended that the regulations retain the requirement, reflected in current § 643.3(a)(3)(ii) that a participant have the ability to complete a program of postsecondary education. Some commenters requested that the participant eligibility requirements concerning individuals receiving support to complete a rigorous secondary school program of study be removed from § 643.3(b). A majority of the comments on § 643.3 concerned the requirement that an individual is eligible to receive support to complete a rigorous secondary school program of study only if the individual is accepted into the TS program by the end of the first term of the tenth grade. Some of these commenters recommended that this provision be changed to allow individuals who are accepted into the TS program by the end of the 10th grade academic year. Another one of these commenters suggested that identifying students for a rigorous secondary school program of study in the 9th grade presents a challenge due to the mobility and attrition issues that TS projects encounter, which make it difficult to identify a cohort of students to follow for four years. This commenter noted that projects in rural States, in particular, have these challenges because the number of schools in which services can be provided would be small. The commenter suggested that we amend the regulations to identify an overall percentage of the total number of high school students served by a project who will complete a rigorous secondary school program of study by the end of their senior year. Other commenters also stated that this provision was too restrictive and recommended that TS projects be given more flexibility to recruit, select, and provide additional services for students among all grade levels. Some commenters argued that using TS funds for a rigorous secondary school program of study is a misplaced priority and that funds would be better utilized providing services aimed at the 6th through 8th grade population.

Discussion: We have not accepted the commenters' recommendation with regard to retaining § 643.3(a)(3)(ii) because we amended this provision to comply with the changes made by

section 403(b)(1)(B) of the HEOA to section 402B(a)(3) of the HEA.

However, in response to other comments, we have decided not to include in these final regulations the participant eligibility requirements for the rigorous secondary school program of study that were reflected in proposed § 643.3(b). We have been convinced by the commenters that this provision would have imposed a significant burden on grantees by adding additional participant eligibility criteria for those participants needing assistance in completing a rigorous secondary school program of study. Also, after considering the comments, we have decided that TS projects should encourage all participants, not just those in high school, to undertake a rigorous secondary school program of study and should coordinate and collaborate with the target schools or school system and other programs for disadvantaged students to provide all TS participants with access to and assistance in completing a rigorous secondary school program of study.

In response to the comment that using TS funds for a rigorous secondary school program of study is a misplaced priority and that funds would be better utilized providing services aimed at the 6th through 8th grade population, we note that section 402A(f)(3)(A)(iv) of the HEA now requires TS grantees to assist participants in completing a rigorous program of study; therefore, we require this assistance in the regulations. However, these final regulations reflect changes we have made to the proposed regulations that should help reduce the costs to the TS project of providing these services. Encouraging participants to pursue a rigorous program of study should be part of the services a TS project provides to participants in the 6th through 8th grades.

Changes: We have amended the regulations by removing proposed § 643.3(b). As a result, current § 643.3(b), which would have been redesignated as § 643.3(c), remains unchanged as § 643.3(b) in these final regulations.

What services does a project provide? (§ 643.4)

Comment: The majority of individuals who commented on § 643.4 suggested that the required services listed in § 643.4(a) were too burdensome, time intensive, cost prohibitive, or impractical for TS grantees and should be eliminated. One commenter suggested that these services should be allowable but not required. One commenter requested that we revise section § 643.4(b) to clarify that grantees may provide additional activities that are not included in the list of permissible services from the TRIO statute provided that these activities meet the goals of the TS program.

Discussion: Section 643.4(a) includes the list of "Required Services" for a TS project, as mandated by section 402B(b) of the HEA. We do not have the discretion to eliminate these required services or to make them permissible. However, a grantee may provide the required services itself or through linkages with other organizations. Moreover, while a grantee must make all of the required services listed in § 643.4(a) available to its participants, not all TS participants may need all of the services or may choose not to take advantage of them. We did not intend for the regulations to prohibit grantees from offering additional services to meet the goals of the program; grantees may offer additional services not explicitly mentioned as required or permissible. Therefore, we have revised § 643.4(b) to reflect that intent more clearly.

Changes: We have revised § 643.4(b) by adding paragraph (b)(8), which clarifies that a TS project may provide services other than those specified in § 643.4(b)(1) through (b)(7) that are designed to meet the purposes of the TS program.

What definitions apply? (§ 643.7)

Regular Secondary School Diploma

Comment: Several commenters suggested that the definition for the term *regular secondary school diploma* be removed from the TS regulations because the assumption would otherwise be that any secondary school diploma would be a regular diploma. Many commenters asked what criteria the Secretary will use to determine whether a diploma constitutes a regular secondary school diploma under this definition. Other commenters suggested that we revise § 643.7 to define the term *regular secondary school diploma* with more specificity. Several commenters indicated that beginning in 2014 a "regular" diploma within their State will be the same as a diploma for completing the State's rigorous secondary school program of study.

In addition, several commenters requested that the definition for the term *regular secondary school diploma* be revised to include a timeline for the "standard number of years" in which participants would complete secondary school. A number of the commenters suggested that there was some confusion as to whether the phrase "standard number of years," as used in §§ 643.21(a)(3) (selection criteria) and 643.22(d)(3) (criteria for calculating PE points) would be considered to end at the conclusion of the academic year or at the conclusion of a summer session. The commenters indicated that this difference would be significant due to the fact that some States require exit examinations. In these States, if a student does not graduate at the end of the academic year, he or she still has the opportunity to pass the examination during the summer. These commenters argued, therefore, that if the meaning of the phrase "standard number of years" includes the summer period, a project would be able to include as graduates those students who pass the examination in the summer. The commenters asked the Department to revise the definition of *regular secondary school diploma* to clarify whether to meet this definition a diploma must be obtained within the academic year.

Discussion: Because we recognize that State policies concerning the requirement for a regular secondary school diploma may differ, we proposed a regulatory definition for this term that is broad enough to encompass varying requirements for a regular secondary school diploma. We do not agree with the commenters' suggestion that this definition be removed; we believe that the definition clarifies for grantees that their respective State standards should be used to determine whether a participant has attained a regular secondary school diploma.

With regard to the comments concerning the meaning of the phrase "standard number of years," we acknowledge that there are a variety of State policies concerning graduation requirements, including exit examinations. We also appreciate that some States may not define what timeframe constitutes a "standard number of years" for high school graduation with a regular secondary school diploma; and, therefore, we should establish a consistent point of measurement for determining a grantee's performance under the outcome criterion for high school graduation with a regular secondary school diploma. The National Center for Education Statistics (NCES) generally measures "on time" high school graduation (*i.e.,* graduating within the standard number of years) as receiving a regular diploma within four years of entering ninth grade, which is consistent with the general approach to measurement and with high school graduation rates determined under the Elementary and Secondary Education Act of 1965, as amended (ESEA).

The Department interprets the standard number of years for high school graduation with a regular secondary school diploma generally to be one grade per year from the beginning of high school, which is usually ninth grade. Further, consistent with the ESEA regulations, in 34 CFR 200.19(b)(1)(iii), a student who passes the exit examinations for a regular high school diploma during the summer after the senior year would be considered to have graduated within the standard number of years. Finally, a student who graduates prior to the conclusion of a student's fourth (or final) year of high school would also be considered to have graduated within the standard number of years.

Changes: None.

Definition of Rigorous Secondary School Program of Study

Comment: Several commenters suggested that a dual enrollment program should be considered as meeting the TS definition of a *rigorous secondary school program of study.* The commenters also recommended that this definition be revised to include as a rigorous secondary school program of study a secondary school program in which a student completed at least two dual enrollment courses for which the student received a grade of "B−" or better and college credit. Another commenter suggested adding to the type of rigorous secondary school program of study described in paragraph (3)(iii) of the definition the requirement that students must successfully complete, at minimum, courses in Anatomy/Physiology, Physical Science, and Environmental Science. Another commenter asked whether the language in paragraph (3) of the definition that provides that a rigorous secondary school program of study include one year of a language other than English would be satisfied by computer science coursework.

Several commenters asked whether the types of programs described in paragraphs (3) and (4) of the definition of *rigorous secondary school program of study* are redundant. The commenters stated that the State Scholars Initiative of the Western Interstate Commission for Higher Education (WICHE) requires the same coursework as that listed in the type of program described in paragraph (3) of the definition.

Therefore, under the WICHE standards, any student who completes a rigorous secondary school program of study under paragraph (4) of the definition would also have completed a rigorous secondary school program of study that satisfies paragraph (3) of the definition. Several commenters suggested that the definition of a *rigorous secondary school program of study* be amended to provide a common single definition instead of including several types of programs that meet this definition, so grant applications can be judged and scored using a common definition. Other commenters indicated that they believed that the presentation of the six types of programs that would meet the definition of a *rigorous secondary school program of study* suggests that an individual program of study would have to meet all six options to meet the definition. They suggested that the definition be clarified by including the word "or" after each of the first five paragraphs. Another commenter suggested that the Department add the words "one of the following" to the definition to clarify that any one of the listed options meets the definition of *rigorous secondary school program of study.*

Discussion: The Secretary disagrees with the commenters who suggested that completion of either a dual enrollment program or a secondary school program that includes two dual enrollment courses with a grade of B− or better should qualify as a rigorous secondary school program of study. We do not believe all dual enrollment programs or courses are rigorous enough to support either of these approaches. Of course, a dual enrollment program or secondary school program that includes dual enrollment courses that otherwise meets one of the criteria in the definition in the regulations would qualify as a rigorous secondary school program of study.

The Secretary also does not agree with the suggestion to add additional required coursework to the definition or with the suggestion to provide a single definition of a rigorous program of study. These suggestions would make the definition overly restrictive and might limit the States' authority to establish curricular standards.

A project, if using the criteria for a rigorous secondary school program of study in paragraph (3), cannot substitute a computer science course for one year of a language other than English. However, the specific course requirements for a rigorous secondary school program of study in paragraphs (1), (2), (4), (5), and (6) may differ from those in paragraph (3).

Further, we believe that the criteria provided in paragraphs (3) and (4) in the definition of a *rigorous secondary school program of study* are sufficiently different in content and should not be combined into a single criterion. While some programs may meet both paragraphs (3) and (4), this will not always be the case. We note, for example, that the WICHE course requirements are more specific than those described in paragraph (3) of the definition. Under paragraph (3) of the definition, a program of study must include three years of science, including one year each of at least two of the following courses: Biology, chemistry, and physics; in contrast, under WICHE requirements, a program of study must require that students complete courses in all three of these subjects. A program of study that meets paragraph (4) of the definition, therefore, will also meet the criteria under paragraph (3) of the definition, but the reverse is not true. Finally, we do not believe it is necessary to add the word "or" after each criterion in this definition. The definition provides that a program meeting any one of paragraphs (1) through (6) would satisfy the definition of *rigorous secondary school program of study.*

Changes: None.

Comment: Several commenters noted that the term "rigorous secondary school diploma" was not defined in the TS regulations.

Discussion: We inadvertently referred to "rigorous secondary school diploma" in the amendatory language when we meant "rigorous secondary school program of study," and have corrected this typographical error.

Change: We have corrected the typographical error in the amendatory language describing the changes to § 643.7(b).

What assurances must an applicant submit? (§ 643.11(a))

Comment: Some commenters objected to the proposed change, reflected in proposed § 643.11(a), that would have required a project to provide an assurance that at least two-thirds of the subset of participants receiving support to complete a rigorous secondary school program of study must be low-income individuals who are potential first-generation college students. The commenters argued that the requirement was an unnecessary burden and would be costly for TS projects, which serve large numbers of participants, because it would require the project to monitor the eligibility and services provided to this subset of participants separately.

Discussion: After reviewing the information provided by the commenters, the Secretary agrees that tracking the eligibility of participants in a rigorous secondary school program of study separately from other TS participants may be overly burdensome and costly to grantees so we have decided not to adopt the revisions we proposed for § 643.11(a).

Changes: In these final regulations, § 643.11(a) will not include the proposed addition of the words ", and at least two-thirds of the participants selected to receive support for a rigorous secondary school program of study." Instead, § 643.11(a) will remain substantively unchanged from current § 643.10(a).

Coordination Among Outreach Programs Serving Similar Populations (§ 643.11(b))

Comment: The Department received many comments regarding the language in proposed § 643.11(b), which would have required applicants to provide an assurance that individuals receiving project services will not receive the same services from another TRIO project, a GEAR UP project, or other programs serving similar populations. Several commenters argued that this provision goes beyond the statutory language and will restrict collaboration among programs. The commenters stated that collaboration is essential in the current economic climate.

Several commenters also expressed concerns about how this provision would be implemented. The commenters stated that participants may receive the same service from two programs, but at different times of the year or on different days of the week. Some commenters expressed concerns that the provision could negatively affect individuals who already participate in more than one program and who may have to stop receiving certain services. Many commenters argued that it would be difficult, if not impossible, for projects to track and record all of the services that participants may receive from other programs. Some commenters noted that, as proposed, § 643.11(b) could prevent participants from receiving specialized services, and that often services that appear duplicative can actually serve to reinforce important concepts. One commenter suggested that this provision could create competition among programs. A few commenters also suggested that this provision could impede a project's ability to comply with other sections of the HEA, such as exposing participants to institutions of higher education, cultural events, or academic programs.

In light of these concerns, many commenters recommended that the Department delete § 643.11(b) in its entirety. Others recommended striking the words "a GEAR UP project under 34 CFR part 694" and "or other programs serving similar populations." Some commenters noted that projects should consult with other programs to ensure minimal overlap of services and suggested that the language in this section be revised to permit a participant to enroll in one or more programs as long as the programs document which program will provide which services.

Discussion: We intended § 643.11(b) to help ensure that the limited funds available under the TRIO, GEAR UP, and other programs for disadvantaged students are used effectively and efficiently by minimizing the duplication of services. Because many of the same services are provided by TS, UB, GEAR UP, and other pre-college preparation programs, coordination of activities is essential to ensure that these programs reach as many students as possible.

Grantees are encouraged to share ideas and coordinate services and activities with other Federal and non-Federal programs serving similar populations, as long as each project maintains fiscal practices that ensure that funds are not comingled and that services provided are appropriately documented. For example, a TS project and a UB project may jointly conduct a field trip to a college campus for participants from both projects while assigning costs to each project based on the number of its participants and staff who attended.

To ensure effective coordination of services, we recommend that a project, when selecting target schools, determine if there is another TRIO, GEAR UP, or similar program at the school; and, if additional services are needed at the school, the project should develop collaboration plans to avoid duplication of services and competition among projects for participants. In selecting project participants, a project should also ask the student whether he or she is involved in similar college readiness programs so services can be coordinated.

Based on the comments, the Secretary has determined that proposed § 643.11(b) may be difficult to implement. Accordingly, we have revised the regulatory provision to address implementation problems like those raised by the commenters.

Changes: We have amended § 643.11(b) to require applicants to submit assurances that the project will collaborate with other Federal TRIO projects, GEAR UP projects, or programs serving similar populations that are serving the same target schools or target area to minimize the duplication of services and promote collaborations so that more students can be served.

What selection criteria does the Secretary use? Need for the project. (§ 643.21(a))

Comment: We received a number of comments on the requirement that, for certain criteria in § 643.21(a), the applicant provide data for "the most recent year for which data is available." These commenters suggested that the Department revise § 643.21 to require applicants to submit data for multiple years or to reinstate the current regulatory language requiring the applicant to provide the required data for the preceding three years to substantiate the basis of need.

Discussion: To reduce the burden on TS applicants, these final regulations only require a grantee to provide data on high school persistence (see § 643.21(a)(2)), graduation (see § 643.21(a)(3)), and postsecondary enrollment (see § 643.21(a)(4)) for the most recent year for which data are available. Based on our experience, these data remain fairly consistent over a three year period; therefore, we believe the most recent year's data should be sufficient for the peer reviewers to assess the extent of the need for the project.

Changes: None.

Comment: One commenter suggested that § 643.21(a)(1) should focus on students "enrolled in" or "participating in" the free or reduced price lunch program, as described in sections 9(b)(1) and 17(c)(4) of the Richard B. Russell National School Lunch Act, rather than students "eligible for" this program. This commenter also noted that applicants from areas such as the Republic of the Marshall Islands, the Federated States of Micronesia, and other outlying areas would not be able to respond to the criterion regarding eligibility for free or reduced price lunch.

Discussion: We used the words "eligible for" free or reduced priced lunch because reporting only on those "enrolled or participating" in this program may undercount the number of low-income students in the target schools because many secondary school students choose not to participate in the free or reduced priced lunch program. In responding to the selection criterion in § 643.21(a)(1), applicants may choose to report either the number or percentage of low-income families residing in the target area (see paragraph (a)(1)(i) of this section) *or* the number or percentage of students attending the target schools who are eligible for free or reduced priced lunch (see paragraph (a)(1)(i) of this section). Therefore, applicants from areas that do not have the free and reduced priced lunch

program may satisfy this criterion by providing data on the number or percentage of low-income families residing in the target area.

Changes: None.

Comment: One commenter stated that the TS program is critical to increasing high school persistence and postsecondary enrollment rates in target schools but argued that the criteria for determining the need for the project in § 643.21(a) worked against this goal. The commenter argued that these criteria penalize TS projects that are successful in helping the target schools increase their high school persistence and postsecondary enrollment rates when these projects apply for a new grant to continue to serve these schools. The commenter expressed concern that as the performance of these target schools improves, the need for the TS project, as defined in these criteria, diminishes. The commenter acknowledged the Department's need to establish the postsecondary enrollment and high school persistence rates for the purposes of benchmarking objectives, but recommended that: (1) The *Need* criteria for low postsecondary enrollment and high school persistence rates be removed from the *Need* section; and (2) that the points assigned for low high school persistence and postsecondary enrollment rates be redistributed among the other *Need* criteria.

Another commenter requested guidance on how applicants in States where attrition rates are not reported should respond to the high school persistence criterion in § 643.21(a)(2). Other commenters stated that data on graduation rates are not collected by their school districts and, therefore, are not available at the target schools, which would penalize applicants from those areas.

Several commenters suggested that the high school persistence and high school graduation criteria disadvantage projects serving rural schools that do not have high dropout rates and do not have low high school graduation rates but have low postsecondary enrollment rates and little access or low participation in courses needed to complete rigorous secondary school programs of study.

One commenter expressed concern about the criterion on low rates of students in the target schools who graduated high school with a regular secondary school diploma reflected in § 643.21(a)(3). The commenter believes TS applicants would be discouraged from selecting target schools that had high rates of students who graduated with a regular secondary school diploma as these schools would not demonstrate high need. Another commenter noted that in the commenter's State, the minimum graduation requirements almost guarantee a rigorous secondary school program of study for all graduates. This commenter expressed concern that TS applicants in areas that have these rigorous graduation requirements would be allowed fewer points for project need under § 643.21(a)(5) and that this result would be unfair to the students in those areas or States that have been proactive by setting high standards for high school graduation. Another commenter questioned the use of the term "regular" diploma noting that, beginning in 2014, a "regular" diploma in the commenter's State would be the same as a diploma for completing the State's rigorous curriculum. Those students not taking a rigorous secondary school program would receive a "modified" diploma. The commenter stated that by using the term "regular" in the regulations, all TS students in the State would have to meet the rigorous curriculum standards.

Discussion: The proposed criteria for evaluating the need for a TS project reflect the changes made by sections 403(a)(5) and 403(b)(1) of the HEOA to sections 402A(f)(3)(A) and 402B(a) of the HEA, respectively. The new criteria reflected in § 643.21(a) align with the purpose of the TS program and with the new statutory outcome criteria for the program. Therefore, we do not have the discretion to revise § 643.21(a) as requested by the commenter.

The selection criteria require the applicant to provide in the application the data the peer reviewers need to assess the extent to which an applicant's designated target area and target schools need the services of a TS project. Further, the data provided in the *Need* section of the application provide baseline data that the peer reviewers use to evaluate the appropriateness of the applicant's proposed project objectives (see § 643.21(b)) and the quality of the applicant's plan of operation for addressing the identified needs (see § 643.21(c)).

In responding to the selection criteria, an applicant is expected to present the required data and discuss how the data support the need for a TS project in the proposed target area and target schools. With regard to selection criteria for which the target schools do not collect the required information, the applicant, to the extent appropriate, may use other data sources (e.g., State or census data) and describe how these data relate to the criteria and demonstrate a need for a TS project in the target area and target schools. Although some applicants may have difficulty securing certain data, all applicants should be able to provide the data required for most of the criteria. The Department believes that it is the responsibility of applicants to judge the need for TS services among potential target schools and to present data that supports the need for a TS project in the proposed target schools.

We do not believe the *Need* criteria will disadvantage an applicant providing services in rural communities because the applicant can justify the need for a TS project by presenting their data in the context of the geographic area in which it is providing services. Further, the applicant does not need to compare its data with data from other geographic areas (e.g., urban schools).

The Secretary commends those States that have set high standards for high school graduation and the *Need* criteria in the TS regulations do not conflict with such standards. Under § 643.21(a)(5), an applicant can demonstrate a need for a TS project by providing data on the extent to which the target secondary schools do not offer their students the courses or academic support to complete a rigorous secondary school program of study *or* have low participation by low-income or first-generation students in such courses. Therefore, an applicant can show the need for a TS project in schools that have high academic standards for high school graduation if TS eligible students are not taking rigorous courses. The Secretary also believes that the extent to which TS eligible students succeed in completing rigorous courses is an important indicator of need. Therefore, we have added the extent to which low-income or first generation students in target secondary schools succeed in rigorous secondary school program of study courses as an indicator of need.

With regard to the commenter's concern about the use of the term "regular diploma," we do not have the discretion to change the regulatory language at issue because it is required by sections 402A(f)(3)(A)(iii) and (f)(3)(A)(iv) of the HEA, which mandate that the TS program include the following two measures: (1) The extent to which participants graduate from secondary school with a regular secondary school diploma in the standard number of years; and (2) the extent to which participants complete a rigorous secondary school program of study.

Changes: The Secretary has amended proposed § 643.21(a)(5) by adding the words "or low success" after the word "participation."

Comment: One commenter expressed concern that the Need criteria do not

adequately consider students' achievement and performance in their target schools. The commenter stated that proposed § 643.21(a) does not reflect the purpose of the TS program, which he believes is to promote equal educational access and to eliminate barriers to higher education for low-income students. The commenter suggested that persistence and graduation rates are not an accurate reflection of student performance and achievement within schools in the lowest income communities. The commenter suggested that in addition to the points awarded for low high school persistence, graduation, and college completion, points also should be given for low student achievement and low standardized test scores in the target schools or areas.

Discussion: We agree with the commenter that low academic achievement and low standardized test scores of students in the target schools are other indicators of need for a TS project. Therefore, we have revised the criteria in § 643.21(a)(6) to make these changes. We have also redistributed the points assigned to the *Need* criteria to better reflect the relative importance of each of the criteria.

Changes: We have revised the criteria in § 643.21(a)(6) to include low academic achievement and low standardized test scores of students enrolled in the target schools as examples of other indicators of need for a TS project. We have also reduced the number of points assigned to the criteria in § 643.21(a)(1)—high number or percentage of low-income families residing in the target area or low-income students attending the target schools—from six points to four points. Finally, we have increased the number of points assigned to the criteria in § 643.21(a)(6) from four points to six points.

What selection criteria does the Secretary use? Objectives. (§ 643.21(b))

Comment: Several commenters suggested that proposed § 643.21(b)(4) and (b)(5), which would require grantees to track participants through postsecondary completion is not within the scope or purpose or the TS program. These commenters asserted that the HEA only requires projects to encourage and prepare participants for "enrollment" into postsecondary programs. Some commenters also suggested that the tracking requirement for this criterion is unrealistic based on the high number of participants that are served by a TS project.

Several commenters requested clarification regarding whether grantees will need to track all graduates through postsecondary completion or just those who participated in a rigorous secondary school program of study. Several commenters suggested that grantees only be required to include in the random selection process for tracking postsecondary completion seniors that graduate from high school during the project year. Several commenters requested that a more feasible requirement would be to request postsecondary acceptance rates or "college going rates" because they believe that the criterion regarding tracking postsecondary enrollment and completion discriminates against high schools that do not track these outcomes and that there is no reasonable method to collect this data accurately.

Other commenters suggested that projects should not be held responsible for students' postsecondary degree attainment, which requires tracking for four to six years after each graduating class and will require projects to follow the academic progress of these students once they enter college even though the TS program is not providing any services during this time. These commenters expressed concern that this criterion does not consider the many factors that determine whether or not students will be successful in postsecondary education.

One commenter requested that we consider revising the regulations to avoid imposing mandatory, inefficient, and unreasonable tracking and sampling methods. Specifically, the commenter recommended that, because sampling and other tracking methods will increase the burden on programs, we should eliminate the sampling requirement altogether and instead limit tracking of postsecondary completion to only current year participants who complete secondary school during the current project year.

Discussion: Section 402A(f)(3)(A)(vi) of the HEA, as amended by section 403(a)(5) of the HEOA, requires the Department to use postsecondary education completion, if practicable, in evaluating the quality and effectiveness of a TS project. Because TS projects serve relatively large numbers of participants, we recognize that it may be difficult for the project to track all participants through completion of postsecondary education. Therefore, a TS project may track a randomly selected sample of its participants. The purpose of § 643.22(d)(6) is to reduce, not increase, the burden on grantees. A grantee, however, is not required to use a sample but may choose to track all participants that complete secondary schools and enroll in postsecondary education.

The Secretary plans, subject to meeting the requirements of the Paperwork Reduction Act of 1995, to establish standard objectives related to postsecondary completion and provide the sampling parameters in the **Federal Register** notice inviting applications and the application package for the TS program.

Changes: None.

What selection criteria does the Secretary use? Plan of Operation: The plan to identify and select eligible project participants. (§ 643.21(c)(2))

Comment: Some commenters requested that § 643.21(c)(2), regarding the applicant's plan for identifying and selecting eligible participants, be revised to track current § 643.21(c)(2), which requires applicants to have a plan to identify and select eligible participants and ensure their participation without regard to race, color, national origin, gender, or disability.

Discussion: In developing proposed § 643.21(c)(2), the Department elected not to retain the selection criterion requiring applicants to have a plan to ensure participants' participation without regard to race, color, national origin, gender or disability because we believed that this language was duplicative of other regulations. Every applicant for Federal financial assistance must submit an assurance to the Department that it will comply with the Federal civil rights laws (see 34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23). Further, grantees under the TRIO programs and other programs funded by the Department are required to comply with Federal laws that prohibit discrimination on the basis of race, color, national origin, sex, handicap, or age (see 34 CFR 75.500, § 643.6(a)(2)).

Changes: None.

What selection criteria does the Secretary use? Plan of Operation: The plan to identify and select eligible project participants, and the plan regarding a rigorous secondary school program of study. (§ 643.21(c)(2) and (4)) and Number of Participants (§ 643.32(b))

Comment: Some commenters applauded the Secretary for proposing to include in the selection criteria the requirement that applicants have a plan to identify and select eligible participants and to provide TS services for individuals who need them to complete a rigorous secondary school program of study. The commenters requested guidance from the Department on its expectations regarding the number or percentage of

participants that would have to be served in a rigorous program under these selection criteria.

Some commenters expressed concern that the selection criteria requiring grantees to assist students to complete a rigorous curriculum (§ 643.21(c)(4)) would place grantees serving rural areas at a serious disadvantage in comparison to those serving urban areas. The commenters argued that in order to serve the required number of participants, a TS project serving a rural area typically serves more target schools and a larger geographic area, which increases project costs, particularly staff travel costs. Further, the commenters noted that many small rural schools do not offer all the courses a student would need to complete a rigorous secondary school program of study.

Many commenters expressed concern that requiring grantees to assist students to complete a rigorous curriculum would add costs for a grantee. These commenters stated that providing these services would require grantees to hire staff with special skills needed to recruit, monitor, and track students in a rigorous curriculum program. The commenters suggested that, at the current funding level for this program, for a grantee to provide these types of rigorous curriculum services to at least 10 percent of the participants, it would need to reduce the number of participants from 600 (the currently required minimum) to 450. Other commenters noted that the increased costs of assisting students taking a rigorous curriculum under § 643.21(c)(4) and the new requirement to follow participants through postsecondary education in § 643.21(c)(5) would force current TS projects to serve fewer students than currently being served or reduce services.

Some commenters suggested that the selection criteria in § 643.21(c)(2) and (c)(4) will require projects to implement a two-tiered program of service delivery—the first tier would support the participants completing a rigorous curriculum and the second tier would provide college preparatory education for those participants not taking a rigorous secondary school program of study. The commenters argued that this two-tiered approach would force current projects to change their participant recruitment and selection strategies, hire additional staff, and reduce the number of students currently being served. These commenters also contended that, given the current budget crisis in local school districts, some projects would not be able to assist participants in completing a rigorous secondary school of study under § 643.21(c)(4) due to the unavailability of the curriculum and other resources.

Other commenters noted that the proposed changes requiring projects to provide intensive services appear to be very similar to the requirements of the Upward Bound program. Several commenters requested guidance regarding the delivery of services for students in a rigorous secondary school program of study who have different educational and developmental needs compared to traditional TS students.

Discussion: In amending the HEA, Congress substantially changed the purpose and goals of the TS program. By including in section 402A(f)(3)(A) of the HEA several new outcome criteria for evaluating the quality and effectiveness of TS projects, Congress effectively required all TS projects to expand the types of services provided. Prior to enactment of the HEOA, the statute did not prescribe any specific performance measures for TS projects; the current measures were established through regulations (see current § 643.22). The new statutory outcome criteria for assessing the success of a TS project include the following two new measures, which are not included in the current regulations: (1) The completion by participants of a rigorous secondary school program of study; and (2) to the extent practicable, completion by participants of postsecondary education. In addition, Congress amended section 402B of the HEA to require TS grantees to provide certain services; previously the HEA included only a list of "permissible" services that a grantee could choose to provide to participants. These final TS regulations appropriately reflect these statutory changes.

The Department acknowledges that many rural schools and low achieving high schools may not offer all of the courses needed to complete a rigorous secondary school program of study and recognizes that there will probably be some participants that will need more costly and intensive services, such as tutoring or tuition assistance to complete the requirements of a rigorous secondary school program of study.

In recognition of the additional costs that grantees likely will incur in providing the new services required by the HEOA, including the increased costs of assisting students taking a rigorous curriculum and following participants through postsecondary education, the Secretary revised § 643.32(b) by removing the requirement that grantees serve a specified minimum number of participants. Section 643.32(b) specifies that the Department will identify the minimum and maximum grant award amounts and the minimum number of participants a TS project must serve each year of the grant cycle in the **Federal Register** notice inviting applications for a competition. This practice will give the Department the flexibility to establish the minimum number of participants to be served based on the available resources and other priorities for each competition and to adjust these numbers for subsequent competitions based on our experience, changing priorities, and cost analyses.

The Department acknowledges that not all TS eligible students may be ready for a rigorous secondary school program of study. Therefore, the Secretary has revised proposed § 643.21(c)(4), which would have specified that we evaluate a TS applicant on a plan to provide services sufficient to enable TS participants to succeed in a rigorous program of study. Instead, the final regulations specify that we will evaluate a TS applicant on a plan to work in a coordinated, collaborative, and cost-effective manner as part of an overarching college access strategy with the target schools or school system and other programs for disadvantaged students to provide participants with access to and assistance in completing a rigorous secondary school program of study. We expect TS grantees to work with their target schools, students, and parents to explain the eligibility requirements for participation, and the services and activities that will be provided by the TS project and those services that will be provided through the target school or by other programs.

Further, because all TS participants will be encouraged to complete a rigorous curriculum, the Secretary has also revised proposed § 643.21(c)(2) by removing the requirement that an applicant present a plan for selecting individuals who would receive support to complete a rigorous secondary school program of study.

Although the new statutory outcome criteria for the TS program are somewhat similar to those for the UB program and will require new project goals and objectives for the TS program, the Department does not believe that Congress intended for the TS program to replicate or duplicate UB. For example, section 402C(c) of the HEA requires UB projects to provide instruction in mathematics through precalculus, laboratory science, foreign language, composition, and literature while TS projects need only provide "connections" to high quality academic tutoring services (section 402B(b)(1) of the HEA). The regulations properly reflect the differences between the programs.

Regarding the comment about students in a rigorous secondary school program of study who have different educational and developmental needs compared to traditional TS students, we recognize that students in a rigorous secondary school of study may have different educational and developmental needs than traditional TS students, most of whom have needed assistance in completing admission and financial aid applications, not academic support. Applicants for TS grants must design and implement new service delivery models that are consistent with the new statutory requirements and that balance intensity of services with strategic coordination with schools and other programs to carry out projects that are cost efficient and that best meet students' needs, including the needs of students in rigorous secondary school program of study.

Changes: We have amended proposed § 643.21(c)(2) to remove the selection criterion requiring an applicant to provide a plan for identifying and selecting participants for a rigorous secondary school program of study. Thus, final § 643.21(c)(2) requires only that an applicant provides a plan for identifying and selecting participants.

We also have removed the proposed criterion in § 643.21(c)(4) and replaced it with a criterion that requires an applicant to present a plan to work in a coordinated, collaborative, and cost-effective manner as part of an overarching college access strategy with the target schools or school system and other programs for disadvantaged students to provide participants with access to and assistance in completing a rigorous secondary school program of study.

In § 643.21(c)(5) we have removed from the proposed criterion the words "coordination with other programs for disadvantaged youth" to eliminate duplication of the provision we are adding to § 643.21(c)(4).

Finally, we have revised § 643.32(b) to specify that for each year of the project period, a grantee must serve at least the number of participants that the Secretary identifies in the **Federal Register** notice inviting applications for a competition, and to state that through this notice, the Secretary provides the minimum and maximum grant award amounts for the competition.

What selection criteria does the Secretary use? Plan of Operation: The plan to follow former participants as they enter, continue in, and complete postsecondary education. (§ 643.21(c)(6))

Comment: Some commenters objected to the proposed criteria in § 643.21(c)(6) that would require TS applicants to have a plan to follow former participants as they progress in postsecondary education. These commenters suggested that it is not reasonable, practicable, or economically feasible for the Department to judge the success and effectiveness of a TS project on the basis of the degree to which participants enter, continue in, and complete postsecondary programs when the project cannot provide retention services during the participants' college years.

Discussion: Section 402A(f)(3)(A)(v) and (f)(3)(A)(vi) of the HEA includes the enrollment in and completion of postsecondary education as an outcome criterion for the TS Program. To implement these statutory requirements, § 643.21(c)(6) requires applicants to have a plan to achieve goals in these areas.

Changes: None.

Comment: Some commenters requested that we define the phrase "complete postsecondary education," as it is used in § 643.21(c)(6). In particular, these commenters asked if completion of vocational and technical degree programs and/or other community college degrees would constitute completion of postsecondary education under this selection criterion. The commenters suggested that if the standard is the completion of a four-year degree, a project could not count TS participants enrolling in and completing community and junior colleges and career technology programs.

Discussion: For purposes of § 643.21, the Secretary considers programs of postsecondary education to include vocational and technical degree programs, associate degree programs, as well as bachelor degree programs. Because TS participants may enroll in all types of postsecondary programs, the project should present a plan to follow a sample of former participants through completion of their programs of postsecondary education.

Changes: None.

What selection criteria does the Secretary use? Applicant and Community Support: Resources secured through written commitments. (§ 643.21(d)(2))

Comment: Several commenters requested clarification of the selection criteria requiring that TS applicants get commitments from the community. Some commenters asked if an applicant that is an institution of higher education must get commitments from institutions other than the host institution. Other commenters expressed concern that secondary schools would not be interested in becoming educational partners with university-based projects because secondary schools are now eligible to apply for TS grants. The commenters stated that secondary school applicants would have an unfair advantage in a TS competition, because they could operate a TS project without getting commitments from colleges and universities while an applicant that is an institution of higher education or community-based organization would need commitments from the secondary schools to effectively serve the secondary school students participating in the TS project. The commenters recommended that secondary schools be held to the same selection criteria as higher education institutions and other eligible entities.

Discussion: The intent of § 643.21(d)(2) is to ensure a fair and equitable competition by requiring that all applicants secure commitments from various entities within the community. The Secretary believes that schools and community organizations should secure commitments from institutions of higher education so that these organizations have the full scope of partners necessary to implement a successful TS program. The Secretary does not agree with the contention that possible applicants in the secondary school systems would not be interested in partnering with higher education institutions, community organizations, or others. Nonetheless, based on the comments received, the Secretary believes that the wording of proposed § 643.21(d)(2) may be unclear. For this reason, we have made clarifying changes to this provision.

Changes: We have revised proposed § 643.21(d)(2) to state that: (i) An applicant that is an institution of higher education must include in its application commitments from the target schools and community organizations; (ii) an applicant that is a secondary school must include in its application commitments from institutions of higher education, community organizations, and as appropriate, other secondary schools and the school district; and (iii) an applicant that is a community organization must include in its application commitments from the target schools and institutions of higher education.

How does the Secretary evaluate prior experience? (§ 643.22)

Comment: Some commenters asked that we revise § 643.22 to clarify the meaning of the term "prior participants" for purposes of the PE evaluation in § 643.22(d)(3) through (d)(5). These commenters requested that TS projects not be required to track prior participants through postsecondary completion. The commenters stated that a requirement to track prior participants after they participate in the program is an undue burden on a TS project given the number of students served and the amount of funding per participant. The commenters argued that grantees should not be required to track non-active participants who graduated from the program years earlier.

Several commenters also asked that § 643.22(d)(5) be changed to permit participants' postsecondary enrollment to be by the "fall or spring" term immediately following the school year, instead of by the "fall" term immediately following the school year because some participants may need to delay enrollment in postsecondary education.

Discussion: As noted earlier in this preamble, with the enactment of the HEOA, the HEA includes new outcome criteria for the TS program, including: Graduation from secondary school with a regular secondary school diploma in the standard number of years; the completion of a rigorous secondary school program of study; and postsecondary enrollment. The Department is required to use these criteria to assess the success of a TS project. However, the Department acknowledges that TS projects serve large numbers of participants each year and may not have the resources needed to track prior participants through high school and into postsecondary education. Therefore, the Department is revising § 643.22(d)(3), (d)(4), and (d)(5) by removing the requirement to track prior participants and clarifying, in § 643.22(d)(3) and (d)(4), that grantees must track participants served during the project year.

Further, we have decided to revise the outcome criterion in § 643.22(d)(5) to focus on participants' enrollment in programs of postsecondary education within the time period specified in the approved objective rather than stating in the regulation the time frame for measurement. The Secretary will, subject to meeting the requirements of the Paperwork Reduction Act of 1995, include in the application package for the TS programs a standard objective related to postsecondary enrollment that includes the time frame for measuring postsecondary enrollment. This will give the Secretary the flexibility to change the period of measurement for each grant competition based on changing situations.

We have also revised the outcome criterion in § 643.22(d)(6) to clarify that a grantee must track the postsecondary completion for only those participants who enrolled in a program of postsecondary education. The option to use a randomly selected sample of participants to track this postsecondary completion should reduce the reporting burden on grantees.

For consistency with the regulatory language used in § 643.22(d)(2), (d)(3) and (d)(6), we have deleted the words "the percentage of" in § 643.22(d)(4) and (d)(5). In addition, we have revised § 643.22(d)(4) by removing the words "who enrolled in and" before the words "completed a rigorous secondary school program of study" to be consistent with the changes we have made to §§ 643.3(b), 643.11(a), 643.21(c)(2) and (c)(4) and 643.32(b)(5), which now include additional participant eligibility and recordkeeping requirements for students in a rigorous program of study.

Changes: We have changed proposed § 643.22(d)(3), (d)(4), and (d)(5) by removing the reference to prior participants in each of these three provisions. In § 643.22(d)(3) and (d)(4), we have clarified that current participants are "participants served during the project year." In addition, in § 643.22(d)(4) and (d)(5), we have removed the words "the percentage of" and in § 643.22(d)(4) we have also removed the words "enrolled in and."

Further, we have changed proposed § 643.22(d)(5) by replacing the words "by the fall term immediately following the school year" with the words "within the time period specified in the approved objective" and have revised § 643.22(d)(6) by replacing the words "regarding the completion of" with the words "project participants who enrolled in and completed."

Comment: Some commenters stated that the 1.5 PE points in § 643.22(d)(6) for postsecondary completion should be reduced because there are many variables outside the control of the TS project that could affect this outcome. The commenters recommended that only one-half of one point (0.5 point) be assigned to this criterion because the participants' postsecondary completion may not be based on direct services the project provides to participants.

Discussion: The Secretary does not agree with the commenters' suggestion to reduce the points allocated to the postsecondary-completion criterion. The Secretary believes that one-half of one point is a negligible amount, which goes against the spirit of the HEA. The 1.5 points for this criterion in § 643.22(d)(6) represents only 10 percent of the total PE points a project could earn.

Changes: None.

What are allowable costs? (§ 643.30)

Comment: A number of commenters suggested including several additional costs to the list of allowable costs for the TS program in § 643.30. Some commenters recommended that we add as an allowable cost, participant meals while on field trips, in tutoring sessions, or at other events because many participants cannot afford to pay for meals while on field trips or at other project sponsored events. Some commenters recommended that we add transportation and meals for parents to attend certain workshops and college visits.

Other commenters suggested that we add an allowable cost provision for cultural events, including associated transportation, meals, and admission fees, because cultural events are permitted under § 643.4(b)(4) and TS participants would benefit from exposure to these events. Commenters also recommended that costs associated with hiring instructional staff, evening and weekend staff, or retraining or renegotiating contracts with current staff to provide tutoring for rigorous coursework, financial literacy programming, or college entrance exam preparation be allowable.

Commenters also suggested that testing fees, including general educational development (GED) exam fees, should be allowable, as these costs are increasing and TS projects are not always able to attain fee waivers.

Some commenters requested clarification regarding the Department's addition of the word "project" before the word "staff" in § 643.30(a). These commenters noted that the provision now appears to prohibit projects from paying meals and lodging for chaperones and part-time summer staff.

Discussion: Section 643.30(a) permits a project to pay transportation, meals, and, if necessary, lodging, for participants and staff in a number of situations, including for field trips to observe and meet with persons employed in various career fields. However, the TS program is a low cost per participant program and we do not believe adding meals as an allowable cost for all field trips, tutoring sessions, or other events, or adding transportation and meals for parents to attend certain workshops and college visits would be the best use of limited resources.

Section 643.30(c) establishes the conditions upon which a TS project may pay for college applications or entrance examinations. We have revised § 643.30(c) to include fees that are required for alternative education examinations, including the GED. Further, as one of the required services, a TS project must assist participants in preparing for college entrance examinations; however, because the TS program is a low cost per participant program, we do not believe it is reasonable for a TS project to pay a third party for college entrance exam preparation for individual participants.

Regarding an allowable cost provision for cultural events, the Department believes that field trips and campus visits, which are allowable costs, may have cultural benefits for participants. While we encourage grantees to incorporate cultural events into these types of trips, we do not agree that cultural events should be added to the regulations as a separate allowable cost category. While the Department understands the value of cultural events, we believe that adding them as an allowable cost would divert scarce resources away from direct college-access services. Connections to tutoring and financial and economic literacy services are required services of the TS program; therefore, costs associated with providing these services would be allowable, including hiring or retraining staff members to provide these services.

Nonetheless, the Department encourages grantees to seek low cost alternatives to hiring instructional staff, such as seeking connections to existing tutoring or financial literacy services for TS participants. Further, TS grantees should coordinate with the target schools and other organizations in the community to ensure that participants have access to the full range of services required for success.

Finally, the term project staff, as used in § 643.30(a), includes part-time staff, including summer staff, and volunteers responsible for chaperoning TS participants on field trips and campus visits; therefore project funds may be used to pay for these individuals' meals and lodging.

Changes: We have revised § 643.30(c) to include examination fees for alternative education programs if a waiver of the fee is unavailable and the fee is paid by the grantee to a third party on behalf of a participant.

Comment: One commenter noted that transportation costs for participants in a rigorous curriculum in rural areas would be costly and may use up limited TS funds. The commenter argued that level funding has damaged a TS project's ability to provide additional transportation costs, particularly in light of the costs of the fringe benefits required to be provided to TS staff as mandated by most State institutions. Other commenters argued that projects do not have sufficient funding to provide tuition for participants. Some commenters also noted that payment of tuition for a few participants may be perceived as discriminatory by participants pursuing regular secondary school diplomas.

Discussion: We appreciate the commenter's concern that the costs associated with transportation of participants in rural areas and payment of tuition would use up limited TS funding. We also appreciate commenters' concern that payment of tuition for a few participants may be perceived as discriminatory. On the other hand, during the negotiated rulemaking sessions, some non-Federal negotiators argued that allowing grantees to use grant funds for this purpose was necessary to meet the goals of the statute. As discussed earlier in this preamble, one of the new statutory outcome criteria for the TS program requires that TS projects report data on the completion by participants of a rigorous secondary school program of study that would make them eligible for grants under the Academic Competitiveness Grants (ACG) Program. Some non-Federal negotiators recommended that TS grantees be authorized to pay transportation and tuition costs for participants who are trying to complete a rigorous program, when courses required for the program are not offered at the secondary school the participant attends or at another local school. The Department decided to allow grantees to use program funds for this purpose. The regulations do not require TS grantees to provide tuition or transportation costs for participants but authorizes this expense as an allowable cost to assist students in completing a rigorous secondary school program of study.

Changes: None.

Comment: Some commenters suggested allowing TS program funds to be used to pay for "service agreements" for computer systems and related technology because many technology systems may require service agreements to cover repairs and software packages.

Discussion: We agree with the suggestion made by the commenters.

Changes: We have amended § 643.30(f) and (g) to include service agreements as an allowable cost.

Comment: A few commenters recommended that we revise § 643.30(h)(3) to allow TS funds to be used to pay for tuition costs for accredited courses offered online because the availability of online courses has increased and allowing TS funds to be used for these courses could increase student access to rigorous curriculum study. One commenter recommended revising § 643.30(h)(3) to allow TS funds to be used to pay for coursework that may be offered by a college at sites other than the college campus, such as online or at a secondary school campus. Other commenters suggested allowing costs for Advanced Placement (AP) and the Idaho Digital Learning Academy coursework as these options may be available at participants' high schools and may cost less than postsecondary tuition.

Some commenters noted that in the commenters' State, students must earn a grade of "C" or better in a series of courses to complete a rigorous secondary school program of study. Due to budget constraints, however, many high schools will not allow students to repeat a course in which the student earned a "D," since the student would still receive credit for the course. Despite receiving credit in this case, the student would not be eligible to complete a rigorous secondary school program of study, unless the student was able to repeat the course and earn a grade of "C" or better. The commenter recommended that projects be allowed to provide tuition assistance for participants under this circumstance.

One commenter noted that one reason participants may not have access to rigorous coursework is that available slots in the courses are full due to overcrowding in the district. This commenter noted that under the current regulations, TS projects may only use TS funds to pay tuition for participants if "the course or a similar course is not offered at the secondary school that the participant attends or at another school within the participant's school district," which would not allow projects to assist participants who are not able to take a course due to overcrowding. The commenter recommended that the regulations permit projects to provide tuition assistance for these participants to take the needed courses elsewhere.

One commenter requested clarification as to whether text books and lab fees are allowable costs. Another commenter requested clarification on whether all eight criteria listed in the regulations must be met for a project to provide tuition assistance.

Discussion: We agree with the proposal to revise § 643.30(h)(3) to allow TS grantees to pay for courses taken through an accredited institution

of higher education, including online courses and courses provided at a site other than the institution's campus, such as at a secondary school campus, provided the course meets all the conditions in § 643.30(h). Section 643.30(h)(3) does not authorize TS grantees to pay for courses provided by accredited institutions at the secondary school's campus if the course is generally available to students at the target schools through an arrangement between the school district and the institution of higher education (e.g., dual enrollment courses).

We do not agree that TS grant funds should be used to pay for Advanced Placement (AP) and other courses available through the participant's high school, for students to repeat courses to receive a higher grade, or for participants to enroll elsewhere in cases of overcrowded courses that are already offered at their schools or in their school districts. The purpose of § 643.30(h) is to allow grantees to pay the costs of courses that are part of a rigorous secondary school program of study only in exceptional situations in which a participant does not have access to a course or courses through his or her high school.

Furthermore, while we recognize that districts may face overcrowding for enrollment in some secondary school courses, we believe that applicants should partner closely with target schools and the school districts during pre-grant planning efforts to mitigate enrollment hurdles, to the extent practicable. We do not believe that limited project funds should be used to pay tuition for courses that are already offered in a participant's school or district. As part of the collaboration with the target schools, institutions of higher education and other community organizations, TS participants should be provided the same opportunities and access to rigorous courses as other students in the target schools.

Finally, project funds may be used to cover tuition and required textbooks and lab fees only if all eight criteria listed in § 643.30(h) have been met.

Changes: We have amended proposed § 643.30(h)(3) to authorize the use of TS funds to pay for courses taken through an accredited institution of higher education.

Comment: A few commenters recommended allowing TS projects to pay stipends to students in a rigorous secondary school program of study to help defray transportation costs when a student has to stay after school or obtain additional tutoring. The commenters requested that participant stipends be added to the list of allowable costs so that TS will offer benefits comparable to those in other programs such as GEAR UP and Upward Bound.

Discussion: The cost for transportation for participants to receive instruction, tutoring, or other services provided by the project that is part of a rigorous secondary school program of study is an allowable cost in § 643.30(a)(4). We do not agree with the proposal to authorize the use of TS funds to pay stipends to participants. Stipends are only permitted in the TRIO programs when they are specifically authorized by statute. The HEA does not authorize stipends in the TS program.

Changes: None.

What other requirements must a grantee meet?

Number of Participants

Comment: We received three comments on the proposal to remove the minimum number of participants from the regulations. One commenter noted that the provision would favor newer, smaller projects while another commenter expressed concern about the possible fluctuation in participant numbers from one grant cycle to the next which might jeopardize relationships with the target schools if the project had to reduce the number of student services. Another commenter hoped that the Department would consider the higher costs of providing services to participants taking a rigorous program of study and the varying cost of living indexes throughout the country in determining the minimum number of participants for a competition.

Discussion: In recognition of the additional costs that grantees likely will incur in providing the new services required or permitted by the HEOA, including the increased costs of assisting students taking a rigorous curriculum and following participants through postsecondary education, the Secretary is not including in § 643.32(b) the requirement that grantees serve a specified minimum number of participants. Instead, as discussed elsewhere in this preamble, we believe it is appropriate for the Secretary to identify the minimum and maximum grant award amounts and the minimum number of participants a TS project must serve each year of the grant cycle in the **Federal Register** notice inviting applications for a competition. This practice will give the Department the flexibility to establish the minimum number of participants to be served based on the available resources and priorities for each competition and to adjust these numbers for subsequent competitions based on our experience, changing priorities, and cost analyses.

Changes: We have revised § 643.32(b) to clarify that a grantee must serve at least the number of participants that the Secretary identifies in the application notice for the competition.

List of Courses Taken by Participants (proposed § 643.32(b)(5))

Comment: Commenters expressed concerns about proposed § 643.32(b)(5), which would have required TS grantees to maintain a list of courses taken by participants that receive support to complete a rigorous secondary school program of study. The commenters argued that this requirement would impose an additional burden on grantees and increase the costs of staff time for recordkeeping and the utilization of office resources.

Discussion: The Secretary agrees with the commenters that the requirement for a list of courses would impose a significant recordkeeping burden that would outweigh the benefits of the practice and, therefore, has deleted proposed § 643.32(b)(5).

Changes: The Secretary is not including proposed § 643.32(b)(5) in these final regulations.

Comment: None.

Discussion: Based on comments we received regarding proposed § 643.11(b), we have revised the required assurance in § 643.11(b). Because of the change to § 643.11(b), we believe it is necessary to add a new § 643.32(c)(5) to require that for each TS participant, the grantee, to the extent practicable, must maintain a record of any services the participant receives during the project year under other TRIO or federally funded programs that serve populations similar to those served under the TS program. This provision has been added to help ensure that the limited funds available under TRIO, GEAR UP, and other programs for disadvantaged students are used effectively and efficiently by minimizing the duplication of services through coordination of activities.

Change: A new § 643.32(c)(5) has been added, requiring grantees to maintain a record of any services TS participants receive during the project year from another TRIO program or federally funded program that serves populations similar to those served under the TS program.

Project Director (proposed § 643.32(c))

Comment: Many commenters suggested that proposed § 643.32(c), which restricts a grant program director from administering more than three programs, was confusing. One commenter also suggested that the

Department strike the words "one or two," so that project directors may administer more than three programs in order to foster collaboration and cost savings.

Discussion: The Secretary agrees that proposed § 643.32(c)(3) may have been confusing and has clarified the regulation. The Secretary, however, does not agree with the recommendation to permit a project director to administer more than three programs without receiving a waiver. We acknowledge that permitting a project director to administer more than one program encourages collaboration among the programs and may provide cost savings. However, project directors responsible for more than three programs may not be able to effectively manage each of the programs. In situations in which a grantee wants the project director to administer more than three TRIO or similar programs, the grantee must submit a detailed justification to the Secretary for approval.

Changes: We have revised proposed § 643.32(c)(3) (final § 643.32(d)(3)) to clarify the standard the Secretary will use to consider requests for a waiver of the restriction on the number of programs a project director may administer.

Educational Opportunity Centers (34 CFR Part 644)

Section 403(f) of the HEOA made changes to the requirements for the Educational Opportunity Centers (EOC) program in section 402F of the HEA. The HEA now includes a requirement that EOC projects be designed "to improve the financial literacy and economic literary of students" and education and counseling services "designed to improve the financial and economic literacy of students" as services an EOC project may provide.

The Department received several comments and questions about this new program requirement. The commenters expressed concern that EOC projects do not have sufficient time with participants to "improve" their financial and economic literacy, in addition to meeting all other programmatic requirements and needs of participants. Another commenter was concerned that the additional services required of EOC projects, in addition to the new populations to be served, will not be supported by increased funding. One commenter expressed the belief that the proposed regulations would require EOC grantees to focus on fully preparing adult participants for postsecondary education programs, where previously the program focused on simply providing information about opportunities to attend college and to assist participants with college admission and financial aid applications.

We address specific comments on the changes to the EOC program regulations in the following section. The Department also plans to provide applicants with additional guidance on the new program requirements through the published application materials. In addition, the Department will conduct 10 pre-application workshops to assist entities interested in applying for EOC grants and will post a list of frequently asked questions on the TRIO Programs Web site at: *http://www.ed.gov/about/offices/list/ope/trio/index.html.*

Educational Opportunity Centers (34 CFR Part 644)

What is the Educational Opportunity Centers program? (§ 644.1)

Comment: Several commenters stated that § 644.1 should be revised to specifically mention that EOC projects provide assistance for individuals who have dropped out of secondary schools because projects are assessed, in the objectives and prior experience sections, on their success in assisting participants without a secondary school diploma or its equivalent. Some commenters also expressed concerns that EOC projects do not have sufficient time with participants to "improve" their financial and economic literacy. These commenters suggested that the word "improve" in § 644.1 be changed to "provide."

Discussion: To ensure consistency between the statutory language in section 402F(a) of the HEA, which describes the program authority and services to be provided under the EOC program, and § 644.1, we decline to make the changes requested by the commenters.

Changes: None.

Who is eligible for a grant? (§ 644.2)

Comment: Several commenters questioned the fact that § 644.2 now includes secondary schools as eligible applicants. Specifically, they expressed concern that because the target population of EOC participants is adults, secondary schools would be less capable of operating an EOC project than organizations that serve primarily adult populations, such as immigrant education programs, employment agencies, or postsecondary institutions. Two commenters suggested that secondary schools should be allowed to receive an EOC grant only if there are no similar projects in the area designed to assist adult students.

Discussion: We do not have the authority to remove secondary schools from the list of eligible applicants or to limit their eligibility under this program because section 402A(b)(1) of the HEA specifically includes secondary schools among the entities eligible to receive EOC grants.

Changes: None.

What services may a project provide? (§ 644.4)

Comment: Some commenters expressed concern about § 644.4(e), which includes education and counseling services designed to improve the financial and economic literacy of participants as a permissible service for EOC grantees. One commenter wanted to know whether participants must be tested on their financial literacy to determine whether they have benefitted from the training. Another commenter expressed concern that the additional services for the new populations listed in § 644.4(k) would not be supported by increased funding.

Discussion: Section 644.4 reflects the statutory changes made to the list of services that an EOC project may provide, as specified in section 402F(b) of the HEA. An EOC project may, but is not required, to provide these services listed in § 644.4. While an EOC project may provide education and counseling services designed to improve the financial and economic literacy of participants, there is no requirement that participants be tested to determine if they benefitted from the services.

Changes: None.

What selection criteria does the Secretary use? (§ 644.21)

Objectives (§ 644.21(b))

Comment: A number of commenters stated that they believed that the point value assigned to the first two objectives in proposed § 644.21(b) (*i.e.,* (a) enrollment of participants who do not have a secondary school diploma or its recognized equivalent in programs leading to a secondary school diploma or its equivalent and (b) postsecondary enrollment) should be weighted less than or equal to the second two objectives (*i.e.,* financial aid assistance and college admissions assistance) because EOC staff spend most of their resources and time assisting participants with financial aid and college admission assistance. One commenter recommended reducing the points for the postsecondary enrollment objective to three points and increasing the points for financial assistance and college admission assistance objectives to one and one half points each.

One commenter expressed concern that the weighting of the points for the objective on enrollment in secondary education was less than for postsecondary enrollment and that this strongly suggested that working with persons without a secondary education diploma or its equivalent has a lesser value than focusing on postsecondary enrollment of participants. The commenter further stated that it would appear more equitable if greater value were placed on efforts to assist persons in continuing and completing their secondary education and to assist those same persons in enrolling in a postsecondary program. Therefore, the commenter recommended that we provide four points for enrolling in programs that lead to a secondary degree or its equivalent and two points for postsecondary enrollment.

Several commenters recommended that we revise the postsecondary enrollment objective in § 644.21(b)(2) and the related PE criterion in § 644.22(d)(2) by eliminating the restriction that the participants be secondary school graduates before enrolling in postsecondary education. The commenters recommended these changes because, they argued, many postsecondary institutions with open enrollment policies accept individuals who have not first obtained a high school diploma or its equivalent. Some commenters expressed concern that it would be difficult for projects to fulfill the postsecondary enrollment objective because many adult education programs are overbooked and underfunded, resulting in EOC participants being placed on waiting lists to either participate in adult education classes or take the GED exam.

Numerous commenters recommended that the word "student" in §§ 644.21(b)(3) and (b)(4) be replaced with the word "participant" to better reflect the population assisted by EOC grantees. One commenter also recommended that EOC grantees be evaluated on how many participants applied for financial aid, rather than how many participants were assisted with applications for financial aid, and on how many participants actually applied for admission, rather than how many participants were assisted with college applications.

Discussion: The objectives for an EOC project in § 644.21(b) and the related PE criterion in § 644.22(d) generally reflect the statutory outcome criteria in section 402A(f)(3)(E) of the HEA. With regard to the postsecondary enrollment objective in § 644.21(b)(2) and the related PE criterion in § 644.22(d)(2), the language referenced is in section 402A(f)(3)(E) of the HEA and cannot be changed as the commenters requested.

The Secretary agrees with the commenters' recommendation to increase the number of points assigned to the student financial aid and the college admission objectives, but we do not agree that the points assigned to these two criteria should be equal to or greater than the points assigned to the postsecondary enrollment criterion. Further, we do not agree with the commenter that the points for the secondary school diploma objective should be equal to or greater than the postsecondary enrollment objective since postsecondary enrollment is the primary goal of the program. Nonetheless, we have reduced the number of points assigned to the postsecondary enrollment objective and increased the points assigned to the financial aid and college admission objectives. While we agree that assisting participants in completing financial aid and college admission applications are valuable services of the program, they are not the ultimate goal of EOC. We believe that educational attainment is the mission of the program and, that secondary school completion and postsecondary enrollment are the more important performance measures for the program and should be rewarded accordingly.

The objectives for an EOC project in § 644.21(b) and the related PE criterion in § 644.22(d) generally reflect the language used for the statutory outcome criteria in section 402A(f)(3)(E) of the HEA. With regard to the postsecondary enrollment objective in § 644.21(b)(2) and the related PE criterion in § 644.22(d)(2), the language referenced is in section 402A(f)(3)(E) and cannot be changed as the commenters requested.

We have responded to the comment about eliminating the restriction that the participants be secondary school graduates before enrolling in postsecondary education in the preamble discussion section for comments on § 644.22(d)(2) through (d)(5) later in this preamble.

Finally, the Secretary agrees with the suggestion to change § 644.21(b)(3) and (b)(4) to better reflect the intent of the objective, which is to measure the extent to which participants completed financial aid and college admission applications. This change is consistent with the statutory language in section 402A(f)(3)(E)(iv) of the HEA.

Changes: The Secretary has revised the wording of the proposed objectives in § 644.21(b)(1) through (b)(5) to refer to: (1) Secondary school diploma or equivalent, (2) Postsecondary enrollment, (3) Financial aid applications, and (4) College admission applications. The Secretary has also revised § 644.21(b) by reducing the number of points assigned to the postsecondary enrollment objective to three points (see paragraph (b)(2)) and increasing the number of points for the financial aid applications and the college admission applications to 1.5 points each (see paragraphs (b)(3) and (b)(4), respectively).

What selection criteria does the Secretary use? Applicant and community support § 644.21(d)

Comment: All of the comments regarding our proposed changes to § 644.21(d) recommended that we not require EOC applicants to obtain commitments from secondary schools. The commenters argued that because most EOC participants are adults, most EOC projects do not work with secondary schools; therefore, it does not make sense to require EOC projects to secure commitments from secondary schools.

Discussion: The Secretary agrees with the commenters and has decided not to specifically evaluate the extent to which the applicant secures commitments of support from secondary schools. Further, the Secretary has decided that current § 644.21(d)(2) remains appropriate for the EOC program. The Department believes that this provision is appropriate because it allows, but does not require, the Secretary to consider the extent to which an applicant secures commitments from entities that may include secondary schools or institutions of higher education. We continue to believe that secondary schools and institutions of higher education may be able to offer assistance and resources to help an EOC project achieve its goals. For example, a secondary school or college may make its computer lab available for adult students to use in the evenings. Therefore, the Secretary encourages each EOC project to solicit commitments from many organizations within the community it serves, including, if appropriate, secondary schools.

Changes: We are not including the proposed changes to § 644.21(d) in the final regulations.

How does the Secretary evaluate prior experience?—Secondary school diploma; Postsecondary enrollment; Financial Aid Applications; College Admission Applications (§ 644.22(d)(2) through (d)(5))

Comment: A number of commenters expressed concern that awarding PE points for the number of participants

who receive a secondary school diploma conflicts with the selection criteria that focuses on the enrollment of participants in programs leading to a secondary school diploma or its equivalent. In addition, some commenters stated that it would be difficult for projects to meet this objective because many adult education programs are overbooked and underfunded, resulting in EOC participants being placed on waiting lists to participate in adult education classes and to take the GED exam.

Some commenters noted that while some postsecondary institutions permit attendance without a high school diploma, students who enroll this way cannot be counted as EOC successes if the project is only permitted to measure the number of participants who enroll "in programs leading to a secondary school diploma or its equivalent." The commenters suggested that the prior experience criterion in § 644.22(d)(2) be changed to refer to the number of participants who enroll in a continuing education program, so that the criterion includes participants without a high school diploma who enroll in secondary or postsecondary education. Alternatively, one commenter recommended that the Department eliminate this criterion entirely. Other commenters noted that § 644.22(d)(2) prevents projects from counting a participant who enrolls in postsecondary education prior to attaining a high school diploma as a success under the postsecondary enrollment, financial aid assistance, or college admission assistance criteria, which would use high school graduation or its equivalent in their calculations

Regarding the postsecondary enrollment criterion in § 644.22(d)(3), one commenter expressed concern that the phrase "secondary school graduates" in this criterion would preclude projects from counting a student who directly enrolls in postsecondary education, prior to attaining a high school diploma, as a success under the criterion. Several other commenters recommended extending the time period specified in this criterion (*i.e.,* the fall term immediately following the school year) in which a participant must enroll in a program of postsecondary education. Specifically, the commenters thought the period used to calculate this criterion consider the following factors: Many EOC participants enroll in community colleges, which are currently deferring admissions to the spring semester because of overcrowding; EOC participants enroll in nontraditional programs with rolling admissions dates that are not necessarily in the fall; and EOC participants often have greater burdens than the typical TRIO participants and, as a result, take longer to get into postsecondary programs than do low-income, first-generation students who did not drop out of high school.

Some commenters argued that the point value assigned to the postsecondary enrollment criterion in § 644.22(d)(3) should be less than or equal to the other objectives. A number of commenters also argued that the point value assigned to the financial aid and college admission criteria in § 644.22(d)(4) and (d)(5) should have the same or greater value than the other criteria because financial aid and college admissions assistance are key services and EOC staff spend the majority of their time assisting participants in these areas.

One commenter suggested that the Department change the point value assigned to the postsecondary enrollment criterion in § 644.22(d)(3) to four points and increase the point value for financial aid and college admissions assistance in § 644.22(d)(4) and (d)(5) to two and one half points each.

Discussion: We agree with the commenters that the proposed secondary school graduation objective criterion, under the selection criteria in § 644.21(b), should be changed to align with the PE outcome measures. (See the discussion and changes for § 644.21(b) earlier in this preamble.) We do not, however, agree with the commenters' suggestion that the Department remove or substantively revise the outcome criterion in § 644.22(d)(3) because this outcome criterion reflects the criterion described in section 402A(f)(3)(E)(ii) of the HEA.

While we sympathize with the concerns of the commenters who find that it is more difficult for the populations served by EOC projects to achieve educational goals because of the many barriers they face, the purpose of PE points is to reward the applicants who have met or exceeded their approved objectives. Applicants are expected to propose objectives that are ambitious and attainable given the plan they develop to address the needs of the target population in their application. The applicant's objectives should take into consideration known barriers to success, such as waitlists for participation in adult education programs in the applicant's target area.

Section 402A(f)(3)(E)(ii) of the HEA specifies that, for the postsecondary enrollment criterion, participants must be secondary school graduates. However, the financial aid and college admission applications criteria in the statute (see section 402A(f)(3)(E)(iv) of the HEA) do not require participants to be secondary school graduates; therefore, a project may count individuals who are not secondary school graduates for the purposes of these objectives.

In response to the comment about extending the time period in § 644.22(a)(3), the Department has decided to change the wording in § 644.22(d)(2) by adding after the word "equivalent" the words "within the time period specified in the approved objective" and, in § 644.22(d)(3), by removing the words "by the fall term immediately following the school year" and adding, in their place, the words "within the time period specified in the approved objective." The Secretary plans, subject to meeting the requirements of the Paperwork Reduction Act of 1995, to establish standard objectives for completion of secondary school and postsecondary enrollment that will include the time frame for measurement.

Recipients of regular secondary school diplomas or other equivalent degrees or certificates, including GEDs, are considered secondary school graduates for purposes of § 644.22(a)(3).

We agree with the commenters' recommendation to redistribute the weights for the PE criteria by reducing the number of points assigned to postsecondary enrollment and increasing the points assigned to financial aid assistance and college admission assistance. However, we do not agree that the points assigned to the financial aid assistance and college admission assistance criteria should be equal to or greater than the points assigned to the postsecondary enrollment criterion. As we mentioned earlier in this preamble, while assisting participants in completing financial aid and college admission applications is a valuable service of the program, it is not the ultimate goal of EOC. We believe that educational attainment is the mission of the program and therefore we believe secondary school completion and postsecondary enrollment are the most important performance measures for the program and should be rewarded accordingly. We have reduced the number of points for the postsecondary enrollment criterion in § 644.22(d)(3) to five points and increased the points assigned to the financial aid assistance and college admission assistance criteria in § 644.22(d)(4) and (d)(5) to two points each.

Further, to be consistent with the changes we made to the objectives in §§ 644.21(b)(3) and (b)(4), we have

revised the PE criteria related to financial aid and college admission assistance in § 644.22(d)(4) and (d)(5). Because EOC projects will report on program outcomes annually, in § 644.22(d)(2) and (d)(3), we have clarified that the objective applies only to "participants served during the project year." In § 644.22(d)(2) we have revised the wording of the criterion to clarify that we will be measuring the extent to which participants receive a secondary school diploma.

Changes: We have modified § 644.22(d)(2) to provide that we will consider whether the applicant met or exceeded its approved objective with regard to participants served during the project year who do not have a secondary school diploma or its equivalent who will receive a secondary school diploma or its equivalent within the time period specified in the approved objective.

In § 644.22(d)(3), we have changed the weight from 6 points to 5 points. We also have changed this section to provide that we will consider whether the applicant met or exceeded its approved objective with regard to the secondary school graduates served during the project year who enroll in programs of postsecondary education within the time period specified in the approved objective.

In § 644.22(d)(4), we have changed the weight from 1.5 points to 2 points. We also have revised this section to provide that we will consider whether the applicant met or exceeded its objective regarding participants applying for financial aid.

Finally, in § 644.22(d)(5), we have changed the weight from 1.5 points to 2 points. We also have amended § 644.22(d)(5) to provide that we will consider whether the applicant met or exceeded its objective regarding participants applying for college admission.

What are allowable costs? (§ 644.30)

Comment: One commenter suggested adding admissions fees to the allowable costs in § 644.30(a) and removing the requirement that a grantee obtain specific prior approval from the Secretary from this provision. The commenter argued that EOC project directors, like project directors in other TRIO programs, should have the authority to use EOC funds to pay for transportation, meals, admissions fees, and lodging when they determine these expenses are necessary and appropriate. One commenter suggested that we add service agreements as an allowable cost in § 644.30(f) because many technology systems may require service agreement to cover repairs and software packages. Several commenters argued that testing fees and the cost of tutoring for the general education development (GED) exam should be allowable costs for the program.

Discussion: Because EOC is a very low cost per participant program, the Secretary does not agree with the commenter's suggestion to include admissions fees as an allowable cost. The other allowable costs in § 644.30(a)—transportation, meals, and, with specific prior approval of the Secretary, lodging—are only allowable under the specific circumstances listed in the regulation. Furthermore, we do not agree with the commenter's recommendation to remove the provision that requires grantees to receive prior approval from the Secretary to use project funds to pay for lodging. Because payments for lodging divert scarce resources from direct college access services to participants, we believe that the expense is only justified in exceptional circumstances.

Section 644.30(c) establishes the conditions upon which an EOC project may pay for college applications or entrance examinations. In response to public comments, we have revised § 643.30(c) to include examination fees for alternative education programs. We also agree with the suggestion to include a service agreement as an allowable cost in § 644.30(f).

Changes: We have revised § 644.30(c) to include examination fees for alternative education programs as an allowable cost if a waiver of the fee is unavailable. We have also revised § 644.30(f) to include a service agreement as an allowable cost.

What other requirements must a grantee meet?

Number of Participants

Comment: None.

Discussion: As discussed in the preamble discussion regarding number of participants for the TS program, we believe it is appropriate for the Secretary to identify the minimum and maximum grant award amounts and the minimum number of participants a project must serve each year of the grant cycle in the **Federal Register** notice inviting applications for a competition. We believe this is true for EOC projects (along with UB, SSS and McNair projects) as well. This practice will give the Department the flexibility to establish the minimum number of participants to be served based on the available resources and other priorities for each competition and to adjust these numbers for subsequent competitions based on our experience, changing priorities, and cost analyses.

Changes: We have revised § 644.32(b) to clarify that a grantee must serve at least the number of participants that the Secretary identifies in the **Federal Register** notice inviting applications for the competition, and to state that through this notice, the Secretary provides the minimum and maximum grant award amounts for the competition.

Coordination Among Outreach Programs Serving Similar Populations (new § 644.32(c)(4))

Comment: None.

Discussion: Based on comments we received on proposed § 643.11(b) for the Talent Search program, we have added a provision regarding the coordination of efforts necessary for students served by more than one TRIO or other federally funded program to the additional requirements a grantee must meet under § 644.32(c)(4). Accordingly, § 644.32(c)(4) now requires an EOC grantee, to the extent practicable, to maintain a record of any services an EOC participant receives during the project year from another Federal TRIO program or other federally funded program serving similar populations. This change will help ensure that the limited funds available under TRIO and other programs for disadvantaged populations are used effectively and efficiently by minimizing the duplication of services through coordination of activities.

Change: A new § 644.32(c)(4) has been added to require grantees to maintain a record of any services EOC participants receive during the project year from another Federal TRIO program or other federally supported program serving similar populations.

Project Director (final § 644.32(d)(3))

Comment: None.

Discussion: For the reasons discussed in the preamble section on *Project Director* under the TS program (proposed § 643.32(c)(3), final § 643.32(d)(3)), we have revised proposed § 644.32(c)(3) (final § 644.32(d)(3)).

Changes: We have revised proposed § 644.32(c)(3) (final § 644.32(db)(3)) to clarify the standard the Secretary will use to consider requests for a waiver of the restriction on the number of programs a project director may administer.

Upward Bound (UB) Program (34 CFR Part 645)

Who is eligible for a grant? (§ 645.2)

Comment: Several commenters expressed concerns about the eligibility of secondary schools to apply for UB funding and the impact this change would have on the UB program. Specifically, commenters were concerned with how secondary schools might use UB funding. For example, some commenters questioned whether secondary schools would be able to fully implement an UB project for the intended population of students and expressed concern that secondary schools would try to use the UB funds to support activities and services for students not eligible for UB or to fund programs or initiatives previously supported with State or local funding. One commenter recommended making a secondary school eligible only if there is no institution of higher education that is interested in and capable of conducting a UB program in the target area. The commenter argued that this proposal would allow some secondary schools to be eligible for grants but would retain the current program structure in which UB grants are awarded primarily to postsecondary institutions.

Discussion: The Department does not have the authority to make the changes recommended by the commenters because the HEOA amended section 402A(b)(1) of the HEA to eliminate the restriction on the eligibility of a secondary school to receive UB grants. The commenters' suggestions are inconsistent with the HEA.

Changes: None.

Who is eligible to participate in an Upward Bound Project? (§ 645.3)

Comment: One commenter noted that, to reflect the HEA, § 645.3 should be amended to include as eligible participants individuals who are at high-risk of academic failure. One commenter also noted that although section 402C(e)(5) of the HEA states that no student will be denied participation in an UB project because he or she will enter the project after the ninth grade, § 645.3(d) still includes the requirement that a participant, at the time of initial selection, must not have entered the twelfth grade. In addition, one commenter suggested adding "not currently enrolled in postsecondary education" to the participant eligibility criteria for VUB participants to clarify that veterans currently enrolled in postsecondary education are not eligible project participants.

Discussion: We agree that § 645.3(b) needs to be amended to include an individual who has a high risk for academic failure as an eligible UB participant (see definitions in § 645.6 for *individual who has a high risk for academic failure* and a *veteran who has a high risk for academic failure).* We also agree with the commenter that we need to amend § 645.3(d); therefore, we have removed the words "but has not entered the twelfth grade." Therefore, if a senior is otherwise eligible, he or she could participate in an UB program during his or her last year of high school.

Nonetheless, the Secretary encourages regular UB and UBMS projects to select students before their senior year. A recent report entitled *Upward Bound and Upward Bound Math-Science Program Outcomes for Participants Expected to Graduate High School in 2004–05* [4] concluded that one consistent predictor of postsecondary enrollment among regular UB and UBMS participants is the length of their participation in the UB program. Those students who participated in the program longer were more likely to continue on to postsecondary education. For example, 55.3 percent of those who participated in the program for less than one year went on to college compared with 91.2 percent of those who participated for three years or more.

With regard to the commenter's recommendation regarding veterans in postsecondary education, we have not made any changes to this section of the final regulations because this issue was not addressed in the NPRM. However, it is the Department's view that VUB projects should not serve individuals enrolled in postsecondary education as the statutory goal of the UB program is to "generate the skills and motivation necessary for success in education beyond secondary school." Veterans served by VUB who enroll in postsecondary education can be served by the SSS program or other programs designed to provide academic support services for individuals enrolled in programs of postsecondary education.

Changes: We have added a new paragraph (b)(3) to § 645.3 to include as eligible participants individuals who have a high risk for academic failure, and we have removed § 645.3(d) which required that participants be initially selected to participate in the UB program prior to entering the twelfth grade.

[4] Report available at: *http://www2.ed.gov/about/offices/list/ope/trio/ub-ubms-outcomes-2004.doc.*

What definitions apply to the Upward Bound Program? (§ 645.6)

Comment: Comments were received concerning several definitions. Some commenters requested that the Department add definitions for the terms "postsecondary completion," "postsecondary," "postsecondary institution," and "postsecondary degree." Several comments were received regarding the definition of the term *individual who has a high risk for academic failure.* A few commenters requested clarification on whether one or all four of the "high risk" criteria in the definition had to be met for an individual to meet the definition. Other commenters expressed concern that the proposed criteria for high risk include using grade point averages (GPAs) (see paragraph (4) of the definition) and the State assessments in reading, language arts, and math (see paragraphs (1) and (2) of the definition) because these measures are not standard across the country.

Some commenters also questioned the proposed criteria related to the math courses completed by the ninth grade (see paragraph (3) of the definition). These commenters stated that most incoming ninth graders have not taken geometry and thus, almost all ninth graders could qualify for UB based on this definition. A few commenters suggested that qualifiers are needed in this paragraph to take into account the wide variety of math course sequences utilized by high schools and because situations can occur that may cause a participant to be deemed high risk even if he or she is on track to graduate. For instance, one commenter argued that, based on the proposed definition, a tenth grade student could be selected to participate in the UB project because he or she had not completed geometry until the end of the tenth grade, even though the student was making normal progress in completing the sequence of math courses needed for high school graduation and postsecondary enrollment.

A few commenters stated that the definition of *individual who has a high-risk for academic failure* should be removed because UB already requires that two-thirds of all participants be both low income and first generation. These commenters suggested that this definition would create an additional burden on grantees to monitor and select an additional student subgroup, and might compromise the program mission by opening eligibility to students who are not low income or first generation and moving the program

from college preparation to drop-out prevention.

We also received many comments on the definition of a *rigorous secondary school program of study*. We address these comments in detail in the summary of comments, discussion, and changes sections for § 643.7 (TS program) earlier in this preamble.

Discussion: The Department believes the terms "postsecondary completion," "postsecondary," "postsecondary institution," and "postsecondary degree" are commonly understood and therefore do not need to be defined in these regulations. However, when these terms are used in the standard PE objective, the Department will provide additional guidance in the published application materials as to how these terms apply to the PE outcome criteria.

With regard to the definition of the term *individual who has a high risk for academic failure* (regular UB participant), we use the word "or" between paragraphs (3) and (4) of the definition to convey that an individual only needs to meet one of the criteria to be considered an individual who has a high risk for academic failure.

We do not view the fact that State assessments are not standardized across the country to be a problem because individuals who do not meet proficiency levels on their State's tests or who have low GPAs are at risk of not completing high school or not being prepared for postsecondary education. We acknowledge that the traditional sequence of high school math courses includes taking algebra in ninth grade and geometry in tenth grade; therefore, a student should not be considered an individual who has a high risk for academic failure if he or she does not complete geometry until the end of tenth grade.

Changes: We have revised paragraph (3) of the definition of *individual who has a high risk for academic failure* to clarify that a student is at high risk for academic failure if he or she has not successfully completed pre-algebra or algebra by the beginning of the tenth grade.

What services do all Upward Bound projects provide? (§ 645.11)

Comment: A large number of commenters recommended that, under proposed § 645.11(a)(1) and (a)(2), the term "postsecondary" be deleted. In the case of proposed § 645.11(a)(1), the commenters believed that academic tutoring provided in high school seldom has a direct impact on student success in postsecondary level coursework. Commenters also stated that the regulations are unclear as to the timeframe in which the tutoring must be provided; they asked whether it would be while the student is enrolled in high school or in a postsecondary program, or both. In the case of proposed § 645.11(a)(2), the commenters expressed concern that there are so many postsecondary institutions that UB participants attend, it would be hard to provide advice and assistance for specific course selection and that it would be best for participants to receive this service from the postsecondary institution. Commenters also stated that it was unclear whether UB staff would be required to continue to advise a student on postsecondary course selection after the student graduates from the UB program, whether there would be additional funding to provide the services, and whether served students who graduated would be counted in the number of students served each year.

Several commenters expressed concerns about proposed § 645.11(a)(5), which would require that UB projects provide high school dropouts guidance and assistance in secondary school reentry, alternative education and GED programs, and entry into postsecondary education. Some asked that the section be eliminated because UB projects do not usually serve dropouts. Other commenters asked for further guidance on how the services would be provided and whether individuals receiving these services would be considered UB participants. In regard to proposed § 645.11(b)(4) and (b)(5), one commenter indicated that it is too difficult to provide instruction in composition and literature in the summer and it should be left up to the program to decide which instruction to do. Another commenter suggested replacing the term "foreign language" with "world language" or "second language."

Under proposed § 645.11(a)(6), commenters requested clarification on the financial and economic literacy services that grantees must provide to students' parents.

Discussion: This section of the regulations includes the statutory list of "Required Services" a UB project must provide under section 402C(b) of the HEA. We cannot include in these regulations changes that would alter the statutory requirements. The Department, however, plans to provide applicants with additional written guidance on how to respond to the new program requirements and the evaluation criteria in the published application materials.

Changes: None.

What services may regular Upward Bound and Upward Bound Math-Science projects provide? (§ 645.12)

Comment: One commenter suggested including language to state that a project may provide other activities designed to meet the purposes of the legislation because this could encourage new and innovative approaches. A few commenters lauded on-campus residential programs as being the most important UB activity and recommended that the applications that propose a summer on-campus residential program be given additional points in the application process. One commenter also suggested that on-campus residential programs be designated as a required service.

Discussion: Section 645.12 includes the statutory list of "Permissible Services" an UB project may provide. The regulations do not prohibit grantees from offering additional services to meet the goals of the program, and grantees may offer additional services not explicitly mentioned as required or permissible. We have revised § 645.12 to reflect that intent more clearly.

Changes: We have revised § 645.12 by adding a new paragraph (g) to state that grantees may provide other services that are consistent with the purposes and goals of the UB program.

What additional services may Veterans Upward Bound projects provide? (§ 645.15(d))

Comment: Several commenters asked whether the additional services that Veterans Upward Bound projects provide are mandatory or permissible.

In addition, one commenter suggested eliminating § 645.15(d) because it appeared to be redundant with the requirements in § 645.11(b), which requires that all UB grantees, including VUB grantees, provide instruction in mathematics through pre-calculus and in laboratory science. The commenter also recommended adding to the list of additional services for VUB grantees in § 645.15: exposure to cultural events, academic programs, and other activities not usually available to disadvantaged veterans because these services are permissible for the low-income, first-generation students served by UB and UBMS projects. The commenter argued that providing these opportunities and experiences would positively influence a veteran's postsecondary and career decisions.

Discussion: We agree that the section heading of § 645.15 incorrectly suggests that the services in the regulations are required services. We have revised the section heading to clarify that the

services are voluntary. Because section 402C(c) of the HEA requires all UB projects to provide math and science instruction and section 402C(d) of the HEA further permits math and science preparation for veterans, we understand why some commenters viewed the new language in § 645.15(d) as being redundant with § 645.11(b). However, § 645.15(d) refers to special services that could supplement the project's instructional program in math and science. Accordingly and to be consistent with the statutory language, we are not changing § 645.15(d).

The Secretary does not agree with the request to include in § 645.15 exposure to cultural events, academic programs, and other activities. The list of permissible services in section 402C(d) of the HEA only identifies one of the permissible services as applicable specifically to veterans (see section 402C(d)(6) of the HEA) and that service is the one reflected in § 645.15(d). Further, section 402C(d)(1) of the HEA is clear that services, such as exposure to cultural events, are meant specifically for disadvantaged youth.

Changes: We have revised the section heading for § 645.15 by replacing the word "do" with the word "may" to clarify that the listed services are voluntary.

How many applications for an Upward Bound award may an eligible applicant submit? (§ 645.20)

Comment: One commenter requested that § 645.20 clarify what qualifies as "another designated different population."

Discussion: As provided in § 645.20(b), the Secretary will designate, in the **Federal Register** notice inviting applications, the different populations for which an applicant may submit a separate application. This provision gives the Department the flexibility to designate the different populations for each competition based upon changing national needs.

Changes: None.

What assurances must an applicant include in an application? Participant Eligibility (§ 645.21)

Comment: Several commenters stated that allowing one-third of participants to be eligible based upon a high risk for academic failure would change the fundamental purpose of the UB program with regard to participant eligibility for services. Many commenters stated that adding the high risk for academic failure assurance in § 645.21(a)(2) would open the door for children of affluent families to receive services over more needy students.

Discussion: Section 402C(e)(1) of the HEA states that not less than two-thirds of youth participating in the project must be low-income individuals who are first generation college students and that the remaining participants must be low-income individuals, first generation college students, or students who have a high risk for academic failure. Section 645.21 reflects this statutory requirement. We note, however, that students who have a high risk for academic failure are just one of the groups that can be included in the one-third calculation. Therefore, a UB project is not required to serve students who have high risk of academic failure and may choose to serve only low-income and potential first-generation college students.

Changes: None.

What assurances must an applicant include in an application? Coordination Among Outreach Programs Serving Similar Populations (§§ 645.21(a)(4), (b)(4), and (c)(3))

Comment: None.

Discussion: Based on comments we received on proposed § 643.11(b) for the Talent Search program—(Coordination Among Outreach Programs Serving Similar Populations), we have revised § 645.21(a)(4), (b)(4), and (c)(3), regarding the coordination of efforts necessary to minimize the duplication of services and promote collaborations so that more students can be served. We believe that these changes, which we have made across the TRIO programs, will help ensure that the limited funds available under TRIO and other programs for disadvantaged students are used effectively and efficiently by minimizing the duplication of services through coordination of activities.

Changes: We have revised § 645.21(a)(4), (b)(4) and (c)(3) to clarify that UB projects must collaborate with other Federal TRIO projects, GEAR UP projects, or programs serving similar populations that are serving the same target schools or target area to minimize the duplication of services and promote collaborations so that more students can be served.

What selection criteria does the Secretary use? Objectives (Academic Performance) (§ 645.31(b)(1)(i) and (b)(1)(ii))

Comment: Several commenters expressed concerns regarding the selection criteria in § 645.31(b)(1)(i) (Academic performance, as measured by grade point average (GPA)) and § 645.31(b)(1)(ii) (Academic performance, as measured by standardized test scores). The commenters argued that the points assigned for the GPA objective should be reduced. The commenters stated that it is difficult to increase GPAs of high-risk students by even a small percentage. Also, as students undertake a more rigorous curriculum their GPAs may increase or decrease over time. Commenters also asked if the projects could use a weighted GPA for those students taking rigorous courses. One commenter expressed concern over using State assessments, on a national level, as a measurement of performance because of the differences in State assessments throughout the country. The commenter recommended that the Department disseminate a list of approved standardized tests to promote consistency among projects reporting from one year to the next.

Discussion: We do not agree with the commenters' suggestion to reduce the points assigned to the academic performance as measured by GPA criterion. The 1.5 points for this criterion represents only 10 percent of the total PE points a project could earn; reducing the points further would go against the goals of the HEA.

The cumulative GPA for this selection criteria should be calculated on all courses taken based on a four-point scale. The GPA may be weighted for students completing honors or Advanced Placement courses. If the target schools use other scales, the GPA should be converted to the extent possible to a four-point scale.

In regard to the commenter's suggestion regarding § 645.31(b)(1)(ii) the Department does not believe it is appropriate to provide a list of approved standardized tests because we do not have the authority to regulate State assessments.

Changes: None.

What selection criteria does the Secretary use? Objectives (Secondary school graduation and completion of rigorous secondary school program of study) (§ 645.31(b)(1)(iii) and (b)(1)(iv))

Comment: In § 645.31(b)(1)(iii) (Secondary school graduation), one commenter recommended inserting the words "retention and" after the words "Secondary school" and before "graduation" to more accurately reflect the language in the statute. Another commenter suggested adding "or a GED diploma" after "regular secondary school diploma", to mirror § 645.11(a)(5)(iii), which includes entry into general educational development (GED) programs as a required service.

In regard to § 645.31(b)(1)(iv) (Completion of rigorous secondary school program of study), several

commenters stated that assisting students to complete a rigorous secondary school program of study might not be realistic for all participants, given that some UB grantees work with English Language Learners (ELL) and high-risk students. The commenters stated that the distinct needs of these populations were not adequately considered when imposing completion of a rigorous secondary school program of study as one of the program's outcome criteria. One commenter argued that this criterion may have the unintended consequence of limiting a project's ability to enroll these groups of students. Another commenter noted that some students do not complete a rigorous program because their educational goals include a technical or associate's degree, and their school system places them on a non-rigorous graduation track. Another commenter stated that the goal of completing a rigorous secondary school program of study is for participants to be eligible for the Academic Competitiveness Grants (ACG); however, this grant program is being phased-out. The commenter asked whether the criteria for the rigorous secondary school program of study will remain, even if the participants will no longer be eligible for ACG.

Discussion: We agree with the recommendation to add the words "retention and" to the secondary school graduation criterion in § 645.31(b)(1)(iii) to be consistent with the outcome criterion in the statute and the PE criterion in § 645.32(e)(1)(iii). However, to remain consistent with the statutory language regarding the UB program outcomes in section 402A(f)(3)(B) of the HEA, we do not agree with the recommendation to add the words "or a GED diploma".

Under § 645.31(b)(1)(iv) (Completion of a rigorous secondary school program of study), we are not requiring projects to serve only participants in a rigorous secondary school program of study. The Department agrees that some English Language Learners, high-risk students, or students in a vocational program of study might not be ready to undertake a rigorous secondary school program of study or may not find such a rigorous program of study relevant to their educational goals. However, to be consistent with statutory intent, the UB project should encourage all UB students to undertake a rigorous curriculum. In addition, section 402A(f)(3)(A)(iv) of the HEA states that the participants who complete a rigorous secondary school program of study should be eligible for programs such as ACG. Therefore, the discontinuation of ACG does not impact the requirement related to a rigorous secondary school program of study as defined in § 645.6.

Changes: We have amended § 645.31(b)(1)(iii) to refer to secondary school retention and graduation.

What selection criteria does the Secretary use? Objectives (Postsecondary completion) (§ 645.31(b)(1)(vi))

Comments: In regard to the criterion in § 645.31(b)(1)(vi) (Postsecondary completion), several commenters suggested that postsecondary completion should include a baccalaureate degree, associate's degree, or a certificate of completion of a postsecondary program. Other commenters asked if the definition of postsecondary completion, as used in this criterion, included the attainment of a four-year or two-year degree. If either degree is satisfactory, one commenter stated that a project that sent students to a two-year institution versus a four-year institution would be able to establish a more ambitious objective due to the fact that it is easier to track participants for two years rather than for four years. Many commenters argued that UB is not authorized or funded to continue working with students once they complete the project. In addition, some commenters stated that a program geared toward high school students should not be held responsible for a participant's completion of a postsecondary education. The commenters suggested that persistence in postsecondary education was a better measurement of project success. Commenters also stated that there are no selection criteria for the *Plan of Operation* or *Budget* sections of the application to address on-going follow-up support of graduates. One commenter requested that the Department clarify how it will determine the parameters and number or percentages for tracking participants.

Discussion: Section 402A(f)(3)(A)(vi) of the HEA requires the Department to use the postsecondary completion criterion, to the extent practicable, in evaluating the quality and effectiveness of a UB project. Due to the UB program's intensive, college-preparatory nature, we do not agree with the commenters who suggest that any postsecondary credential, including a certificate, should be included in postsecondary completion measurements. For the purpose of awarding PE points for projects' success under the postsecondary completion outcome criterion, the Department considers a program of postsecondary education to be a combination of courses and related activities whose curriculum is designed primarily for students who are beyond the compulsory age for high school and which leads to the attainment of an associate's or bachelor's degree, and which excludes postsecondary certificates and vocational and adult basic education programs.

The Secretary plans, subject to meeting the requirements of the Paperwork Reduction Act of 1995, to establish a standard objective related to postsecondary completion in the application package for the UB program. Further, each applicant will establish in its application the project's target with regard to postsecondary completion. The baseline data the applicant provides in the *Need* section of the application will provide the peer reviewers with the information needed to assess the extent to which the applicant's target for the objective is both ambitious and attainable.

We understand the commenters' concerns about not having the authority or resources to provide follow-up support for UB graduates as they progress through postsecondary education; however, the new statutory outcome criteria effectively requires that UB projects track the academic progress of participants through postsecondary completion. Section 645.31(c)(10) (Plan of Operation) requires applicants to have a follow-up plan for tracking graduates of UB projects as they enter and continue in postsecondary education. Further, § 645.31(f) (Budget and cost effectiveness) requires applicants to be evaluated on the extent to which the budget for the project is adequate to support planned project services and activities. Therefore, an applicant may include in the proposed budget for the project costs related to tracking the academic progress of former participants through postsecondary education.

Changes: None.

What selection criteria does the Secretary use? Applicant and Community Support: Resources secured through written commitments (§ 645.31(d)(2))

Comment: None.

Discussion: Based on comments we received on proposed § 643.21(d)(2) (Applicant and community support) for the TS program, we have revised § 645.31(d)(2) to ensure consistency across programs. A detailed discussion of the comments and rationale for the changes is included earlier in this preamble, in the summary of comments, discussion, and changes related to § 643.21(d)(2).

Changes: We have revised § 645.31(d)(2) to provide that the Secretary will evaluate the applicant and community support for the proposed project on the basis on the extent to which the applicant can show that it has resources secured through written commitments from community partners. This section also requires that: (i) An applicant that is an institution of higher education must include in its application commitments from the target schools and community organizations; (ii) an applicant that is a secondary school must include in its commitments from institutions of higher education, community organizations, and, as appropriate, other secondary schools and the school district; and (iii) an applicant that is a community organization must include in its application commitments from the target schools and institutions of higher education.

How does the Secretary evaluate prior experience? Regular Upward Bound and Upward Bound Math and Science Centers (§ 645.32(e)(1))

Comment: In regard to proposed § 645.32(e)(1)(ii)(A) (Academic Performance, as measured by grade point average (GPA)), one commenter suggested that the GPA of 2.5 be changed to 2.0 to be consistent with the Federal Pell Grant's requirement that students who receive financial aid maintain a 2.0 GPA. Several commenters requested clarification on whether the GPA standard was weighted or not weighted.

In regard to proposed § 645.32(e)(1)(ii)(B) (Academic Performance, as measured by standardized test scores), one commenter requested that the Department publish an approved list of standardized tests to provide for consistency in reporting among grantees. The commenter stated that the differences in the various State assessments do not allow for consistent measurements of performance of UB projects.

In regard to proposed § 645.32(e)(1)(iii), which defines PE points for secondary school retention and graduation, one commenter suggested that we add the phrase "or a general educational development (GED) diploma" after the phrase "regular secondary school diploma".

In regard to proposed § 645.32(e)(1)(iv), which defines PE points for a rigorous secondary school program of study, one commenter stated that it is impossible for grantees to ensure that students complete a rigorous secondary school program of study, given that some school districts do not offer rigorous courses. Another commenter emphasized that this PE criterion would limit the ability of projects to work with a high-risk population, as this population may not have the ability to undertake a rigorous secondary school program of study.

Several commenters asked that § 645.32(e)(1)(v) be changed to permit participants' postsecondary enrollment to take place by the fall or spring term immediately following the school year, instead of by the fall term. Commenters stated that some participants need to delay enrollment in postsecondary education for several reasons, including the need to work to support their efforts to enroll, family responsibilities, changes in the economy, and the fact that institutions may be granting acceptance for the spring semester instead of the fall semester due to budget cuts and the large number of applicants. These commenters argued that their recommended change would allow grantees to count summer graduates and GED recipients who matriculate in the spring in the relevant calculations for PE points.

In regard to proposed § 645.32(e)(1)(vi), which discusses the PE criteria based on postsecondary completion, several commenters stated that tracking participants through postsecondary completion is impractical. These commenters stated that postsecondary completion should not be assessed as part of PE, due to the fact that UB grantees do not provide services during the participant's postsecondary tenure and also because it is difficult to accurately track participants who may drop out, enroll in several different institutions consecutively or simultaneously, or use different names to enroll. Commenters suggested using postsecondary persistence instead of postsecondary completion as the PE criterion. If the criterion remains, the commenters recommended changing the point value to 0.5.

Discussion: In response to the commenters' recommendation that we permit participants' postsecondary enrollment to take place by the fall or spring term immediately following the school year, instead of by the fall term, we have decided to remove from the proposed regulations the point of measurement (*e.g.,* fall term). Further, we also have decided to remove from § 645.32(e)(1)(ii)(A) and (e)(1)(ii)(B) (*e.g.,* State assessments) the GPA standard (*e.g.,* 2.5). Instead, the Department will establish the point of measurement and the standards for measuring academic performance when establishing the standard PE objectives for each grant competition. These changes will give the Department the flexibility to adjust the standards of measurement and period of measurement for UB PE objectives based on changing conditions. The Secretary plans, subject to meeting the requirements of the Paperwork Reduction Act of 1995, to establish standard objectives for each of the PE criteria in the application package for the UB program.

With regard to the requests for clarification regarding the cumulative GPA, as discussed in the response to comments regarding § 645.31(b)(1)(i) (Objectives), the GPA should be calculated on all courses taken based on a four-point scale. The GPA may be weighted for students completing honors or Advanced Placement courses. If the target schools use other scales, the GPA should be converted to the extent possible to a four-point scale.

With regard to proposed § 645.32(e)(1)(iv), regarding completion of a rigorous secondary school program of study, we acknowledge that not all UB participants may be ready to undertake a rigorous secondary school program of study; however, UB participants should be encouraged to complete a rigorous secondary school program of study because research suggests that students who take rigorous classes in high school are more likely to enroll in and complete postsecondary education which are the goals of the UB program. A 2003 GAO report, for instance, reported that students taking a highly rigorous secondary school program of study were 1.7 times more likely to earn a bachelor's degree than students who took a basic high school curriculum.[5]

With regard to the postsecondary completion criterion in proposed § 645.32(e)(1)(vi), section 402A(f)(3)(A)(vi) of the HEA requires the Department to use this criterion, to the extent practicable, in evaluating the quality and effectiveness of an UB project for the purpose of assessing PE. The Secretary does not agree with the commenters' suggestion to lower the points allocated to the postsecondary completion criterion. The 1.5 points represent only 10 percent of the total PE points a project can earn and is an appropriate value to place on this criterion.

We have made a number of clarifying changes to § 645.32(e)(1)(ii) through (vi). First, we have clarified that when we

[5] GAO, "Additional Efforts Could Help Education With its Education Goals," May 2003, available at *http://www.gao.gov/new.items/d03568.pdf.*

refer to "project participants" or "current participants", we mean those participants served during the project year. For consistency with the regulatory language used for the PE criteria in § 643.22 (TS) and § 644.22 (EOC), we have deleted the words "the percentage of" where it appeared in proposed § 645.32(e)(1)(ii) through (vi).

Changes: The Secretary has amended § 645.32(e)(1)(ii) through (vi) to provide that for purposes of the PE evaluation of Regular Upward Bound and Upward Bound Math and Science Centers grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

Academic Performance (§ 645.32(e)(1)(ii))

(A) Whether the applicant met or exceeded its approved objective with regard to participants served during the project year who had a cumulative GPA at the end of the school year that was not less than the GPA specified in the approved objective. (1.5 points)

(B) Whether the applicant met or exceeded its approved objective with regard to participants served during the project period who met the academic performance levels on standardized tests as specified in the approved objectives. (1.5 points)

Secondary School Retention and Graduation (645.32(e)(1)(iii))

Whether the applicant met or exceeded its approved objective with regard to participants served during the project year who returned the next school year to secondary school or graduated from secondary school with a regular secondary school diploma. (3 points)

Rigorous Secondary School Program of Study (§ 645.32(e)(1)(iv))

Whether the applicant met or exceeded its approved objective with regard to current and prior participants with an expected high school graduation date in the school year who completed a rigorous secondary school program of study. (1.5 points)

Postsecondary Enrollment (§ 645.32(e)(1)(v))

Whether the applicant met or exceeded its approved objective with regard to current and prior participants with an expected high school graduation date in the school year who enrolled in a program of postsecondary education within the time period specified in the approved objective. (3 points)

Postsecondary Completion (§ 645.32(e)(1)(vi))

Whether the applicant met or exceeded its approved objective with regard to postsecondary enrollees who attained a postsecondary degree within the number of years specified in the approved objective. (1.5 points)

How does the Secretary evaluate prior experience? Veterans Upward Bound (VUB) (§ 645.32(d)(2) and (e)(2))

Comment: Several commenters requested that the Department use the number of VUB participants that completed the project during the project year, instead of the approved number of participants or the actual number of participants served in a given year, if greater than the approved number of participants, as the denominator for the academic improvement on a standardized test criterion for PE points in § 645.32(e)(2)(ii). One commenter argued that VUB is an open-entry, open-exit program and that veterans who enroll may not be able to complete all needed academic services during a single reporting period, for a variety of reasons. Requiring veterans to take a post-test prior to receiving all appropriate academic services would not yield an accurate assessment of the grantee's success. The commenter contended that because all participants will not be able to take a pre-test, receive all necessary services, and take a post-test during a single project year, this criterion should only measure those participants that completed the project during the reporting period.

With regard to the postsecondary enrollment criterion for PE points, several commenters requested that § 645.32(e)(2)(iv) be changed to permit participants' postsecondary enrollment by the fall or spring term immediately following program completion. The change would allow projects to count program graduates who matriculate to postsecondary education on a non-traditional timeline.

Discussion: For the reasons set forth in the preceding section, we have made a number of clarifying changes to § 645.32(e)(2) to mirror the changes we made in § 645.32(e)(1). These changes clarify that the criteria relate to participants served during the project year and that the Department will establish the point of measurement for the postsecondary enrollment and postsecondary completion criteria when establishing the standard PE objectives for each grant competition. Further, the changes clarify that for § 645.32(e)(2)(ii) (Academic improvement on standardized tests) will be assessed only for those participants who completed the VUB program during the project year.

Changes: The Secretary has amended § 645.32(e)(2) to provide that, for purposes of the PE evaluation of Veterans Upward Bound grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

Academic Improvement on Standardized Test (§ 645.32(e)(2)(ii))

Whether the applicant met or exceeded its approved objective with regard to participants served during the project year who completed their Veterans Upward Bound educational program during the project year and who improved their academic performance as measured by a standardized test taken by participants before and after receiving services from the project. (3 points)

Education Program Retention and Completion (§ 645.32(e)(2)(iii))

Whether the applicant met or exceeded its approved objective with regard to participants who were served during the project year who remained in or completed their Veterans Upward Bound educational program. (3 points)

Postsecondary enrollment (§ 645.32(e)(2)(iv))

Whether the applicant met or exceeded its approved objective with regard to the participants who completed their Veterans Upward Bound educational program and enrolled in an institution of higher education within the time period specified in the approved objective. (3 points)

Postsecondary completion (§ 645.32(e)(2)(v))

Whether the applicant met or exceeded its approved objective with regard to postsecondary enrollees who completed a program of postsecondary education within the number of years specified in the approved objective. (3 points)

What are allowable costs? (§ 645.40)

Comment: Several commenters suggested that § 645.40(i) be changed to permit a grantee to pay tuition costs for up to six credit hours of postsecondary courses in an academic year or summer session for a student if tuition waivers are unavailable. These commenters argued that such a change would encourage dual enrollment for UB students still in high school. Current regulations permit the payment of tuition for postsecondary credit only for

participants of the UB summer bridge component. The commenters noted that this change is especially necessary if the target schools served by the UB program do not provide a rigorous course of study. Commenters suggested that because UB projects, like TS projects, will be evaluated on the extent to which participants complete a rigorous secondary school program of study, UB projects should be allowed to pay for tuition, when needed, for secondary students taking a rigorous curriculum.

In addition, commenters suggested adding the phrase "service agreement" after the word "lease" in proposed § 645.40(n) and (o) because many technology systems may require repairs and software packages that are provided pursuant to service agreements.

Finally, one commenter recommended revising § 645.40(i) that permits UB projects to pay tuition costs for postsecondary credit courses for participants in the summer bridge program by striking the phrase "at the host institution" and adding "educational supplies for participants" to this provision.

Discussion: The Department agrees that UB projects should be permitted to pay tuition costs, in certain situations, for participants taking a rigorous secondary school program of study, but does not agree that all dual enrollment courses should be considered part of a rigorous secondary school program of study. In addition, the Department agrees to add payment for a service agreement to the allowable costs.

We do not agree with the commenter's recommendations to remove the phrase "at the host institution" from § 645.40(i)). Students participating in the summer bridge program are still UB participants; therefore, we believe the UB project will continue to provide services to these students while they are taking postsecondary courses during the summer bridge program. Therefore, we believe these UB bridge participants should take courses at the host institution where the project can provide additional support services. The costs for required textbooks and lab fees for bridge students taking postsecondary courses are allowable.

Changes: We have amended proposed § 645.40(n) and (o) to add the cost of an equipment service agreement as an allowable cost. We also have amended § 643.40 by adding a new paragraph (q) to allow UB projects to pay, under certain conditions, the tuition for courses that will allow project participants to complete a rigorous secondary school program of study.

What are Upward Bound stipends? (§ 645.42)

Comment: Several commenters requested that the $40 stipend that may be paid to participants be increased to $60. One commenter suggested increasing the $60 stipend, which is available during the summer school recess, to $80. The commenter also recommended that work-study positions be made available year-round and that a participant should be able to get the $300 stipend for any three months during the year. The commenter argued that these changes would increase participation in the work-study component and thereby increase program retention and persistence.

Discussion: Section 402C(f) of the HEA provides that youth participating in a UB project may be paid stipends not in excess of $60 per month during the summer school recess, for a period not to exceed three months. During the remaining months, youth participating in the project may receive stipends not in excess of $40. The HEA does not limit work-study to the summer school recess; it only stipulates that the stipend of $300 per month for youth participating in a work-study position may only be provided during the months of June, July, and August. We cannot include in these regulations changes that would alter the stipend dollar amount or timing of payment as provided in the HEA.

Changes: None.

What other requirements must a grantee meet? (§ 645.43)

Number of Participants (§ 645.43(a))

Comment: None.

Discussion: As discussed in the preamble discussion on the number of participants under the TS program, we believe it is appropriate for the Secretary to identify the minimum and maximum grant award amounts and the minimum number of participants a project must serve each year of the grant cycle in the **Federal Register** notice inviting applications for a competition. We believe this is true for UB projects (along with EOC, SSS and McNair projects) as well. This practice will give the Department the flexibility to establish the minimum number of participants to be served based on the available resources and other priorities for each competition and to adjust these numbers for subsequent competitions based on our experience, changing priorities, and cost analyses.

Changes: We have revised § 645.43(a) to clarify that a grantee must serve at least the number of participants that the Secretary identifies in the **Federal Register** notice inviting applications for the competition, and to state that through this notice, the Secretary provides the minimum and maximum grant award amounts for the competition.

Project Director (Final § 645.43(b)(3))

Comment: None.

Discussion: For the reasons discussed in the section of this preamble on *Project Director* under the TS program (proposed § 643.32(c)(3), final § 643.32(d)(3)), we have revised proposed § 645.43(a)(3) (final § 645.43(b)(3)).

Changes: We have revised proposed § 645.43(a)(3) (final § 645.43(b)(3)) to clarify the standard the Secretary will use to consider requests for a waiver of the restriction on the number of programs a project director may administer.

Coordination Among Outreach Programs Serving Similar Populations (New § 645.43(c)(5))

Comment: None.

Discussion: For the reasons discussed under *Coordination Among Outreach Programs Serving Similar Populations* (§§ 645.21(a)(4), (b)(4), and (c)(3)), we have added language to § 645.43 (What other requirements must a grantee meet?) to require UB grantees to maintain, to the extent practicable, a record of the services UB participants received during the project period from another TRIO program or other program serving the same populations as the UB program. We believe that these changes, which we have made across the TRIO programs, will help ensure that the limited funds available under TRIO and other programs for disadvantaged students are used effectively and efficiently by minimizing the duplication of services through coordination of activities.

Changes: We have added new § 645.43(c)(5) to require UB grantees to maintain, to the extent practicable, a record of any services UB participants receive during the project year from other Federal TRIO or federally funded programs serving the same populations as the UB program.

Student Support Services (SSS) (34 CFR Part 646)

What is the Student Support Services program? (§ 646.1)

Comment: One commenter recommended that the proposed reference to "college" in paragraph (a) be replaced by a reference to "postsecondary educational institution." In addition, multiple commenters asked that the Department retain the current

references to low-income and first-generation students to highlight the target population of the SSS Program. These commenters asked that we not include the reference to "groups that are traditionally underrepresented in postsecondary education," as reflected in proposed § 646.1(c) as this reference could dilute the focus of the program.

Discussion: The language in § 646.1 has been changed to more closely track the language in section 402D(a) of the HEA. This statutory language appropriately reflects the focus of this program; for this reason, we do not believe any changes to this regulatory provision are necessary.

Changes: None.

What activities and services does a project provide? Required Services (§ 646.4(a))

Comment: Six commenters requested minor changes to the SSS list of required services in § 646.4(a) to specify who should provide the services. For example, one commenter noted that assistance in completing financial aid applications could be provided by SSS advisors directly or in collaboration with staff in the financial aid office. Several commenters requested additional language specifying that graduate and professional school enrollment is an activity specific to four-year institutions. Two commenters requested that we change the language in proposed § 646.4(a)(5) and (a)(6) from "obtaining financial assistance for enrollment in" to "applying for financial aid." Two other commenters asked that we add specific language to this section to clarify that support for financial aid assistance and postsecondary course counseling could be given directly by TRIO professionals or through other services with the assistance of other offices as part of other services they provide.

Discussion: We recognize that SSS projects may work with other offices and programs at the institution to provide the required services. However, we do not think it is necessary to regulate who specifically must provide the services or how those services must be provided. An applicant for a SSS grant must include its plan to provide services that address the goals and objectives of the project in the *Plan of Operation* section of its application (see § 646.21(c)(4)).

To clarify that graduate and professional school enrollment is an activity specific to four-year institutions, we have added language to § 646.4(a)(5) that refers to participants enrolled in four-year institutions of higher education. This language will parallel the structure in paragraph (a)(6), which refers specifically to students enrolled in two-year institutions of higher education.

We decline to revise this section to focus only on helping students with "applying for financial aid," as requested by some commenters. The language in this section mirrors section 402D(b)(5) and (b)(6) of the HEA. In addition, although applying for financial aid may be the most important step in assisting a student in obtaining financial aid, the student may require assistance after the student submits his or her financial aid application; such assistance could include helping the student understand or accept a financial aid award. Therefore, we think it is important to retain the proposed regulatory language, which is broader and covers helping students in obtaining financial aid, because it encourages SSS grantees to continue assisting students throughout the entire financial aid process.

Changes: We have revised § 646.4(a)(5) to refer to activities designed to assist participants enrolled in four-year institutions of higher education in applying for admission to, and obtaining financial assistance for enrollment in, graduate and professional programs.

Permissible Services (§ 646.4(b))

Comment: Many commenters requested that we revise § 646.4(b) to clarify that grantees may provide additional activities that are not included in the list of permissible services in the HEA, provided that such activities assist grantees to meet the goals of the SSS program. These commenters expressed concern that, without such regulatory language, SSS projects could not offer these additional activities.

Discussion: Section 646.4(b) incorporates language from section 402D(c) of the HEA, which lists permissible services a SSS project may provide. The regulations do not prohibit grantees from offering additional services to meet the goals of the program, and grantees may offer additional services not explicitly listed as required or permissible. We have revised § 646.4(b) to reflect that intent more clearly.

Changes: We have revised § 646.4 by adding a new paragraph (b)(7) to specifically state that SSS projects provide other services that are consistent with the purposes and goals of the SSS program.

What definitions apply? First Generation College Student (§ 646.7(b))

Comment: Commenters asked whether a student whose parent has a baccalaureate degree from a country other than the United States meets the definition of *first generation college student* in § 646.7(b). The commenters noted that other countries may have different requirements for a baccalaureate degree that may not be equivalent to a U.S. baccalaureate degree. In addition, these commenters expressed concern that individuals who received their degrees in another country may be unable to assist their children with college entry and financial aid requirements for U.S. institutions of higher education, and that the SSS project could address this problem.

Discussion: Under the TRIO Programs, the definition of *first-generation college student* is used to determine if an individual is eligible to participate in a TRIO project, the purpose of which is to identify individuals from families in which there is no family history of successfully pursuing a bachelor's degree. For individuals whose parents earned a bachelor's degree in another country, there is a family history of success in higher education, regardless of whether the requirements to receive the baccalaureate degree were different than those in the United States. For this reason, we do not believe that a student who has a parent with a baccalaureate degree from outside the United States should be eligible to participate in the SSS program.

Changes: None.

What definitions apply? Low-Income Individual (§ 646.7(b))

Comment: One commenter requested clarification as to what years' tax documents should be used to determine whether a student meets the definition of the term *low-income individual* under § 646.7(b). The commenter suggested that the Department provide a chart to assist grantees in finding the information needed for them to determine an individual's low-income status. The commenter stated that doing so would help avoid confusion that occurs when the tax and calendar years do not match up with the academic year.

Discussion: To document low-income status, tax documents from the calendar year preceding the academic year in which the student will begin to receive services should be used. For example, students who initially participate in a SSS project in the 2009–2010 academic year will have their low-income status

determined by using tax documents submitted to the Internal Revenue Service (IRS) for calendar year 2008. Also, the Department annually posts, on the TRIO Web site, a chart on Annual Income Levels for use by grantees in determining student eligibility. A grantee is only required to verify a student's low-income status prior to providing the first service to that student.

Changes: None.

What assurances and other information must an applicant include in an application? SSS coordination with other projects (§ 646.11)

Comment: Some commenters recommended that the SSS regulations require an applicant to provide an assurance that individuals receiving services from another SSS project will not receive the same services under the applicant's proposed project. The commenters argued that such an assurance would allow projects to serve more participants and, especially in light of the addition of new types of SSS projects, would prevent SSS projects on the same campus from serving the same students, and, therefore, fewer students overall. Furthermore, the commenters noted that the assurance would mirror a similar assurance required under the regulations for the TS, EOC, and UB programs.

Discussion: We agree with the commenters. Current TRIO regulations that establish age and academic level criteria for participation in each program ensure that there is no overlap in services between SSS and the pre-college TRIO programs, such as regular UB. However, it is now possible that a single institution could have multiple SSS projects and a McNair project. We are, therefore, adding language, in § 646.11(c), to address the commenters' concern. This new language, clarifies that a student receiving benefits from one SSS project is not eligible to receive services from another SSS project at any one time. Further, under § 646.11(c), the SSS project must collaborate with other SSS and McNair projects and other State and institutional programs at the grantee-institution so that more students can be served. Under this provision, a student may leave one SSS project and join another at the same institution, as long as the student's participation in each project is only counted for the performance period during the time he or she is actually receiving services from that particular project.

Changes: We have amended § 646.11 to include a new paragraph (c) that requires an applicant to assure the Secretary in the application that a student will not be served by more than one SSS project at any one time and that the SSS project will collaborate with other SSS and McNair projects and other State and institutional programs at the grantee-institution so that more students can be served.

What assurances and other information must an applicant include in an application? Providing Financial Assistance to Participants (§ 646.11(b))

Comment: A number of commenters requested that the Secretary change § 646.11(b)(1) to eliminate the requirement that applicant describe their efforts and past history in meeting the full financial need of each student in the project to requiring an applicant to offer each student sufficient financial assistance to meet their full financial need. The commenters stated that it is unreasonable to expect SSS projects to have sufficient funding to meet the full financial need of each student in the project. One commenter recommended adding a selection criterion that would evaluate the extent to which an institution has made efforts to meet the financial need of participants and to reduce the loan burden on participants.

Discussion: The language in § 646.11(b) referenced by the commenters is from section 402D(e)(6) of the HEA and cannot be changed as the commenters requested. With respect to the second comment, section 402D(e) of the HEA requires the Secretary to consider the institution's effort and, where applicable, past history in providing sufficient financial assistance to meet the full financial need of each student in the project and in maintaining the loan burden of each student at a manageable level. Because Federal grant aid is often insufficient to meet a student's full financial need, SSS students may be offered large amounts of loans to meet their financial needs for attendance at the grantee institution. Under current § 646.21(d)(3) (Institutional commitment), the Secretary evaluates the extent to which the applicant has demonstrated a commitment to minimize the dependence on student loans in developing financial aid packages for project participants by committing institutional resources, to the extent possible. We believe the regulation adequately addresses the commenter's concern and that no further changes are necessary.

Changes: None.

What assurances and other information must an applicant include in an application? Consultations between SSS project and financial aid office in awarding of grant aid.

Comments: Several commenters recommended that § 646.30(i) (Allowable cost—grant aid) be revised to incorporate the statutory language regarding the required consultation between the SSS project and their institution's financial aid office to determine the students who are eligible for grant aid and the amount of grant aid to be awarded (see section 402D(d)(1) of the HEA). The commenters noted that, while awarding financial aid is the responsibility of the financial aid office, the grant aid can only be awarded to SSS participants and, therefore, the SSS Director should be consulted with respect to which students should receive the grant aid and the amount of the grant aid awards.

Discussion: We agree with the commenters' concern that the regulations should require consultation between the SSS project and the financial aid office in the awarding of grant aid, but believe it would be better to include this requirement as an assurance in § 646.11, rather than as an allowable cost under § 646.30(i).

Changes: We have amended § 646.11 to include a new paragraph (d) that requires an applicant to assure the Secretary in the application that the institution's financial aid office will consult with the SSS project with respect to which SSS participants should receive grant aid and the amount of the grant aid awards.

Certificate or Degree Completion and Transfer to a Four-Year Institution (§§ 646.21(b)(3)(ii) and 646.22(e)(5))

Comment: A number of commenters requested that the Department revise the evaluation criterion in § 646.21(b)(3)(ii), related to the applicant's proposed objectives, that would award up to 2 points for certificate or degree completion and transfer to a four-year institution so that the criterion only evaluated whether participants transfer to four-year institutions. The commenters indicated that, in many cases, it is in the student's best interest to transfer to a four-year institution prior to receiving a certificate or degree from the two-year institution.

One commenter stated that it would not be feasible for an applicant to collect data on transfers to four-year institutions or graduate and professional school enrollment because by the time this data can be collected, the student has left the institution and may have

severed ties with the school. One commenter asked for clarification on whether retention in postsecondary education for purposes of the selection criteria means retention at the grantee institution or in any institution of higher education.

Discussion: Sections 646.21(b)(3)(ii) and 646.22(e)(5) are based on statutory language from section 402A(f)(3)(C)(ii)(II) of the HEA. Section 402A(f)(3)(C)(ii)(II) of the HEA specifically includes, as outcome criteria, both certificate or degree completion and transfer to a four-year institution prior to receiving a certificate or degree from the two-year institution. For this reason, we cannot make the change requested by the commenters.

With regard to the retention objective (see § 646.22(e)(2) and (e)(3)), a grantee is only required to report on participants served during the project year who: (1) Graduate from the grantee institution during the project year; (2) transfer from a two-year to a four-year institution during the project year; or persist at the grantee institution into the fall term of the next academic year. With regard to the good standing objective (see § 646.22(e)(3)), a grantee is only required to report on participants served during the project year.

Changes: We have revised § 646.22(e)(2) to clarify that the Secretary evaluates the applicant's retention and good standing objectives based on participants served during the project year. We have also revised § 646.22(e)(4) and (e)(5) (degree completion) to clarify that the objectives include current and prior year participants who are still enrolled at the grantee institution. In addition, for consistency with the regulatory language used for the PE criteria in the other TRIO programs, we have removed the words "the percentage of" from § 646.22(e)(2), (e)(3), (e)(4), and (e)(5).

What are allowable costs? (§ 646.30)

Comment: Six commenters requested that we specify that a SSS project may pay for lodging and meals for participants and staff participating in project-sponsored educational and cultural activities. One commenter noted that adding this language to § 646.30(e), for example, would allow SSS participants to participate in State and regional leadership conferences, which are held over the weekend and require overnight lodging. The commenter also noted that for projects in rural or remote locations many educational and cultural activities require overnight lodging.

Discussion: The Secretary acknowledges that participation in some educational and cultural activities may require overnight travel (*e.g.,* State or regional leadership conferences). However, we also believe that the use of project funds for these activities must be limited to ensure that sufficient project funds are available to provide academic support services. Therefore, the Secretary will require a project to obtain prior approval for educational and cultural trips that require overnight travel.

Changes: We have revised § 646.30(e) to include, as an allowable cost, transportation and, with prior approval of the Secretary, meals and lodging for participants and staff during approved educational and cultural activities sponsored by the project.

Comment: Many commenters requested the removal of the four percent cap on the amount a project may spend on professional development travel under § 646.30(g). The commenters stated that this cap is inconsistent with other TRIO programs, which do not have a professional development cap.

Discussion: The Secretary does not agree with the commenter's suggestion. This provision provides grantees with clear parameters regarding the percentage of project funds we believe are sufficient for professional development travel for staff. In addition, in unusual situations, a grantee may ask the Secretary to approve a higher percentage to address unique circumstances (*e.g.,* high cost of travel in some areas, new staff that could benefit from more professional development). We acknowledge that this limitation is not included in the regulations for the other TRIO programs. However, we do not believe it is appropriate to add this provision to the other program regulations at this time because the NPRM did not suggest we were considering applying this restriction to all of the programs. Nonetheless, we encourage all TRIO projects to limit the amount of funds spent on professional development travel to no more than four percent of staff salaries and may consider proposing a provision like this for the regulations for the other TRIO programs at a later date.

Changes: None.

Comment: One commenter suggested adding the phrase "service agreement" after the word "lease" in § 646.30(f), because many technology systems may require repairs and software packages and those repairs and software packages may be made available through service agreements.

Discussion: We agree with the suggestion to include service agreements as an allowable cost in § 646.30(f).

Changes: We have revised § 646.30(f) to include service agreements for equipment.

Comment: One commenter suggested that we add a new paragraph (k) to § 646.30 to include as an allowable cost admission application fees for project participants who complete a certificate or degree before continuing to another higher education institution if the certain conditions exist. The commenter noted that such language would be consistent with the regulations for the TS program, which, like SSS, aims to assist students in securing admission to the next level of academic study.

Discussion: We disagree with the commenter's recommendation. Unlike the participants in the TS program, SSS participants are enrolled in postsecondary programs and are eligible to receive financial aid to cover their cost of attendance at the institution. Further, this recommendation is inconsistent with § 646.31(b) (Unallowable costs), which prohibits the use of grant funds for tuition, fees, stipends, and other forms of direct financial support, except for grant aid under § 646.30(i), for staff or participants.

Changes: None.

Comment: Two commenters requested that the Department clarify the use of funds allowed under § 646.30(i). In particular, the commenters asked whether awarding rant aid to students who are in their first two years of postsecondary education means students who are in their first two academic years, or students in their freshman and sophomore years, based on credits hours earned.

Discussion: The reference to the first two years of postsecondary education in section 402D(d)(2) of the HEA refers to the student's first two years of postsecondary education attendance, not the student's grade level classification (e.g., freshman or sophomore).

Changes: None.

Comment: A number of commenters requested that we define the term "breaks," used in § 646.30(j). Under that section, paying for temporary housing during breaks in the academic year, for students who are homeless children and youths or were formerly homeless children and youths and students who are foster care youth, is considered an allowable cost. Some commenters were confused as to whether the term "breaks" includes only holiday breaks between semesters, or if the term also includes the entire summer semester. One individual requested that

disconnected youth be included in this paragraph as well. The commenters also asked that the Department clarify that homeless adult SSS participants, who are not formerly homeless youth, are eligible for temporary housing support. Specifically, these commenters recommended that § 646.30(j) be revised to include, in addition to students who are homeless children and youth or were formally homeless children and youth and students who are foster care youth, any SSS participant who is considered homeless.

Discussion: Section 402D(c)(5) of the HEA allows SSS projects to use grant funds to secure temporary housing during breaks in the academic year. The term "breaks" in the academic year means any period of time between semesters or quarters within the same academic year but does not typically include the normal summer break between academic years. However, if the participant is enrolled for the summer term, "breaks" would include the period of time between the spring and summer terms and between the summer and fall terms.

The Secretary does not agree with the recommendation to add disconnected youth or homeless adult SSS participants, who are not formerly homeless youth to § 646.30(j), as this would go beyond the statutory intent, which specifically references the definitions in the McKinney-Vento Homeless Assistance Act. Further, the Secretary does not believe that SSS projects will have sufficient funds to provide temporary housing assistance for many participants and provide the academic support services required under § 646.4. Therefore, the Secretary does not believe it is in the best interest of the program to expand the populations eligible for temporary housing assistance; instead the Secretary encourages SSS project to collaborate with other programs at the institution or within the community to meet the housing needs of eligible participants.

Changes: None.

What other requirements must a grantee meet? (§ 646.32)

Number of Participants (new § 646.32(a))

Comment: None.

Discussion: As discussed in the preamble discussion regarding the number of participants under the TS program, we believe it is appropriate for the Secretary to identify the minimum and maximum grant award amounts and the minimum number of participants that TRIO projects, including SSS projects, must serve each year of the grant cycle in the **Federal Register** notice inviting applications for a competition. This practice will give the Department the flexibility to establish the minimum number of participants to be served based on the available resources and other priorities for each competition and to adjust these numbers for subsequent competitions based on our experience, changing priorities, and cost analyses.

Changes: We have revised § 646.32 by redesignating current paragraphs (a) through (d) as paragraphs (b) through (e) and adding a new paragraph (a). New paragraph (a) clarifies that a grantee must serve at least the number of participants that the Secretary identifies in the application notice for the competition, and states that through this notice, the Secretary provides the minimum and maximum grant award amounts for the competition.

Coordination of Services (new paragraph § 646.32(c)(5)).

Comment: None.

Discussion: Based on comments we received on proposed § 643.11(b) for the Talent Search program—(Coordination Among Outreach Programs Serving Similar Populations), we have added a provision regarding the coordination of efforts necessary for students served by more than one Federal TRIO or other federally funded program to the additional requirements a grantee must meet under § 646.32(c)(5). Accordingly, § 646.32(c)(5) now requires the SSS grantee to maintain, to the extent practicable, a record of any services SSS participants receive during the project year from another Federal TRIO program or other federally funded programs serving similar populations. This change will help ensure that the limited funds available under TRIO and other programs for disadvantaged students are used effectively and efficiently by minimizing the duplication of services through coordination of activities.

Change: A new § 646.32(c)(5) has been added to require grantees to maintain, to the extent practicable, a record of any services SSS participants receive during the project year by other Federal TRIO or federally funded programs that serve similar populations.

Project Director (proposed § 646.32(c); final § 646.32(d))

Comment: None.

Discussion: For the reasons discussed in the preamble section on *Project Director* under the TS program (proposed § 643.32(c)(3), final § 643.32(d)(3)), we have revised proposed § 646.32(c) (final § 646.32(d)).

Changes: We have revised proposed § 646.32(c) (final § 646.32(d)) to clarify the standard the Secretary will use to consider requests for a waiver of the restriction on the number of programs a project director may administer.

Ronald E. McNair Postbaccalaureate Achievement (McNair) Program (34 CFR part 647)

What activities and services does a project provide? (§ 647.4)

Comment: Several commenters suggested a variety of changes to § 647.4. First, commenters recommended that the Department explicitly permit grantees to use grant funds for other activities or services that meet the goals of the program, to make it clear that grantees may go beyond the scope of the activities listed in the regulations. In addition, a number of commenters contended that tutoring should be moved from a required activity under § 647.4(a) to a permissible activity under § 647.4(b); these commenters argued that most McNair Scholars will not require tutoring. The commenters further suggested that the regulations should specify that tutoring may be offered directly or by referral, as needed, and also that tutoring may include peer tutoring, in addition to tutoring by a graduate student or other professional.

Finally, a few commenters requested clarification of the requirement that a McNair grantee provide summer internships for students. The commenters asked whether the internship must specifically be a research internship, be distinct from any other internship required for the completion of a degree or certificate, and whether the internship must be distinct from the research or other scholarly activities required under § 647.4(a).

Discussion: Section 647.4(b) incorporates section 402E(c) of the HEA, which lists permissible services a McNair project may provide. The regulations do not prohibit grantees from offering additional services to meet the goals of the program, and grantees may offer additional services not explicitly mentioned as required or permissible. We have revised § 647.4(b) to reflect that intent more clearly.

With regard to the comments concerning tutoring, we note that, under section 402E(b)(4) of the HEA, tutoring is a required service in the McNair program. However, a grantee may offer tutoring itself, or through linkages with other offices at an institution or another

entity. While grantees must make tutoring available, individual participants may choose whether or not to take advantage of this service.

Finally, one of the required services that a McNair grantee must provide are summer internships that advance the purpose of the McNair program, to prepare disadvantaged college students for doctoral study (see section 402E(b)(2) of the HEA). Internships do not necessarily have to involve research, but must assist students in preparing for doctoral work. There is no requirement that the summer internships be in addition to internships that may be required to complete a degree. However, internships are a separate and unique activity (see section 402E(b)(2) of the HEA) offered by a McNair grantee and may not also be counted as an opportunity for research or other scholarly activities (see section 402E(b)(1) of the HEA). The HEA clearly separates these two required activities and McNair programs must offer both.

Changes: We have revised § 647.4(b) by adding a new paragraph (b)(4) that would allow a McNair grantee to provide other services that are consistent with the purposes and goals of the McNair program.

What Definitions Apply? (§ 647.7)

Definition of Low-income

Comment: One commenter requested clarification of the definition of the term *low-income individuals* in § 647.7. The commenter recommended that the Department provide a chart or other language that clarifies the income levels that should be used in making this determination, and also that a project should use the same chart throughout an entire grant cycle.

Discussion: We did not propose any changes to the definition of *low-income individual* in the NPRM. However, the commenter does not appear to be requesting a change to this definition. Rather, the commenter seems to be seeking additional information on how to determine whether an individual meets this definition. To document low-income status, tax documents for the calendar year preceding the academic year in which the student will begin to receive services should be used. For example, students who initially participate in a McNair project in 2009–2010 academic year will have their low-income status determined by using tax documents submitted to the IRS for calendar year 2008. Also, the Department annually posts, on the TRIO Web site, a chart on Annual Income Levels for use by grantees in determining student eligibility. A grantee is only required to verify a student's low-income status prior to providing the first service to that student.

Changes: None.

Definition of Research or Scholarly Activity

Comment: Many commenters stated that the definition of *research or scholarly activity* in § 647.7 should be expanded to include examples such as developing a research proposal, implementing reporting, presenting and publishing research, and attendance at professional conferences. They argued that adding these activities as examples in the definition would clarify that "research" encompasses a range of scholarly activities that are more rigorous than typically available to undergraduates in a classroom setting.

Discussion: The Department agrees with the commenters that "research" may include a wide variety of scholarly activities, and we intend for the defined term *research or scholarly activity* to include activities such as those mentioned by the commenter. These examples are appropriate parts of a doctoral program and accordingly, could satisfy the requirement for research or scholarly activity under the McNair program. However, because there are so many examples of activities that could be covered in this definition, we are not including any examples in the regulations, but may include them in non-regulatory guidance.

Changes: None.

What assurances must an applicant submit? McNair coordination with other projects (newly redesignated § 647.11)

Comment: None.

Discussion: Based on comments we received regarding coordination of services for other TRIO Programs (see the TS, EOC, UB, and SSS discussions in this preamble), we believe it is also necessary to add a new paragraph (d) to the McNair assurances in newly redesignated § 647.11 to clarify that a student receiving benefits from a McNair project is not eligible to receive services from another McNair project at any one time. Further, we believe that it is appropriate to require each McNair project to provide an assurance it will collaborate with other McNair and SSS projects and other State and institutional programs at the grantee-institution, including those supporting undergraduate research, so that more students can be served. This change will allow McNair projects to serve more participants and reduce duplication of services, and it mirrors a similar assurance under the regulations for the TS, EOC, UB, and SSS programs. Furthermore, it is consistent with current TRIO regulations that establish age and academic level criteria for participation in each program to minimize overlap in services among programs.

Changes: We have amended newly redesignated § 647.11 to include a new paragraph (d) that requires an applicant to submit as part of its application, assurances that a student will not be served by more than one McNair project at any one time and that the McNair project will collaborate with other McNair and SSS projects and other State and institutional programs at the grantee-institution, including those supporting undergraduate research, so that more students can be served.

What selection criteria does the Secretary use? (§ 647.21(b))

Comment: We received a number of comments on the selection criteria proposed for the McNair program. First, many commenters suggested that we add "or scholarly activity" after the word "research" in proposed § 647.21 to maintain consistency with the activities and services a McNair project must provide.

Second, multiple commenters stated that the emphasis on Bachelor of Arts/Bachelor of Sciences degree attainment should not be lost with the added focus on graduate degree enrollment and attainment. These commenters recommended that the regulations for this program retain attainment of undergraduate degrees in the selection criteria; they suggested that we alter the point distribution to show that both this goal and the newly added criteria of success in helping students to enroll in and continue enrollment in graduate study are critical elements to the program.

Third, many commenters expressed concern about the new selection criteria that relate to continued enrollment in graduate study and doctoral degree attainment. These commenters suggested removing one or both of these criteria for a variety of reasons. Some expressed concern that the criteria were unclear, while others argued that these criteria should be removed from the regulations because, rather than applying to current scholars, these criteria apply to program alumni, on whom programs may not spend funds and over whom they have no control.

Discussion: First, with respect to the suggestion that we add the words "or scholarly activity" after the word "research" in § 647.21, we agree that this change is appropriate to ensure

consistency across the regulations for this program. For this reason, we are making this change.

Second, with regard to the comments concerning the appropriateness of focusing on Bachelor of Arts/Bachelor of Science degrees, we note that the HEOA made changes to the McNair program to better align the outcome criteria with the explicit goal of preparing students for success in graduate programs leading to doctoral degrees, including continued enrollment in graduate school and doctoral degree attainment. In doing so, Congress did not use the same criteria as in the current regulations (*e.g.,* attainment of a baccalaureate degree); therefore, we have used the statutory criteria. We have also decided not to change the point distribution related to these selection criteria, as we have determined that the proposed points correctly reflect the statutory goals of the program.

Third, the regulations that include the new selection criteria that relate to continued enrollment in graduate study and doctoral degree attainment appropriately reflect the statute. Section 402A(f)(3)(D)(iv) of the HEA, as amended by section 403(a)(5) of the HEOA, requires the Department to use the attainment of doctoral degrees by former participants in evaluating the quality and effectiveness of a McNair project.

Changes: We have amended § 647.21(b)(1) to add the words "or scholarly activity" after the word "research".

How does the Secretary evaluate prior experience? (§ 647.22)

Comment: Numerous commenters expressed concern about the proposed point distribution for evaluating prior experience in making awards for the McNair program. Multiple commenters expressed concern that the points are weighted too heavily on graduate school enrollment and continued enrollment in graduate school through doctoral degree attainment. These commenters argued that it does not make sense to give so many points and emphasis to areas over which a grantee has little control, as the points would be based on alumni participants instead of current scholars. Further, the commenters stated that the difficulties and costs in tracking students for these criteria merit awarding a lower point value for them. One commenter requested that the language in § 647.22(e)(3) through (e)(5) be clarified to ensure that current McNair participants are not counted in the calculation of prior experience because those individuals would not have been able to participate in graduate educational opportunities at that point in their academic careers. Multiple commenters requested that the regulations reflect a reapportionment of the PE points to focus more on the direct contact, activities, and time that the project spends with current applicants, rather than focusing on the success of students who are no longer current McNair participants. The commenters contended that it was unfair to place so much emphasis on the graduate success of a student, when grantees are not allowed to provide services to those students.

Other commenters requested that the Department clarify what is meant by the term "doctoral level degree" for purposes of calculating PE points. They urged the Department to consider other degrees besides a doctor of philosophy (Ph.D.) as a doctoral level degree; for instance, they argued that a doctor of education (ED.D), doctor of psychology (Psy.D), or doctor of social work (D.S.W.) should be considered a doctoral level degree. Further, one commenter suggested that, instead of requiring a doctoral level degree, the regulations should use the terminal degree in the field in which the degree is sought, arguing, for example, that a master of fine arts degree is the highest degree available for that particular field.

Finally, a few commenters suggested some changes to the regulatory language to clarify various provisions. Specifically, commenters recommended changing "research and scholarly activities" in proposed § 647.22(e)(2) to "research or scholarly activities" to maintain consistency with other sections in these regulations. Further, one commenter recommended adding the word "current" before the word "participants" in § 647.22(e)(1) through (e)(5).

Discussion: We disagree with the commenters' suggestions about redistributing the PE points among the criteria. Most (sixty percent) of the PE points are awarded based on the expected outcomes for participants served during the project year (see § 647.22(e)(1), (e)(2), and (e)(3)). The remaining points (6 out of a possible 15 points) are awarded based on the extent to which prior participants are moving toward achieving the main goal of the McNair program, which is attainment of doctoral degrees (see the program outcome criteria in section 402A(f)(3)(D) of the HEA).

With regard to the comments requesting clarification of what is considered a doctoral level degree, the Department agrees that this term is not limited to a doctor of philosophy. Other research intensive doctoral degrees, such as a doctor of education (Ed.D.), a doctor of psychology (Psy.D.), and a doctor of social work (D.S.W.) are appropriate to the goals of the program. However, the purpose of the McNair program is to encourage research at the doctoral level, and we, therefore, disagree with the suggestion that using the terminal degree in the field is sufficient.

Because the Department agrees with the commenters that changing the reference to "research and scholarly activities" in § 647.22(e)(2) to "research or scholarly activities" will ensure greater consistency across sections, we will make this change. Finally, we agree that we should clarify that the criteria in § 647.22(e)(2) and (e)(3) apply to "current participants"; however, instead of using the phrase "current year" we have decided to add the words "served during the project year" after the word "participants." However, § 647.22(e)(4) and (e)(5) relates to prior participants, and we will not be making any change to these paragraphs.

Changes: We have amended § 647.22(e)(2) to change the reference from "research and scholarly activities" to "research or scholarly activities". We have also amended § 647.22(e)(2) and (e)(3) by adding "served during the project year" after the word "participants."

What are allowable costs? (§ 647.30)

Comments: Two commenters suggested adding the phrase "service agreement" after the word "lease" in § 647.30(d), because many technology systems may require repairs and software packages that are made pursuant to service agreements.

Discussion: We agree with the commenters who recommended that we include service agreements as an allowable cost in § 647.30(d) and have revised the regulations accordingly.

Changes: We have revised § 647.30(d) to include to include service agreements for equipment.

What other requirements must a grantee meet? (§ 647.32)

Number of Participants (new § 647.32(a))

Comment: None.

Discussion: As discussed in the preamble discussion regarding number of participants under the TS program, we believe it is appropriate for the Secretary to identify the minimum and maximum grant award amounts and the minimum number of participants TRIO projects, including McNair projects, must serve each year of the grant cycle in the **Federal Register** notice inviting

applications for a competition. This practice will give the Department the flexibility to establish the number of participants to be served based on the available resources and other priorities for each competition and to adjust these numbers for subsequent competitions based on our experience, changing priorities, and cost analyses.

Change: We have revised § 647.32 by redesignating paragraphs (a), (b), (c), and (d) as paragraphs (b), (c), (d), and (e), respectively and adding a new paragraph (a). New paragraph (a) clarifies that a grantee must serve at least the number of participants that the Secretary identifies in the application notice for the competition, and states that through this notice, the Secretary provides the minimum and maximum grant award amounts for the competition.

Coordination of Services (new § 647.32(c)(5))

Comment: None.

Discussion: Based on comments we received on proposed § 643.11(b) for the Talent Search program—(Coordination Among Outreach Programs Serving Similar Populations), we have added a provision regarding the coordination of efforts necessary for students served by more than one Federal TRIO or other federally funded program to the additional requirements a grantee must meet under § 647.32(c)(5). We have also added a new McNair assurance requiring the coordination of efforts for students served by more than one Federal TRIO Program or other state or institutional program (see discussion regarding newly redesignated § 647.11(d)). Accordingly, § 647.32(c)(5) now requires the McNair grantee to maintain, to the extent practicable, a record of any services McNair participants receive during the project year from another Federal TRIO program or another federally funded program that serves populations similar to those served under the McNair program. This change will help ensure that the limited funds available under TRIO and other programs for disadvantaged students are used effectively and efficiently by minimizing the duplication of services through coordination of activities.

Change: We have added a new § 647.32(c)(5) to require grantees to maintain, to the extent practicable, records documenting any services the participant receives during the project year from another Federal TRIO program or another federally funded program that serves populations similar to those served under the McNair program.

Project Director (proposed § 647.32(d); final § 647.32(e))

Comments: We received a few comments requesting that we remove the requirement that a project employ a full-time project director.

Discussion: The McNair program regulations do not require McNair projects to employ a full-time project director. While we did make changes to parallel sections of the regulations for other TRIO programs, we did not propose any changes to § 647.32(e) of these regulations. Accordingly, no changes are necessary in response to these comments.

Changes: None.

Part 694—Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP)

Changes in the Cohort (§ 694.4)

Comment: One commenter asked how GEAR UP services would be provided to cohort students who move to non-participating schools after they complete the last grade level offered in a school.

Discussion: Section 694.4 addresses which students a State or Partnership must serve under GEAR UP when there are changes in the cohort. Specifically, this section of the regulations requires that a GEAR UP grantee continue to provide services to at least those students in the cohort who, after completing the last grade level offered by the school at which the cohort began to receive GEAR UP services, attend one or more participating schools that together enroll a substantial majority of the students in the cohort.

In response to the comment, we intend the term "participating schools" in § 694.4(b)(2) to refer to schools that students in a cohort attend after completing the last grade level offered by the school at which the cohort began to receive GEAR UP services.

Based on the language in § 694.4, including our use of the term "participating schools," we assume that when the commenter uses the term "non-participating schools" it does so to refer to schools that enroll no (or very few) students who have left the school at which their cohort began to receive GEAR UP services. Thus, we interpret the comment to be asking whether services must be provided to students in a cohort who, after completing the last grade level offered by the school at which the cohort began to receive GEAR UP services, move to a school that enrolls no (or very few) students from the cohort. While a GEAR UP grantee certainly could provide these students with GEAR UP services, nothing in this section requires it to do so.

We appreciate that the commenter may be concerned that GEAR UP students be able to continue to receive services regardless of what school they attend. However, we believe that an LEA would likely encounter both logistical and financial challenges that would be difficult to overcome if the LEA were required to continue to provide GEAR UP services to each student in a cohort regardless of where the student may later enroll and how many other GEAR UP students also attend that school. We believe that the language of proposed § 694.4, which we adopt in this final notice, creates the right balance for when an LEA must continue to provide GEAR UP services to these students.

Changes: None.

Waiver of Matching Requirements (§§ 694.8 and 694.9)

Comment: One commenter suggested that proposed §§ 694.8 and 694.9 may not be consistent with section 404C(b)(2) of the HEA, which was amended by section 404c(3)(C) of the HEOA. The commenter interprets this statutory section as authorizing either a State or a Partnership to apply for match relief either at the time of application or subsequent to receiving the grant award. The commenter observed that the proposed regulations do not authorize a State to seek such relief, and requested that we revise the final regulations to explain how a State may do so.

Discussion: The Secretary believes that the best statutory interpretation of the language in section 404C(b)(2) of the HEA is that the Department's authority to grant relief from the program's matching requirement to GEAR UP applicants and grantees extends to Partnerships but not to States. While section 404C(b)(2) of the HEA authorizes approval of "an eligible entity's request for a reduced match percentage," this language follows the lead sentence of the paragraph, which authorizes the Secretary, by regulation, to modify the minimum 50 percent match requirement only "for eligible entities described in section 404A(c)(2)" (*i.e.,* Partnerships). Based on this language, we do not interpret the HEA to allow States to apply for match relief either at the time of application or subsequent to the grant award.

Moreover, we believe that granting permission only to Partnerships to seek this reduced match percentage represents a reasonable approach given the greater capacity States have to provide matching contributions. We also note that during negotiated

rulemaking none of the non-Federal negotiators expressed a contrary view, or urged that the language of our proposed §§ 694.8 and 694.9 be modified to reflect the availability of waiver relief for State applicants or grantees.

Changes: None.

What priorities does the Secretary establish for a GEAR UP grant? (§ 694.19)

Comment: One commenter suggested that the proposed criteria for awarding competitive preference priority points for State applicants also be used for awarding competitive preference priority points to Partnership applicants.

Discussion: We appreciate the commenter's request that the proposed criteria for awarding competitive preference priority points to State applicants also be applied to Partnership applicants. Section 404A(b)(3) of the HEA mandates that, in making awards to State grant applicants, the Secretary must give priority to eligible applicants that carried out successful GEAR UP projects immediately before enactment of the HEOA and have a prior, demonstrated commitment to early intervention leading to college access. Because this provision only references applicability to State applicants, we believe that Congress intended it only to apply those entities and not to Partnership applicants. Therefore, the Department does not have the authority to make the change requested by the commenter.

Changes: None.

Services to students who were served under a previous GEAR UP grant (§ 694.25)

Comment: One commenter noted that summer enrichment programs would help those students who were served under a prior GEAR UP grant, but who had not yet graduated, to better prepare for postsecondary education. The commenter seemed to suggest that we revise § 694.25 to acknowledge the importance of these programs.

Discussion: The Secretary agrees with the commenter on the importance of summer programs, particularly for those students who did not graduate from high school with members of their cohort. However, such programs are already specifically authorized in § 694.22(i), and this is only one of many GEAR UP activities and strategies for helping these particular GEAR UP students to succeed. Moreover, the purpose of § 694.25 is to clarify when students who are still in secondary schools who were served under a prior GEAR UP grant need to continue to receive services under a new grant—not to specify what services grantees should provide to meet these students' needs.

Changes: None.

Executive Order 12866

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and therefore subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement 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. Pursuant to the Executive order, it has been determined that this regulatory action will have an annual effect on the economy of more than $100 million because the amount of government transfers provided through these discretionary grant programs will exceed that amount. Therefore, this action is "economically significant" and subject to OMB review under section 3(f)(1) of the Executive order.

The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits of this regulatory action, we have determined that the benefits of the regulations justify the costs.

We have determined, also, that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

HEP and CAMP Programs

The Secretary has concluded that there is no need to discuss the changes to the regulations for HEP and CAMP in the *Regulatory Impact Analysis* because the changes to regulations for these programs were minor. The most significant changes to these regulations address who can be considered an immediate family member of a migrant individual in order to be eligible for program services. The Department determined that providing clarity to the term "immediate family member" would help ensure there is a uniform standard of eligibility for these programs.

Federal Trio Programs

Need for Federal Regulatory Action

- These Federal TRIO program regulations are needed to implement provisions of the HEOA, which changed certain features of the TRIO program. In developing these regulations, the Secretary has endeavored to regulate only where necessary: *Number of Applications:* The HEA stipulates that entities may submit multiple applications for grants under each TRIO program "if the additional applications describe programs serving different populations or different campuses." The HEA, as amended by the HEOA, defines the terms "different population" and "different campus."
- *Section 643.22(d): Rigorous Secondary School Program of Study:* The HEOA modified the HEA's outcome criteria for Talent Search by adding the completion of a "rigorous secondary school program of study" as one of the criteria to be considered in calculating prior experience points.
- *Section 643.32: Changes to Minimum Number of Participants Served in Talent Search:* In order to provide it with greater flexibility to establish the minimum number of participants in each TS grant competition, the Department has decided to eliminate the current regulatory requirement that TS projects serve a minimum number of individuals.
- *Sections 643.30 (TS), 644.30 (EOC), 645.40 (UB), 646.30 (SSS), 647.30 (McNair): Changes to Allowable Costs (Computer Hardware and Software):* The requirement that grantees must seek prior approval for purchases of computer equipment was not addressed in the statute. However, based on comments received during negotiated rulemaking and the public comment period, the Department has decided to change its allowable cost regulations with respect to the purchase of computer equipment.

Regulatory Alternatives Considered

Sections 643.7 and 643.10 (TS); 644.7 and 644.10 (EOC); 645.6 and 645.20 (UB); 646.7 and 646.10 (SSS); and 647.7 and 647.10 (McNair): Number of Applications: Different Campuses and Different Populations

The HEA stipulates that entities may submit multiple applications "if the additional applications describe programs serving different populations or different campuses." Section 402A(h)(1) and (2) of the HEA defines "different campus" and "different population." A "different campus" is defined as a site of an institution of higher education that: Is geographically apart from the main campus of the institution; is permanent in nature; and offers courses in educational programs leading to a degree, certificate, or other recognized credential. A "different population" is defined in section 402A(h)(2) of the HEA as a group of individuals that an eligible entity desires to serve through an application for a TRIO grant that is: Separate and distinct from any other population that the entity has applied for a TRIO grant to serve; and while sharing some of the same needs as another population that the entity has applied to serve, has distinct needs for specialized services.

The regulations clarify that, for the purposes of the TS and UB programs, applicants will be allowed to submit multiple applications if they plan to serve different target schools. For the SSS and McNair programs, applicants can submit multiple applications if they propose to serve different campuses.

These final regulations establish a definition of "different campus" that is different from the definition of "different campus" currently in the SSS regulations. Current SSS regulations require a "different campus" to have separate budget and hiring authority to be an eligible applicant. However, the HEA, as amended by HEOA, defined "different campus" as a site of an institution of higher education that is: "Geographically apart from the main campus of the institution," "permanent," and one that offers courses leading to an educational credential. These regulations, therefore, use the definition from the HEA.

With respect to the implementation of the HEA's definition of "different population," initially, the Department proposed to implement this definitional change consistent with its current practice. Currently, all of the TRIO programs—except for SSS—prohibit an applicant from submitting an application proposing to serve a different population within the same target area, school, campus, etc. The SSS program allows an entity to submit a separate application to serve individuals with disabilities. However, during the negotiated rulemaking sessions, the non-Federal negotiators disagreed with this approach and argued that the HEA permits applicants to submit multiple applications that propose to serve different populations, even in the same target area, school, or campus. The Secretary has adopted this latter view. Under these final regulations, therefore, an applicant planning to serve a separate population will be permitted under certain circumstances to apply for a separate grant to serve the population even if it also applies to serve a different population of students on the same campus.

While grantees must be able to serve more students and to tailor services to meet the distinct needs of different populations, the Department needs to establish some limitations on the number of separate applications an eligible entity may submit for each competition. Without such limitations, adding the definition of the term *different population* to the regulations could have the unintended consequence of disproportionately increasing funding at some institutions, agencies, and organizations that submit several applications while limiting the funds available to expand program services to other areas, schools, and institutions. To mitigate this risk and to ensure fairness and consistency in the application process, the Department has amended the regulations for each of the TRIO programs to provide that the Department will define, for each competition, the different populations for which an eligible entity can submit separate applications and publish this information in the **Federal Register** notice inviting applications and other application materials for the competition.

This approach gives the Department the flexibility to designate the different populations for each competition based on changing national needs. It also permits the Department to more effectively manage the program competitions within the available resources.

For these reasons, under the final regulations, an entity applying for more than one grant under the TS, EOC, and UB programs may submit separate applications to serve different target areas and different target schools, and may also submit separate applications to serve one or more of the different populations designated in the **Federal Register** notice inviting applications. Entities applying for grants under the SSS and McNair programs will now be able to submit separate applications to serve different campuses and may also submit separate applications to serve one or more of the different populations designated in the **Federal Register** notice inviting applications for the competition.

These regulatory changes are expected to increase the number of grant applications for SSS (and other TRIO) grants. For the SSS program, the Department estimates an increase of about 450 applicants (from 1,200 to 1,650) for each competition. With 450 new applicants devoting approximately 34 hours to the process, the Department estimates that the amount of money spent on applications by applicants will increase by $742,950. (Note, however, that the cost to individual applicants is not expected to increase).

INCREASE IN AGGREGATE APPLICANT COSTS

Burden	Calculations	Estimated increase
Professional Staff	(450 additional applications * 27 hours * $30 per hour) + Overhead at 50% of salary	$546,750
Clerical Staff	(450 additional applications * 7 hours * $12 per hour) + Overhead at 50% of salary	56,700
Use of Computer Equipment	450 additional applications * ($200 for computer time + $10 for printing)	94,500
Operation Cost	450 additional applications * $100 cost of finding and maintaining application materials.	45,000
Total		742,950

Note: Cost estimations are based on the "Supporting Statement for the Application for Grants Under the Student Support Services Program, HEOA of 2008, Title IV–A."

In addition, the cost of administering the SSS grant competition will likely increase. In particular, the Department estimates that variable costs of processing and reviewing applications will increase by 37.5 percent. The cost of retaining outside reviewers should increase to $555,000 from $404,000 while application processing costs should increase from approximately $25,000 to $34,560. Costs associated with staff time for conducting the supervised review process are expected to increase from $377,000 to $518,000. Finally, costs associated with financing workshops, field reading, and slate preparation are expected to increase from $917,000 to $1,260,625. In sum, the Department estimates the expected increase in grant applications to increase administration costs by approximately $646,000.

INCREASE IN COST TO FEDERAL GOVERNMENT

Burden	Calculations	Estimated increase
Field reviewers	Proportional increase in field reviewers as a result of increase in applications * $1,100 ($1,000 honorarium, $100 for expenses).	$151,364
Processing applications	Proportional increase in staff or staff hours as a result of increase in applications	9,426
Contractor logistical support for workshops, achieving prior unfunded applications, application processing, field reading and slate preparation.	Proportional increase in contract costs as a result of increase in applications	343,807
Staff time for conducting supervised review.	Proportional increase in staff or staff hours as a result of increase in applications	141,382
Total		645,978

Note: Cost estimations are based on the "Supporting Statement for the Application for Grants Under the Student Support Services Program, HEOA of 2008, Title IV–A."

The primary beneficiaries of the regulatory change related to different populations will be students with special needs. To the extent that college completion strategies vary across different populations of students, allowing applicants to submit separate applications for different populations should increase the delivery of the right kinds of services to students. SSS projects geared specifically towards ESL students, for instance, should be able to provide highly specialized services to these students in a more efficient and effective manner than would a general SSS project.

Section 643.30: Rigorous Secondary School Program of Study Adding Tuition as an Allowable Cost in the TS program:

The HEOA modified the outcome criteria for the TS program. These outcome criteria are used to determine the award of prior experience points for grantees that choose to apply for future awards. One of the new outcome criteria added to the statute requires grantees to report on the number of all TS participants who complete a rigorous secondary school program of study that will make the students eligible for Academic Competitiveness Grants (ACG). This new statutory criterion in and of itself does not require that TS projects provide more intensive services: It could be interpreted simply as requiring the Department to track whether TS students, with proper counseling on course selection and with referrals to tutoring services, enroll in the coursework that would qualify them for an ACG grant. (In most States, students can qualify for an ACG grant if they complete four years of English; three years of mathematics, including algebra I and a higher-level class such as algebra II, geometry, or data analysis and statistics; three years of science, including at least two of three specific courses, biology, chemistry, and physics; three years of social studies; and one year of a language other than English. In addition, under the ACG program, there are other options for meeting the rigorous course of study requirement, including taking International Baccalaureate or Advanced Placement courses.)

A number of commenters on the proposed regulations contended some schools served by TS grantees do not provide the type of curriculum necessary for students to meet the ACG program's requirements for a "rigorous secondary school program of study." Consequently, they argued, grantees serving students in these schools would be at a disadvantage with respect to meeting this criterion. They specifically requested that grantees be permitted to use grant funds to enable participants in the TS program to attend classes at other schools to help grantees satisfactorily meet this new outcome criterion.

The Department has decided to allow TS grantees to use grant funds to pay a participant's tuition for a course that is part of a rigorous secondary school program of study if a similar course is not offered at a school within his or her school district provided that several conditions are met. The Department also has decided to allow TS grantees to pay for a student's transportation to a school not regularly attended by that student for that student to take a course that is part of a rigorous secondary school program of study.

To determine the impact of these regulations, we need to estimate the number of TS participants who do not have access to a rigorous secondary school program of study at their high school and the cost of providing these participants with the requisite curriculum (through payment of tuition and transportation costs to locations at which the participants will receive instruction). We also need to estimate the extent to which grantees that are serving schools with these participants will elect to incur these costs.

According to recent program data from the ACG 2007–2008 End of the Year Report, 54 percent of ACG recipients qualified under a rigorous coursework component, 41 percent under a State designated curriculum, and four percent under the Advanced Placement or International Baccalaureate Program courses. The Department asked the public for data on the extent to which rigorous coursework offerings that would meet the ACG requirements are not available at the schools or areas that are targeted under the TS program and the number of potential TS participants in these schools or areas that would be unable to meet the requirements because of the unavailability of the curriculum. The only data we received from the public

with respect to the availability of rigorous curricula at TS schools described the availability of such course offerings at the Portland Public Schools and the Hillsboro School District. According to the commenter providing these data, the secondary schools in these districts now provide a curriculum that meets the third definition of a rigorous secondary school program in these regulations and, by the 2011–2012 academic year, all these schools will be required to provide such a curriculum. Although we do not have national data on the number of affected students, we do have some data on the cost of providing tuition assistance. Based on data collected by the American Association of Community Colleges (AACC) in 2008, we estimate that the cost of providing a student with one course per semester, including required textbooks, would be approximately $560 to $1,280. AACC data indicate that the per credit costs for public community colleges range from about $20 in California to $180 in Vermont. This compares to an average grantee cost per TS participant of approximately $402 in 2008, which means that the opportunity cost of providing tuition for one TS participant to take one class at a community college is roughly equal to what it costs on average to serve 1 to 3 additional participants under the TS program prior to the enactment of HEOA. Because we do not know the extent to which grantees will elect to use funds for this purpose or the actual costs of providing access to this coursework, we asked current TS grantees to provide estimates regarding the amount of the project budget that might be used for tuition and the estimated number of participants that might benefit each year from this service if the grantee elected to provide it. A few grantees responded to this request, but their comments were based on an expectation that the new regulations would introduce a two-tiered system of service-provision in which grantees would concentrate on providing a rigorous secondary school program of study to only 10 percent of its participants. In these final regulations, the Department is clarifying that TS grantees will collaborate and coordinate with their target schools to provide access to and assistance in completing a rigorous secondary school program of study for all participants (see § 643.21(c)(4)). With respect to the benefits of this regulatory change, the Secretary believes that students enrolled in schools with curricula that do not meet the State's definition of a rigorous secondary school program of study will be the primary beneficiaries. TS participants in schools that do not offer all of the coursework needed to meet the requirements of a rigorous secondary school program of study (*e.g.,* they do not offer a physics or chemistry course) may be afforded the opportunity to take such coursework through an institution of higher education. Given the body of research suggesting that students who take rigorous classes in high school are more likely to enroll in and complete postsecondary education, providing this benefit to TS participants could improve their educational outcomes. A 2003 GAO report, for instance, reported that students taking a highly rigorous secondary school program of study were 1.7 times more likely to earn a bachelor's degree than students who took a basic high school curriculum.[6] However, grantees will need to balance the costs of providing these opportunities to individual students with the expected educational benefits to avoid an unnecessary increase in the cost of successful outcomes under this program.

Section 643.32: Changes to the Minimum Number of Participants Served in TS

Current TS regulations require that any grantee receiving an award of $180,000 or more must serve a minimum of 600 individuals. In these final regulations, the Department removes this requirement that TS projects serve a minimum number of individuals.

The Department has decided to take this action to provide it flexibility in each competition to establish the minimum number of participants that must be served, and to adjust these numbers in subsequent competitions based on experience, cost analyses, and other factors.

The Department is committed to encouraging TS grantees to identify and adopt the most cost-effective strategies to help disadvantaged youth complete secondary school programs, enroll in or reenter education programs at the postsecondary level, and complete postsecondary education programs. The Department intends to design future TS grant competitions to achieve this objective. Grant competition notices will set parameters that are consistent with the statute to encourage adoption of cost effective practices using the best available evidence. This will include setting a minimum number of program participants for each competition to promote adoption of cost-effective practices.

In accordance with § 643.32(b) of the final regulations, the Secretary will specify the number of participants a TS project will be expected to serve each year of the grant cycle through the **Federal Register** notice inviting applications for a competition. Through this notice, the Secretary will also provide the minimum and maximum grant award amounts for the project period.

Sections 643.30 (TS), 644.30 (EOC), 645.40 (UB), 646.30 (SSS), 647.30 (McNair): Changes to Allowable Costs (Computer Hardware and Software)

Under the final regulations, TRIO projects no longer are required to obtain the Secretary's approval before purchasing computer and software equipment. This regulatory change eliminates administrative costs associated with obtaining this approval.

GEAR UP

Need for Federal Regulatory Action

The final GEAR UP regulations are needed to implement provisions of the HEOA, which changed certain features of the GEAR UP program. The Secretary has endeavored to regulate only where necessary, and in ways that to the extent possible reflect the recommendations of the non-Federal negotiators. The statutory changes that have prompted us to make changes in these regulations follows:

- *Section 694.19—Priority:* Section 404A(b)(3)(A) of the HEA now requires that priority be given to those States that have "carried out successful [GEAR UP] programs" prior to enactment of the HEOA, and have a "prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies."
- *Section 694.8—Waiver of Matching Requirements:* Section 404C(b)(2) of the HEA, as amended by the HEOA, permits the Secretary to waive the matching requirement for a Partnership in whole or in part if, at the time of application, the Partnership demonstrates significant economic hardship that precludes it from meeting the matching requirement, or requests that its contributions to the scholarship fund under section 404E of the HEA be matched on a two-for-one basis. Section 404C(b)(2) of the HEA also permits the Secretary to waive the matching requirement for any Partnership grantee that demonstrates that the matching funds described in its application are not available and that it

[6] GAO, "Additional Efforts Could Help Education With its Education Goals," May 2003, available at *http://www.gao.gov/new.items/d03568.pdf.*

has exhausted all revenues for replacing these matching funds.

• *Sections §§ 694.12 and 694.14—Scholarship Component:* Section 404E(e)(1) of the HEA, as amended by the HEOA, requires each State grantee to reserve an amount of money that is not less than the minimum scholarship amount described in section 404E(d) of the HEA, multiplied by the number of students the grantee estimates will complete a secondary school diploma or its equivalent as may be required for the students' admission and enrollment at an institution of higher education. The Department interprets this new statutory provision along with the new requirement in section 404E(d) of the HEA that all eligible students (as defined in section 404E(g) of the HEA), whether served by a State or Partnership grantee, who enroll in an institution of higher education receive at least the minimum Federal Pell Grant award, to require any GEAR UP grantee subject to the section 404E requirements to provide this minimum award to all GEAR UP students enrolled in an institution of higher education. This statutory change led the Department to revisit its current regulations governing the provision of continuation scholarships.

• *Section § 694.16—Return of Unused Scholarship Funds:* Section 404E(e)(4)(A) of the HEA, as amended by the HEOA, now requires State grantees either to redistribute to other eligible students scholarship funds that are not used by eligible students within six years of the student's completion of secondary school or return those funds to the Secretary for distribution to other grantees in accordance with the funding rules described in section 404B(a) of the HEA.

Regulatory Alternatives Considered

Section 694.19: Priority

Final § 694.19 clarifies how the Department will implement the statute's requirement that priority in making awards be given to those States that meet the following elements: (1) Prior to enactment of the HEOA have "carried out successful GEAR UP programs" and (2) have a "prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies." While the Department could seek to implement this statutory priority by having applicants address in their applications how they met of these elements, we believe that imposing this kind of data burden is unnecessary.

Instead, we will rely, where possible, on reports that applicants previously submitted in implementing their prior GEAR UP projects. Thus, to implement this statutory priority, the Department will grant "priority preference points" to State applicants, based, in part, on their prior submission of data, including outcome data, about their projects and other information available to the Department. At present, the Department is considering implementing the second element of the priority, which concerns a prior, demonstrated commitment to early intervention leading to college access, through review of the new GEAR UP application itself given that we do not know how else the Department would obtain the information it needs to determine the extent to which applicants would meet the second element of the priority. Moreover, should the Department determine that it needs applicants to provide more information on this second element in their applications, the Department believes that the additional burden would be very small, and that the costs of this additional administrative burden would be far outweighed by the benefits of ensuring that the Department is able to give priority to the most deserving State applicants.

Sections 694.8 and 694.9: Waiver of Matching Requirements

Consistent with section 404C(b) of the HEA, as amended by the HEOA, these new sections specify the circumstances in which the Secretary will consider requests from applicants for a waiver of GEAR UP's matching requirement based on significant economic hardship, and from grantees based on the unavailability of matching funds as described in section 404C(b)(2)(A) and (b)(2)(B) of the HEA. (Section 404C(b)(2)(A)(ii) of the HEA also authorizes a Partnership applicant to request that contributions to scholarship funds established under section 404E of the HEA be matched on two-to-one basis, but final § 694.8(c) simply repeats this statutory provision.)

The final regulations governing waiver requests by applicants (§ 694.8) and by grantees (§ 694.9) provide significant benefit to the public, and do so in numerous ways. First, they provide that the Secretary will entertain waiver requests of significant amounts from applicants and grantees—up to 75 percent for up to two years in the case of an applicant that demonstrates a significant economic hardship stemming from a specific, exceptional, or uncontrollable event, and up to 50 percent for up to two years in the case of an applicant with a pre-existing and on-going significant economic hardship that precludes the applicant from meeting the matching requirement. Second, by providing clarifying examples of the kinds of economic situations and events that would give rise to approval of an applicant's or grantee's waiver requests, the final regulations advise the public of the considerations the Secretary will examine upon receipt of a waiver request.

Finally, for an applicant in an area that faces chronic economic challenges expected to affect the life of the GEAR UP project, § 694.8(b)(3) permits the Secretary to grant tentative approval of the waiver for the entire project period, subject to the Partnership's submission of documentation every two years that confirms (1) the continued economic hardship, and (2) the Partnership's continuing and unsuccessful attempts to secure matching contributions. This regulatory provision both eliminates the applicant's need to prepare a non-Federal budget as part of its application, and upon initial approval of the waiver request, provides a basis for predicting whether or not the Secretary will extend the waiver in future years.

Thus, these regulatory provisions provide a substantial benefit to grantees meeting the new criteria. For example, in 2009, the average GEAR UP grant award made to a Partnership was approximately $1.1 million. Because, absent a waiver, GEAR UP grantees must match the amount of Federal expenditures, the average annual matching requirement for a Partnership was also $1.1 million in 2009. However, under §§ 694.8(b) and 694.9(a)(1), a Partnership-applicant that can demonstrate an ongoing significant economic hardship that precludes it from meeting the matching requirement, or a Partnership grantee that can demonstrate that its matching contributions are no longer available and that it has exhausted all funds and sources of potential replacement contributions, could receive a waiver up to 50 percent, or on average up to $600,000 per year. And, under §§ 694.8(a) and 694.9(a)(2), a Partnership that can demonstrate the unavailability of match due to an uncontrollable event such as a natural disaster that has had a devastating impact on members of the Partnership and the community in which they operate may receive a waiver of up to 75 percent—thus creating a benefit (*i.e.,* a lessened private commitment) on average of up to $900,000 per year. Given the current national economic climate, such waiver requests seem likely. Moreover, for grantees that

would not be able to continue operating their GEAR UP projects without these waivers, these regulations enable the participating students to continue to receive GEAR UP services, albeit at a reduced level given the smaller matching contributions.

In considering the amount of match subject to possible waiver, the non-Federal negotiators opposed waivers of greater size. They stressed the importance of a vibrant and committed partnership in GEAR UP projects required partners to maintain a commitment of their own resources to help provide needed GEAR UP services. Moreover, the non-Federal negotiators also noted that even under current economic conditions, partners committed to the GEAR UP projects should be able to secure substantial in-kind matching contributions. Accordingly, they rejected options under which the Secretary might provide a waiver of the matching contributions for one or more years of the project because of economic conditions or a one-time exceptional or uncontrollable event waiver of up to 100 percent.

We agree with the non-Federal negotiators on this issue. We believe that our decision to allow the Secretary to grant waivers of the program's matching requirement of up to 50 and 75 percent strikes the right balance between (a) providing relief where circumstances beyond the control of a Partnership affect its ability to maintain its required match, and (b) the need for members of the Partnership to be truly committed to helping to provide the services that participating GEAR UP students need.

Sections 694.12 and 694.14: Scholarship Component

Final § 694.14(g) makes the requirement in prior § 694.10(d) that grantees participating in the scholarship component must grant continuation scholarships to each student who was granted an initial scholarship (and who remains eligible) inapplicable to grantees that receive their initial GEAR UP awards on or after August 14, 2008. Our decision to remove this financial burden from these grantees recognizes that by requiring each eligible student to receive at least the Federal Pell Grant minimum award, section 404E of the HEA, as amended by the HEOA, will leave grantees with insufficient scholarship funds to meet the current regulatory requirement. While GEAR UP students may bear a corresponding cost by not having these continuation awards available to them, this cost results from the new statutory requirement that all eligible students receive at least the Pell Grant minimum award. Because the minimum scholarship amount is equal to the minimum Federal Pell Grant award, which is defined in section 401(b)(4) of the HEA as 10 percent of the maximum Pell Grant award, the benefit to grantees as a result of final § 694.14(g) is equal to at least 10 percent of the appropriated maximum Pell grant award in a given year, multiplied by the number of individuals the grantee determines will not receive continuation awards. Importantly, because removing the continuation award requirement from the GEAR UP regulations only applies to new awards, no GEAR UP students in newly funded projects will have the expectation of receiving a GEAR UP continuation scholarship.

Section 694.16: Return of Unused Scholarship Funds

Section 404E(e)(4)(A)(ii) of HEA, as amended by the HEOA, requires grantees to return to the Secretary any scholarship funds that remain after they have first redistributed unused funds to eligible students. To enable the Department to monitor these scholarship accounts and ensure that Federal funds reserved for scholarships are expended as intended, the Department has added § 694.16(c), which requires grantees participating in the scholarship component of the program to provide annual information, as the Secretary may require, on the amount of Federal and non-Federal funds reserved for GEAR UP scholarships, and the disbursement of those scholarship funds to eligible GEAR UP students. These annual reports will need to be submitted until all of the funds are either disbursed or returned to the Secretary.

This requirement imposes an administrative burden on the grantees. Grantees will be able to charge some of these administrative costs to their award of Federal GEAR UP grant funds because some of these annual reports will be prepared and submitted during the project period. Other annual reports will need to be prepared and submitted after the six-or seven-year GEAR UP project period has ended (by which time it is possible that the Partnerships have dissolved). In order to pay the costs of post-project reports, grantees may (1) reserve additional amounts during each project period for the future costs of preparing and submitting post-project reports, or (2) authorize those administering the GEAR UP scholarship accounts to deduct such amount from the amount held in reserve for GEAR UP scholarships (assuming that all eligible students will still be able to receive a minimum Federal Pell Grant award).

Because the Department has not yet established detailed reporting requirements for this regulatory provision, it is difficult to estimate the costs that grantees could charge to GEAR UP funds. However, based on all available information, the Secretary believes that the costs introduced by this regulatory provision are justified by the Department's need to have the necessary information to monitor the millions of dollars of Federal funds obligated to GEAR UP scholarship accounts.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in the following table, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this regulatory action. This table provides our best estimate of the Federal payments to be made to institutions of higher education, public and private agencies and organizations, and secondary schools under these programs as a result of this regulatory action. Expenditures are classified as transfers to those entities.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

Category	Transfers (in millions)
Annual Monetized Transfers.	$1,233
From Whom to Whom	Federal Government to institutions of higher education, public and private agencies and organizations, and secondary schools.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant impact on a substantial number of small entities. The regulations affect institutions of higher education, States, LEAs, and nonprofit organizations.

The Regulatory Flexibility Act defines three types of "small entities." They include "small businesses," which have the same meaning as "small business concern" under section 3 of the Small Business Act and includes firms that are "independently owned and operated" and "not dominant in its field of operation." The U.S. Small Business Administration further defines small business by developing size standards

by industry. The definition of small business includes for-profit schools with total annual revenue below $7,000,000. The definition of small entity also includes "small organizations," which are defined as "any not-for-profit enterprise which is independently owned and operated and not dominant in its field," and "small governmental jurisdictions," which include schools districts under 50,000.

HEP and CAMP

The Secretary believes that the minor changes reflected in the HEP and CAMP regulations will not affect small entities.

Federal TRIO Programs

The Secretary believes that the regulations for the Federal TRIO Programs will not adversely impact any small entities receiving TRIO grants. The Department has determined that approximately 141 of the 2,887 TRIO grantees are defined as "small entities" under the U.S. Small Business Administration's size standards. Of these 141 entities, 133 are nonprofit organizations that receive less than $5,000,000 in total annual revenue, 7 are LEAs or tribes with jurisdictions containing fewer than 50,000 people, and one is a secondary school. The Secretary believes that the final Federal TRIO regulations will not negatively impact these small entities and, in fact, believes that small grantees will benefit from these regulations. For example, the removal of the minimum students served requirement under the TS program will benefit small entities, whose typically smaller budgets make it difficult to serve large numbers of students. In addition, the elimination of the requirement for grantees to obtain the Secretary's approval before purchasing computer equipment will benefit small grantees, in particular, because administrative costs for these grantees are most burdensome. Most importantly, given that TRIO programs are competitive grant programs, all costs of participating are reimbursed by the grant.

GEAR UP

The Secretary believes that the final GEAR UP regulations will not adversely impact any small entities receiving GEAR UP grants. The 42 States receiving grants are not small entities because each State has a population exceeding 50,000. Thirty of the fiscal agents for the 154 Partnership grants are LEAs; according to the U.S. Census Bureau, 6 of these LEAs have jurisdiction over an area with fewer than 50,000 residents, and as such, are defined as "small entities" under the U.S. Small Business Administration size standards. However, the Secretary believes that these small entities will not be adversely impacted by the regulations. In accordance with statutory changes, the regulations regarding matching requirement waivers should particularly benefit small fiscal agents, which are more vulnerable to economic hardship than large fiscal agents, and, therefore, more likely to qualify for waivers.

Paperwork Reduction Act of 1995

Sections 642.21, 642.22, and 642.25 of the Training Program for Federal TRIO Programs (Training) regulations; §§ 643.21, 643.22, 643.24 and 643.32 of the Talent Search (TS) regulations; §§ 644.21, 644.22, 644.24, and 644.32 of the Educational Opportunity Centers (EOC) regulations; §§ 645.31; 645.32, 645.35, and 645.43 of the Upward Bound (UB) regulations; §§ 646.11, 646.21, 646.22, 646.24, 646.32, and 646.33 of the Student Support Services (SSS) regulations; §§ 647.21, 647.22 and 647.24 of the Ronald E. McNair Postbaccalaureate Achievement Program (McNair); and §§ 694.7, 694.8, 694.9, 694.14, 694.19, and 694.20 of the GEAR UP regulations contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

Parts 642, 643, 644, 645, 646, 647—Federal TRIO Programs

Recent grant application packages for the Training, SSS, TS, EOC, UB, and McNair programs have been or will be discontinued; new application packages for these programs will be developed prior to their next competitions, and will reflect the regulatory changes included in these final regulations. For each new application, a separate 30-day **Federal Register** notice will be published to solicit comments on the new application prior to the next scheduled competition for the program.

Likewise, any regulatory changes applicable to the annual performance reports (APRs) will affect grants awarded under competitions conducted after the enactment of the HEOA. The APRs for the first year of a new grant will be due approximately 15 months after the beginning of the new grant period. Until new grants are awarded, the Department will continue to use the existing APR for the program. A new APR for each program that addresses the new HEOA requirements will be developed for the new grant period. A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the new APR form for each program prior to its usage.

Sections 642.21 and 642.25 (Training)—Selection criteria the Secretary uses to evaluate an application for a new grant and the second review process for unsuccessful applicants.

The final regulations for the Training program amend the selection criteria the Secretary uses to evaluate an application for a new grant to conform to current practice. Further, section 402A(c)(8)(C) of the HEA established a formal second review process for unsuccessful TRIO applicants. Therefore, the final regulations include a new section that establishes processes and procedures for a second review of unsuccessful applications. The new application will include the changes to the selection criteria and describe the processes and procedures for the second review of unsuccessful applications.

Specifically, these regulations remove the *Need* criterion from the selection criteria for the Training program (current § 642.31(f)) to conform to current practice. An applicant for a Training grant now will need to address one of the absolute priorities established in the **Federal Register** notice inviting applications for the competition. With the absolute priorities, the Department will establish the "need" for the proposed training; thus, the *Need* selection criterion is no longer necessary. This regulatory change will reduce the amount of information an applicant must include in its application.

In addition, the application will describe the procedures an unsuccessful applicant must follow to request a second review of its application. Under the final regulations, only those applicants in the proposed "funding band" will be eligible to request a second review. As described in the regulations, the Department will notify an unsuccessful applicant in writing as to the status of its application and the "funding band" for the second review and provide copies of the peer reviewers' evaluations of the application and the applicant's prior experience (PE) scores, if applicable. The applicant will be given at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification. To be considered for a second review, an applicant must provide evidence

demonstrating that the Department, an agent of the Department, or a peer reviewer made a technical, administrative or scoring error in the processing or review of the application. The applicant, however, is not permitted to submit any additional data or information related to the criteria used to evaluate the quality of the application that was not included in its original application.

The regulatory change to the selection criteria reduces the amount of information an applicant must include in its application, resulting in an estimated burden reduction of 240 hours. In addition, we estimate that approximately 10 percent of the applications received under each competition for Training grants will score within the "funding band." For each applicant in the "funding band" that requests a second review, we estimate an additional burden of two hours for a burden increase of 12 hours, which includes the time an applicant would need to review the peer reviewers' evaluations and, if applicable, the PE assessment and submit a written request for a second review.

Taken together, the regulatory changes reflected in §§ 642.21 and 642.25 will result in a net total burden reduction of 228 hours, reflected in OMB Control Number 1840–NEW1.

Sections 643.21 and 643.24 (TS)—Selection criteria the Secretary uses to evaluate an application for a new grant and the second review process for unsuccessful applicants.

The final regulations amend the selection criteria the Secretary uses to evaluate an application for a new TS grant to address statutory changes resulting from the HEOA. Further, section 402A(c)(8)(C) of the HEA, as amended by the HEOA, added requirements for a formal second review process for unsuccessful applicants. Therefore, the final regulations add a new section that establishes processes and procedures for a second review of unsuccessful applications. The new application will include the changes to the selection criteria and the processes and procedures for the second review of unsuccessful applications.

The HEOA made significant changes to the purpose and goals of the TS program as reflected in changes to applicant eligibility, the list of required and permissible services, and the outcome criteria. To better align the selection criteria with these statutory changes, we revised the following selection criteria: § 643.21(a) (Need for the project); 643.21(b) (Objectives); 643.21(c) (Plan of operation); and 643.21(d) (Applicant and community support).

In addition, the application for TS competitions will describe the procedures an unsuccessful applicant must follow to request a second review of its application. Under the regulations, only those applicants in the proposed "funding band" will be eligible to request a second review. As described in the final regulations, the Department will notify an unsuccessful applicant in writing as to the status of its application and the "funding band" for the second review and provide copies of the peer reviewers' evaluations of the application and the applicant's PE scores, if applicable. The applicant will be given at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification. To be considered for a second review, an applicant will need to provide evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made a technical, administrative or scoring error in the processing or review of the application. The applicant, however, will not be able to submit any additional data or information related to the criteria used to evaluate the quality of the application that was not included in its original application.

The Department does not expect the changes to the TS selection criteria to increase an applicant's paperwork burden. However, we estimate that approximately two percent of the applications received under each competition for TS grants will score within the "funding band". For each applicant in the "funding band" that requests a second review, we estimate an additional burden of two hours, which includes the time an applicant would need to review the peer reviewers' evaluations and, if applicable, the PE assessment and submit a written request for a second review. This will result in a total burden increase of 60 hours for the revised application, which will be reflected in a new OMB Control Number 1840–NEW2. The Department has already solicited public comments in a separate 30-day **Federal Register** notice that was published on August 5, 2010 (75 FR 37415) on the new application process that will be used for the FY 2011 competition for new TS grants; the estimated deadline date for receiving applications for this competition is December 2010.

Sections 644.21 and 644.24 (EOC)—Selection criteria the Secretary uses to evaluate an application for a new grant and the second review process for unsuccessful applicants.

The final regulations for the EOC program amend the selection criteria the Secretary uses to evaluate an application for a new grant to address statutory changes resulting from the HEOA. Further, section 402A(c)(8)(C) of the HEA, as amended by the HEOA, added requirements for a formal second review process for unsuccessful applicants. Therefore, the final regulations will establish processes and procedures for a second review of unsuccessful applications. The new grant application for the EOC program will include the changes to the selection criteria and describe the processes and procedures for the second review of unsuccessful applications.

Revisions in the selection criteria are needed to address the statutory changes resulting from the HEOA. The HEOA made changes to the outcome criteria. To better align the selection criteria with these statutory changes, we revised the selection criteria in § 644.21(b) (Objectives). The revised selection criteria replace existing criteria.

In addition, the EOC grant application will describe the procedures an unsuccessful applicant would need to follow to request a second review of its application. Under these regulations, only those applicants in the "funding band" will be eligible to request a second review. As described in the regulations, the Department will notify an unsuccessful applicant in writing as to the status of its application and the "funding band" for the second review and provide copies of the peer reviewers' evaluations of the application and the applicant's PE scores, if applicable. The applicant will be given at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification. To be considered for a second review, an applicant will need to provide evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made a technical, administrative or scoring error in the processing or review of the application. The applicant, however, will not be able to submit any additional data or information related to the criteria used to evaluate the quality of the application that was not included in its original application.

The Department does not expect these changes to the selection criteria will increase an applicant's paperwork burden. However, we estimate that approximately two percent of the applications received under each competition for EOC grants will score within the "funding band." For each applicant in the "funding band" that requests a second review, we estimate an additional burden of two hours, which includes the time an applicant would need to review the peer reviewers' evaluations and, if applicable, the PE assessment and submit a written request for a second review. This will result in a total burden increase of 20 hours for the revised application, which will be reflected in a new OMB Control Number 1840–NEW3. A separate 30-day **Federal Register** notice will be published to solicit public comment on the new application form to be used for the next competition for new EOC grants currently scheduled for winter 2011.

Sections 645.31 and 645.35 (UB)—Selection criteria the Secretary uses to evaluate an application for a new grant and the second review process for unsuccessful applicants.

The final UB regulations amend the selection criteria the Secretary uses to evaluate an application for a new grant to address statutory changes resulting from the HEOA. Further, section 402A(c)(8)(C) of the HEA, as amended by the HEOA, added requirements for a formal second review process for unsuccessful applicants. Therefore, the final regulations establish processes and procedures for a second review of unsuccessful applications. The new application for UB grant competitions will include the changes to the selection criteria and describe the processes and procedures for the second review of unsuccessful applications.

The HEOA made changes to applicant eligibility and the outcome criteria. To better align the selection criteria with these statutory changes, we revised the following selection criteria: §§ 645.31(b) (Objectives) and 645.31(d)(2) (Applicant and community support). The revised selection criteria replace the criteria in current §§ 645.31(b) and 645.31(d)(2).

In addition, the application will describe the procedures an unsuccessful applicant must follow to request a second review of its application. Under the regulations, only those applicants in the "funding band" will be eligible to request a second review. As described in the final regulations, the Department will notify an unsuccessful applicant in writing as to the status of its application and the "funding band" for the second review and provide copies of the peer reviewers' evaluations of the application and the applicant's PE scores, if applicable. The applicant will be given at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification. To be considered for a second review, an applicant will need to provide evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made a technical, administrative or scoring error in the processing or review of the application. The applicant, however, will not be permitted to submit any additional data or information related to the criteria used to evaluate the quality of the application that was not included in its original application.

The Department does not expect these changes to the selection criteria to increase an applicant's paperwork burden. However, we estimate that approximately two percent of the applications received under each competition for UB grants will score within the "funding band." For each applicant in the "funding band" that requests a second review, we estimate an additional burden of two hours, which includes the time an applicant would need to review the peer reviewers' evaluations and, if applicable, the PE assessment and submit a written request for a second review. This will result in a total burden increase of 80 hours for the revised application, which will be reflected in a new OMB Control Number 1840–NEW4.

A separate 30-day **Federal Register** notice will be published to solicit public comment on the new application form to be used for the next competition for new UB grants currently scheduled for fall 2011.

Sections 646.11, 646.21 and 646.24 (SSS)—The assurances and other information an applicant must include in an application, the selection criteria the Secretary uses to evaluate an application for a new grant and the second review process for unsuccessful applicants.

The final SSS regulations amend the selection criteria the Secretary uses to evaluate an application for a new grant to address statutory changes resulting from the HEOA and add the statutory requirement that an applicant include in its application a description of its efforts in providing participants with sufficient financial assistance. Further, section 402A(c)(8)(C) of the HEA, as amended by the HEOA, has added requirements for a formal second review process for unsuccessful applicants. Therefore, the final regulations include a new section that establishes processes and procedures for a second review of unsuccessful applications. The new application will include the changes to the selection criteria and describe the processes and procedures for the second review of unsuccessful applications.

The HEOA made changes to the outcome criteria. To better align the selection criteria with these statutory changes and current practice, we revised § 646.21(b) (Objectives). In addition, we have revised § 646.11 to include the requirement that the applicant discuss in its application its efforts to provide participants sufficient financial assistance.

The application for SSS grants will describe the procedures an unsuccessful applicant must follow to request a second review of its application. Under the SSS regulations, only those applicants in the "funding band" are eligible to request a second review. As described in the regulations, the Department will notify an unsuccessful applicant in writing as to the status of its application and the "funding band" for the second review and provide copies of the peer reviewers' evaluations of the application and the applicant's PE scores, if applicable. The applicant will be given at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification. To be considered for a second review, an applicant must provide evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made a technical, administrative, or scoring error in the processing or review of the application. The applicant, however, will not be permitted to submit any additional data or information related to the criteria used to evaluate the quality of the application that was not included in its original application.

The Department does not expect the changes to the SSS selection criteria or the assurances that an applicant must provide in its application will increase an applicant's paperwork burden. However, we estimate that approximately two percent of the applications received under each competition for SSS grants will score within the "funding band" and be eligible for a second review. For each applicant in the "funding band" that requests a second review, we estimate

an additional burden of two hours, which includes the time an applicant would need to review the peer reviewers' evaluations and, if applicable, the PE assessment and submit a written request for a second review. This will result in a total burden increase of 66 hours for the revised application, which will be reflected in a new OMB Control Number 1840–NEW5.

A separate 30-day **Federal Register** notice will be published to solicit public comment on the new application form to be used for the next competition for new SSS grants currently scheduled for fall 2014.

Sections 647.21 and 647.24 (McNair)—Selection criteria the Secretary uses to evaluate an application for a new grant and the second review process for unsuccessful applicants.

The final McNair regulations amend the selection criteria the Secretary uses to evaluate an application for a new grant to address statutory changes resulting from the HEOA. Further, section 402A(c)(8)(C) of the HEA, as amended by the HEOA, added requirements for a formal second review final for unsuccessful applicants. Therefore, the final McNair regulations establish processes and procedures for a second review of unsuccessful applications. The new application will describe the changes to the selection criteria and the processes and procedures for the second review of unsuccessful applications.

The HEOA made changes to the outcome criteria. To better align the selection criteria for McNair with these statutory changes and current practice, we revised § 647.21(b) (Objectives).

In addition, the McNair grant application will describe the procedures an unsuccessful applicant must follow to request a second review of its application. Under the final regulations, only those applicants in the "funding band" will be eligible to request a second review. As described in the final regulations, the Department will notify an unsuccessful applicant in writing as to the status of its application and the "funding band" for the second review and provide copies of the peer reviewers' evaluations of the application and the applicant's PE scores, if applicable. The applicant will be given at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification. To be considered for a second review, an applicant will need to provide evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made a technical, administrative or scoring error in the processing or review of the application. The applicant, however, will not be permitted to submit any additional data or information related to the criteria used to evaluate the quality of the application that was not included in its original application.

The Department does not expect the changes to the selection criteria for the McNair program to increase an applicant's paperwork burden. However, we estimate that approximately two percent of the applications received under each competition for McNair grants will score within the "funding band." For each applicant in the "funding band" that requests a second review, we estimate an additional burden of two hours, which includes the time an applicant would need to review the peer reviewers' evaluations and, if applicable, the PE assessment and submit a written request for a second review. This will result in a total burden increase of 16 hours for the revised application, which will be reflected in a new OMB Control Number 1840–NEW6. A separate 30-day **Federal Register** notice will be published to solicit public comment on the new application form for the next competition for new McNair grants currently scheduled for winter 2012.

Section 642.22 (Training)—How does the Secretary evaluate prior experience?

The HEA does not establish specific outcome criteria for the Training program; the program outcome criteria for evaluating a grantee's PE are established in the regulations.

Under the final regulations for the Training program, we will award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination will be based on the information the grantee submits in its APRs. The regulations amend the PE criteria the Secretary uses to award PE points as follows.

For Training (Newly redesignated § 642.20 and 642.22), we clarified the PE criteria and updated the regulations to reflect the maximum number of PE points a Training program grantee may earn. The maximum number of points changes from 8 points to 15 points.

The burden hour estimate associated with this APR is reported under OMB Control Number 1894–0003, the Department's generic performance report Standard 524B form. The Department does not expect the changes reflected in this provision to increase burden.

Sections 643.22 and 643.32 (TS)—How does the Secretary evaluate prior experience? and New recordkeeping requirement.

Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, provides specific outcome criteria to be used to determine an entity's PE of high quality service delivery and for the purpose of reporting annually to Congress on the performance of the TS program. Prior to the enactment of the HEOA, the PE criteria were established only in the regulations.

Under the final TS regulations, we will award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination will be based on the information the grantee submits in its APRs. The regulations amend the criteria the Secretary uses to award PE points.

The final TS regulations amend the PE criteria to address statutory changes resulting from the HEOA. The new statutory outcome and PE criteria for TS require grantees to report on: (1) Secondary school persistence of participants; (2) secondary school graduation of participants with regular secondary school diploma; (3) secondary school graduation of participants in a rigorous secondary school program of study; (4) the postsecondary enrollment of participants; and (5) the postsecondary completion of participants.

We also amended the recordkeeping requirements in § 643.32(c) to require that a TS grantee, to the extent practicable, keep a record of any services its participants receive during the project year from another Federal TRIO program or other federally funded program serving similar populations.

Currently one APR form is used for both the TS and EOC programs. Because of the changes to TS, the Department plans to develop a new APR for TS. The Department expects the reporting and recordkeeping requirements for TS to increase the reporting burden for this new data collection to 16 hours for each grantee. This will result in a total burden increase of 7,520 hours for the new APR, which will be reflected in a new OMB Control Number 1840–NEW7. A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the new APR form several months prior to its first use in fall 2012.

Sections 644.22 and 644.32 (EOC)—How does the Secretary evaluate prior experience? and New recordkeeping requirement.

Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, provides specific outcome criteria to be used to determine an entity's PE of high quality service delivery and for the purpose of reporting annually to Congress on the performance of the EOC program. Prior to the HEOA, the PE criteria were established only in the regulations.

Under the final EOC regulations, we will award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination will be based on the information the grantee submits in its APRs. The final regulations amend the criteria the Secretary uses to award PE points.

We also amended the recordkeeping requirements in § 644.32(c) to require that an EOC grantee, to the extent practicable, keep a record of any services its participants receive during the project year from another Federal TRIO program or other federally funded program serving similar populations.

The new statutory PE criteria are similar to the current regulatory PE criteria for the EOC program (see current § 644.22); therefore, the Department does not expect the changes in § 644.22 to increase the burden on an EOC grantee. However, the Department expects the new recordkeeping requirements for EOC to increase the reporting burden by 2 hours per grantee (248 total hours). However, when a new TS APR is developed, the current TS/EOC form will not be used by TS grantees; therefore, we expect a burden decrease for this data collection of 2,820 hours; therefore, the net reduction in burden hours will be 2,572, which will be reflected in a new OMB Control Number 1840–NEW8.

A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the new APR form several months prior to its first use in fall 2012.

Sections 645.32 and 645.43 (UB)—How does the Secretary evaluate prior experience? and New recordkeeping requirement.

Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, provides specific outcome criteria to be used to determine an entity's PE of high quality service delivery and for the purpose of reporting annually to Congress on the performance of the UB program. Prior to the enactment of the HEOA, the PE criteria were established only in the regulations.

Under the final regulations for the UB program, we award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination will be based on the information the grantee submits in its APR. The final regulations amend the criteria the Secretary uses to award PE points.

Revisions in the PE criteria are needed to address statutory changes resulting from the HEOA. The new statutory outcome PE criteria for UB require grantees to report on: (1) The academic performance of participants; (2) secondary school retention and graduation of participants; (3) completion by participants of a rigorous secondary school program of study; (4) the postsecondary enrollment of participants; and (5) the postsecondary completion of participants.

We also amended the recordkeeping requirements in § 645.43(c) to require that an UB grantee, to the extent practicable, keep a record of any services its participants receive during the project year from another Federal TRIO program or other federally funded program serving similar populations.

The Department expects the new requirements that a grantee report on the completion of a rigorous secondary school program of study and postsecondary completion of participants and the new recordkeeping requirements to increase the reporting burden for this data collection by eight hours for each grantee. This will result in a total burden increase of 9,144 hours for the revised APR, which will be reflected in a new OMB Control Number 1840–NEW9.

A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the new APR form several months prior to its first use in fall 2013.

Sections 646.22, 646.32 and 646.33 (SSS)—How does the Secretary evaluate prior experience? New recordkeeping requirement and Addition of the statutory matching requirements for grantees that use Federal SSS funds for Grant aid.

Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, provides specific outcome criteria to be used to determine an entity's prior experience of high quality service delivery and for the purpose of reporting annually to Congress on the performance of the SSS program. Prior to the HEOA, the PE criteria were established only in the regulations.

Under the final regulations for the SSS program, we award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination will be based on the information the grantee submits in its APR. The final regulations amend the criteria the Secretary uses to award PE points.

Revisions in the PE criteria are needed to address statutory changes resulting from the HEOA. The statutory outcome PE criteria for the SSS program requires grantees to report on baccalaureate degree competition for participants at four-year institutions and certificate and associate degree completion and transfers to four-year institutions for participants at two-year institutions. The Department expects that these requirements for tracking the academic progress of SSS participants through degree completion to increase the reporting burden by six hours for each grantee.

We have amended the recordkeeping requirements in § 646.32(c) to require that a SSS grantee, to the extent practicable, keep a record of any services its participants receive during the project year from another Federal TRIO program or other federally funded program serving similar populations. We estimated that this new recordkeeping requirement will increase the reporting burden by two hours per grantee.

We also added new § 646.33 to incorporate the statutory provisions that permit a grantee to use Federal grant funds to provide grant aid to students. Many grantees that use program funds for grant aid must provide a non-Federal match, in cash, of not less than 33 percent of the Federal funds used for grant aid. A grant recipient that is an institution of higher education eligible to receive funds under part A or B of title III or title V of the HEA is not required to match the Federal funds used for grant aid. For those grantees that are required to provide matching funds for grant aid (estimated at 50 percent of SSS grantees), we estimate that these regulations will increase the burden by two hours per grantee.

The combined increase will result in a total burden increase of 9,234 hours for the revised APR, which will be reflected in a new OMB Control Number 1840–NEW10. A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the new APR form several months prior to its first use in fall 2011.

Sections 647.22 and 647.32 (McNair)—How does the Secretary evaluate prior experience? and New recordkeeping requirement.

Section 402A(f) of the HEA, as amended by section 403(a)(5) of the HEOA, provides specific outcome criteria for the McNair program to be used to determine an entity's PE of high quality service delivery and for the purpose of reporting annually to Congress on the performance of the McNair program. Prior to the HEOA, the PE criteria were established only in the regulations.

Under the final regulations for the McNair program, we award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination will be based on the information the grantee submits in its APR. The regulations amend the criteria the Secretary uses to award PE points.

The Department expects the new statutory requirements that include long-term tracking of the academic progress of McNair participants through completion of the doctoral degree will increase the reporting burden for this data collection by four hours per grantee. We have also amended the recordkeeping requirements in § 647.32(c) to require that a McNair grantee, to the extent practicable, keep a record of any services its participants receive during the project year from another Federal TRIO program or other federally funded program serving similar populations. We estimated that this new recordkeeping requirement will increase the reporting burden by two hours per grantee.

The combined increase will result in a total burden increase of 1,200 hours for the revised APR, which will be reflected in a new OMB Control Number 1840–NEW11. A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the new APR form several months prior to its first use in either fall 2013.

Part 694—GEAR UP

Sections 694.7, 694.8 and 694.9—Matching Requirements for GEAR UP grants

The final regulations provide that an applicant for GEAR UP funding must state in its application the percentage of the cost of the GEAR UP project that the applicant will provide from non-Federal funds. The final regulations also provide that the Secretary may waive a portion of the matching requirement in response to a grantee's written request for a waiver of the match. The final regulations further provide the conditions that must be met for the Secretary to approve a request to waive a portion of the matching requirement and that if the Secretary grants a tentative waiver to a new grantee for the full project period because of a pre-existing or ongoing economic hardship, the recipient will need to submit documentation every two years to demonstrate that conditions have not changed.

The final regulations will provide that an applicant for GEAR UP funding must state in its application the percentage of the cost of the GEAR UP project that the application will provide from non-Federal funds. We estimate that this requirement will increase burden by 12.5 hours for each GEAR UP applicant in OMB Control Number 1840–New12, for a total burden increase of 6,250 hours, based on 500 applicants. A separate 30-day **Federal Register** notice will be published to solicit public comment on the revised application form prior to its usage, currently estimated to be spring 2011.

The final regulations also will provide that the Secretary may waive a portion of the matching requirement in response to a written request for a waiver of the match. This written request can be included in the application or submitted separately. If granted a waiver of the matching requirement, GEAR UP grantees will spend significantly less time collecting and documenting matching funds. We estimate that the final changes will decrease burden by 500 hours for each GEAR UP grantee in OMB Control Number 1840–NEW13, resulting in a total burden decrease of 7,860 hours, and likewise in OMB Control Number 1840–NEW14, resulting in a total burden decrease of 5,625. A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the revised APR and FPR forms prior to their usage, currently estimated to be spring 2012.

Section 694.16(c)—Scholarship Reporting Requirements

The final regulations require grantees whose initial GEAR UP grant awards were made on or after August 14, 2008 and grantees whose initial GEAR UP grant awards were made prior to August 14, 2008, but who, pursuant to § 694.12(b)(2), elect to make scholarships pursuant to the HEOA requirements, to furnish information as the Secretary may require on the amount of any Federal and non-Federal funds reserved and held for GEAR UP scholarships and the disbursement of these scholarship funds. Reporting will be required until these funds are fully expended or, if Federal funds, returned to the Secretary.

We estimate that these final changes will increase burden by 400 hours for each GEAR UP grantee in OMB Control Number 1840–NEW13, resulting in a total burden increase of 8,760, and by 800 hours for each grantee in OMB Control Number 1840–NEW14, resulting in a total burden increase of 6,925. A separate 60-day **Federal Register** notice followed by a 30-day **Federal Register** notice will be published to solicit public comment on the revised APR and FPR forms prior to their usage, currently estimated to be spring 2012.

Section 694.19—What priorities does the Secretary establish for a GEAR UP grant?

The final regulations will provide that the Secretary awards competitive preference priority points to an eligible applicant for a State grant that has carried out a successful State GEAR UP grant prior to August 14, 2008 and has a prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies.

Applicants will respond to these priorities as part of their applications in OMB Control Number 1840–NEW12, which will increase total burden by 6,250 hours. A separate 30-day **Federal Register** notice will be published to solicit public comment on the revised application form prior to its usage, currently estimated to be spring 2011.

Section 694.20—When may a GEAR UP grantee provide services to students attending an institution of higher education?

Under the final regulations, GEAR UP applicants will be permitted to request in their applications a seventh year of funding so that the State or Partnership may continue to provide services to students through their first year of attendance at an institution of higher education.

We estimate that the final changes will increase burden by 300 hours in OMB Control Number 1840–NEW12 for each GEAR UP applicant for a total burden increase of 150,000 hours. A separate 30-day **Federal Register** notice will be published to solicit public comment on the revised application form prior to its usage, currently estimated to be spring 2011.

Consistent with this discussion, the following chart describes the sections of the final regulations involving information collections, the information being collected, and the collections that the Department will submit to OMB for

approval and public comment under the Paperwork Reduction Act of 1995.

Regulation section	Information section	Collection OMB control number
Sections 642.21 and 642.25 (Training).	The final regulations amend the selection criteria the Secretary uses to evaluate an application for a Training grant. The final regulations add a new section that establishes processes and procedures for a review of unsuccessful applications.	1840–NEW1 (Training This is a new collection. The final regulations will affect applicant burden in two ways. First, the elimination of the *Need* selection criterion reduces the amount of information an applicant must include in its application, resulting in an estimated burden reduction of 240 hours. Additionally, the final regulatory processes and procedures for a second review of unsuccessful applications will lead to an estimated burden increase of 12 hours (or, an estimated two burden hour increase for each of the estimated six applicants that will fall within an estimated 10 percent funding band under the second review process). In total, there will be an estimated decrease in burden of 228 hours.
Sections 643.21 and 643.24 (TS).	The final regulations amend the selection criteria the Secretary uses to evaluate an application for a TS grant. The final regulations also add a new section that establishes processes and procedures for a review of unsuccessful applications.	1840–NEW2 (TS) This will be a new collection. The Department has already solicited public comments in a separate 30-day **Federal Register** notice that was published August 5, 2010 on the new application process that will be used for the FY 2011 competition for new TS grants; the estimated deadline date for receiving applications is December 2010. The Department does not expect that changes to the selection criteria will change an applicant's paperwork burden. The final regulatory processes and procedures for a second review of unsuccessful applications will lead to an estimated burden increase of 60 hours (or, an estimated two burden hour increase for each of the estimated 30 applicants that will fall within an estimated two percent funding band under the second review process). In total, there will be an estimated burden increase of 60 hours.
Sections 644.21 and 644.24 (EOC).	The final regulations amend the selection criteria the Secretary uses to evaluate an application for an EOC grant. The final regulations add a new section that establishes processes and procedures for a review of unsuccessful applications.	1840–NEW3 (EOC) This will be a new collection. A separate 30-day **Federal Register** notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for winter 2011. The Department does not expect that the final amendments to the selection criteria will change an applicant's paperwork burden. The final regulatory processes and procedures for a second review of unsuccessful applications will lead to an estimated burden increase of 20 hours (or, an estimated two burden hour increase for each of the estimated 10 applicants that will fall within an estimated two percent funding band under the second review process). In total, there will be an estimated burden increase of 20 hours.
Sections 645.31 and 645.35 (UB).	The final regulations amend the selection criteria the Secretary uses to evaluate an application for a UB grant. The final regulations also add a new section that establishes processes and procedures for a review of unsuccessful applications.	1840–NEW4 (UB) This will be a new collection. A separate 30-day **Federal Register** notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for fall 2011. The Department does not expect that final amendments to the selection criteria will change an applicant's paperwork burden. The final regulatory processes and procedures for a second review of unsuccessful applications will lead to an estimated burden increase of 80 hours (or, an estimated two burden hour increase for each of the estimated 40 applicants that will fall within an estimated two percent funding band under the second review process). In total, there will be an estimated burden increase of 80 hours.
Sections 646.11; 646.21 and 646.24 (SSS).	The final regulations amend the selection criteria the Secretary uses to evaluate an application for a SSS grant and amend the assurance and other information an applicant must include in its application. The final regulations also add a new section that establishes processes and procedures for a review of unsuccessful applications.	1840–NEW5 (SSS) This will be a new collection. A separate 30-day **Federal Register** notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for fall 2014.

Regulation section	Information section	Collection OMB control number
		The Department does not expect that amendments to the selection criteria or the assurance that an applicant must describe in its application regarding its efforts to provide participants with sufficient financial assistance will change an applicant's paperwork burden. The final regulatory processes and procedures for a second review of unsuccessful applications will lead to an estimated burden increase of 66 hours (or, an estimated two burden hour increase for each of the estimated 33 applicants that will fall within an estimated two percent funding band under the second review process). In total, there will be an estimated burden increase of 66 hours.
Sections 647.21 and 647.24 (McNair).	The final regulations amend the selection criteria the Secretary uses to evaluate an application for a McNair grant. The regulations also add a new section that establishes processes and procedures for a review of unsuccessful applications.	1840–NEW6 (McNair) This will be a new collection. A separate 30-day **Federal Register** notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for winter 2012. The Department does not expect that amendments to the selection criteria will change an applicant's paperwork burden. The final regulatory processes and procedures for a second review of unsuccessful applications will lead to an estimated burden increase of 16 hours (or, an estimated two burden hour increase for each of the estimated eight applicants that will fall within an estimated two percent funding band under the second review process). In total, there will be an estimated burden increase of 16 hours.
Section 642.22 (Training).	The final regulations amend the PE criteria the Secretary uses to award PE points. Under the final regulations, we award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination will be based on the information the grantee submits in its annual performance report.	1894–0003 (Training) The Department will continue to use the Department's generic performance report for the Training program. The final changes reflected in this provision are editorial in nature. There will be no increase in estimated burden hours.
Sections 643.22 (TS) and 643.32.	The final regulations amend the PE criteria the Secretary uses to award PE points. Under the final regulations we award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination will be based on the information the grantee submits in its annual performance report.	1840–NEW7 (TS) This will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new TS grants. The revised APR is needed for fall 2012 data collection. The final regulations will increase grantee data collection and reporting requirements in two ways. First, the final regulatory amendments to the PE criteria, which address statutory changes that expand outcome and PE criteria for TS grantees to include such measures as the postsecondary completion of participants, are expected to increase grantees' reporting burden.
	The final regulations also amend the recordkeeping requirements for TS	Additionally, the final regulatory amendments to recordkeeping requirements will require that a TS grantee document the services a student, who is served by more than one TRIO or other federally funded program, is receiving from another program during the project year. This is a new data collection that also will increase grantees' burden hours. The Department expects these two changes to result in an increase of 16 burden hours per grantee. In total, for 470 grantees, there will be an estimated burden increase of 7,520 hours.
Sections 644.22 and 644.32 (EOC).	The final regulations amend the PE criteria the Secretary uses to award PE points. Under the final regulations we award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination will be based on the information the grantee submits in its annual performance report.	1840–NEW8 (EOC) This will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new EOC grants.The revised APR is needed for fall 2012 data collection.
	The final regulations also amend the recordkeeping requirements for EOC.	Because the new statutory PE criteria are similar to the current regulatory PE criteria, the Department does not expect the changes to affect the burden on EOC grantees.

Regulation section	Information section	Collection OMB control number
		However, the final regulatory amendments to the recordkeeping requirements will require that an EOC grantee document the services a student, who is served by more than one TRIO or other federally funded program, is receiving from another program during the project year. This is a new data collection that will increase grantee's burden hours by two hours per grantee (248 total hours for 124 grantees). However, when a new TS APR is developed, the current TS/EOC form will not be used by TS grantees; therefore, we expect a burden decrease for this data collection of 2,820 hours; the net reduction in burden hours will be 2,572, which will be reflected in a new OMB Control Number 1840–NEW8.
Sections 645.32 and 645.43 (UB).	The final regulations amend the PE criteria the Secretary uses to award PE points. Under the final regulations we award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination will be based on the information the grantee submits in its annual performance report. The final regulations also amend the recordkeeping requirements for UB.	1840–NEW9 (UB) This will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new UB grants.The revised APR is needed for fall 2013 data collection. The final regulatory amendments to the PE criteria, which address statutory changes that expand outcome and PE criteria for UB grantees to include such measures as the postsecondary completion of participants, are expected to increase grantees' reporting burden. The Department expects changes to result in an increase of six burden hours per grantee. The final regulatory amendments to recordkeeping requirements will require that a UB grantee document the services a student, who is served by more than one TRIO or other federally funded program, is receiving from another program during the project year. This is a new data collection that also will increase a grantee's burden by an estimated two hours. In total, there will be an estimated burden increase of eight hours per grantee for a total increase of 9,144 hours for 1,143 grantees.
Sections 646.22, 646.32 and 646.33 (SSS).	The final regulations amend the PE criteria the Secretary uses to award PE points. Under the final regulations we award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination will be based on the information the grantee submits in its annual performance report. The final regulations amend the recordkeeping requirements for SSS and also add a new section on matching requirements for SSS.	1840–NEW10 (SSS) This will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new SSS grants. The revised APR is needed for fall 2011 data collection. The final regulations will increase grantee data collection and reporting requirements in three ways. First, the regulatory amendments to the PE criteria, which address statutory requirements for tracking the academic progress of SSS participants through degree completion, will increase the reporting burden by six hours for each grantee. Second, the final regulatory amendments to recordkeeping requirements will require that a SSS grantee document the services a student, who is served by more than one TRIO or other federally funded program, is receiving from another program during the project year. This is a new data collection that also will increase a grantee's burden by an estimated two hours. Additionally, for those grantees that are required to provide matching funds for grant aid (estimated at 50 percent of SSS grantees), the final regulations will increase burden by an estimated two hours per grantee. In total, there will be an estimated burden increase of 9,234 hours for 1,026 grantees.
Sections 647.22 and 647.32 (McNair).	The final regulations amend the PE criteria the Secretary uses to award PE points. Under the final regulations we award PE points for each criterion by determining whether the grantee met or exceeded applicable project objectives. This determination will be based on the information the grantee submits in its annual performance report.	1840–NEW11 (McNair) This will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new McNair grants. The revised APR is needed for fall 2013 data collection. The regulatory amendments to the PE criteria, which address statutory requirements for long-term tracking of the academic progress of McNair participants through completion of the doctoral degree, will increase the reporting burden by four hours for each grantee.

Regulation section	Information section	Collection OMB control number
		Further, the final regulatory amendments to recordkeeping requirements will require that a McNair grantee document the services a student, who is served by more than one TRIO or other federally funded program, is receiving from another program during the project year. This is a new data collection that also will increase a grantee's burden by an estimated two hours. In total, there will be an estimated burden increase of six hours per grantee for a total of 1,200 hours for 200 grantees.
694.7, 694.8, and 694.9 GEAR UP.	The final regulations will provide that an applicant for GEAR UP funding must state in its application the percentage of the cost of the GEAR UP project that the application will provide from non-Federal funds. The final regulations also will provide that the Secretary may waive a portion of the matching requirement in response to a written request for a waiver of the match. This written request can be included in the application or submitted separately.	1840–NEW12 This will be a new collection. A separate 30-day **Federal Register** notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for spring 2011. In total, there will be an estimated burden increase of 12.5 hours per applicant for an estimated 500 applicants. There will be an estimated burden increase of 6,250 hours.
	The final regulations will also provide the conditions that must be met for the Secretary to approve a request to waive a portion of the matching requirement.	1840–NEW13 This will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new GEAR UP grants. If granted a waiver of the matching requirement, GEAR UP grantees will spend significantly less time collecting and documenting matching funds. In total, there will be an estimated burden decrease of 46.5 hours per grantee for an estimated 169 grantees. There will be an estimated burden decrease of 7,860 hours. 1840–NEW14 This will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new GEAR UP grants. The final regulations provide that an applicant for GEAR UP funding must state in its application the percentage of the cost of the GEAR UP project that the applicant will provide from non-Federal funds. The final regulations also provide that the Secretary may waive a portion of the matching requirement in response to a grantee's written request for a waiver of the match. The final regulations further provide the conditions that must be met for the Secretary to approve a request to waive a portion of the matching requirement and that if the Secretary grants a tentative waiver to a new grantee for the full project period because of a pre-existing or ongoing economic hardship, the recipient will need to submit documentation every two years to demonstrate that conditions have not changed. In total, there will be an estimated burden decrease of 56.25 per grantee for an estimated 100 grantees.There will be an estimated burden decrease of 5,625 hours.
694.16	The final regulations will require grantees whose initial GEAR UP grant awards were made on or after August 14, 2008 and grantees whose initial GEAR UP grant awards were made prior to August 14, 2008 but who, pursuant to § 694.12(b)(2), elect to use the § 694.14 requirements (rather than the § 694.13 requirements) to furnish information on the amount of any Federal and non-Federal funds reserved and held for GEAR UP scholarships and the disbursement of these scholarship funds until these funds are fully expended or returned to the Secretary.	1840–NEW13 This will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new GEAR UP grants. In total, there will be an estimated burden increase of 87.6 hours per grantee for an estimated 100 grantees. There will be an estimated burden increase of 8,760 hours. 1840–NEW14 This will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments on this form following the next competition for new GEAR grants. There will be an estimated burden increase of 6,925 hours.

Regulation section	Information section	Collection OMB control number
		The final regulations require grantees whose initial GEAR UP grant awards were made on or after August 14, 2008 and grantees whose initial GEAR UP grant awards were made prior to August 14, 2008, to provide information as the Secretary may require on the amount of any Federal and non-Federal funds reserved and held for GEAR UP scholarships and the disbursement of these scholarship funds. Reporting will be required until these funds are fully expended or, if Federal funds, returned to the Secretary.
694.19	The final regulations provide that the Secretary awards competitive preference priority points to an eligible applicant for a State grant that has carried out a successful State GEAR UP grant prior to August 14, 2008 and has a prior, demonstrated commitment to early intervention, leading to college access through collaboration and replication of successful strategies.	1840–NEW12 This will be a new collection. A separate 30-day **Federal Register** notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for spring 2011. In total, there will be an estimated burden increase of 5 hours per applicant for an estimated 43 applicants. There will be an estimated burden increase of 215 hours.
		The final regulations will provide that the Secretary awards competitive preference priority points to an eligible applicant for a State grant that has carried out a successful State GEAR UP grant prior to August 14, 2008 and has a prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies.
694.20	The final regulations permit GEAR UP applicants to request in their applications a seventh year of funding so that the State or Partnership may continue to provide services to students through their first year of attendance at an institution of higher education.	1840–NEW12 This will be a new collection. A separate 30-day **Federal Register** notice will be published to solicit comments on this form prior to the next competition for new grants scheduled for spring 2011. In total, there will be an estimated burden increase of 300 hours for each applicant for an estimated 500 applicants. There will be an estimated burden increase of 150,000 hours.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, and based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers HEP/CAMP: 84.141A, 84.149A; TRIO: 84.042A, 84.044A, 84.047A, 84.047M, 84.047V, 84.066A, 84.103A, 84.217A; GEAR UP: 84.334A, 84.334S.)

List of Subjects in 34 CFR Parts 206, 642, 643, 644, 645, 646, 647, and 694

Colleges and universities, Disadvantaged students, Educational programs, Discretionary grants, Reporting and recordkeeping requirements, Training.

Dated: September 23, 2010.

Arne Duncan,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends parts 206, 642, 643, 644, 645, 646, 647, and 694 of title 34 of the Code of Federal Regulations as follows:

PART 206—SPECIAL EDUCATIONAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND OTHER SEASONAL FARMWORK—HIGH SCHOOL EQUIVALENCY PROGRAM AND COLLEGE ASSISTANCE MIGRANT PROGRAM

■ 1. The authority citation for part 206 continues to read as follows:

Authority: 20 U.S.C. 1070d–2, unless otherwise noted.

■ 2. Section 206.3 is amended by:

■ A. In paragraph (a)(1), removing the word "parent" and adding, in its place, the words "immediate family member".

■ B. Revising paragraph (a)(2).

The revision reads as follows:

§ 206.3 Who is eligible to participate in a project?

(a) * * *

(2) The person must have participated (with respect to HEP within the last 24 months), or be eligible to participate, in programs under 34 CFR part 200, subpart C (Title I—Migrant Education Program) or 20 CFR part 633 (Employment and Training Administration, Department of Labor—Migrant and Seasonal Farmworker Programs).

* * * * *

■ 3. Section 206.4 is amended by:
■ A. Redesignating paragraphs (a)(6) and (a)(7) as paragraphs (a)(7) and (a)(8), respectively.
■ B. Adding a new paragraph (a)(6).
■ C. Adding new paragraphs (a)(9) through (a)(11).

The additions read as follows:

§ 206.4 What regulations apply to these programs?

* * * * *

(a) * * *

(6) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)).

* * * * *

(9) 34 CFR part 97 (Protection of Human Subjects).

(10) 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing).

(11) 34 CFR part 99 (Family Educational Rights and Privacy).

* * * * *

■ 4. Section 206.5 is amended by:
■ A. Redesignating paragraphs (c)(5), (c)(6), and (c)(7) as paragraphs (c)(6), (c)(7), and (c)(8), respectively.
■ B. Adding a new paragraph (c)(5).
■ C. In newly redesignated paragraph (c)(7), removing the citation "(c)(7)" and adding, in its place, the citation "(c)(8)".
■ D. Revising newly redesignated paragraph (c)(8).
■ E. In paragraph (d)—
■ 1. Removing the citation "34 CFR 201.3" and adding, in its place, the citation "34 CFR 200.81"; and
■ 2. Removing the words "Chapter 1" and adding, in their place, the words "Title I".

The addition and revisions read as follows:

§ 206.5 What definitions apply to these programs?

* * * * *

(c) * * *

(5) *Immediate family member* means one or more of the following:

(i) A spouse.

(ii) A parent, step-parent, adoptive parent, foster parent, or anyone with guardianship.

(iii) Any person who—

(A) Claims the individual as a dependent on a Federal income tax return for either of the previous two years, or

(B) Resides in the same household as the individual, supports that individual financially, and is a relative of that individual.

* * * * *

(8) *Seasonal farmworker* means a person whose primary employment was in farmwork on a temporary or seasonal basis (that is, not a constant year-round activity) for a period of at least 75 days within the past 24 months.

* * * * *

■ 5. Section 206.10 is amended by:
■ A. In paragraph (b)(1)(iii)(B), adding the words "(including preparation for college entrance examinations)" after the word "program".
■ B. In paragraph (b)(1)(v), removing the words "Weekly stipends" and adding, in their place, the word "Stipends".
■ C. In paragraph (b)(1)(viii), adding the words "(such as transportation and child care)" after the word "services".
■ D. In paragraph (b)(1), adding a new paragraph (ix).
■ E. In paragraph (b)(2)(ii) introductory text, adding the words "to improve placement, persistence, and retention in postsecondary education" after the word "services".
■ F. In paragraph (b)(2)(ii)(A), by—
■ 1. Removing the word "and"; and
■ 2. Adding the words "economic education, or personal finance" before the word "counseling".
■ G. In paragraph (b)(2)(iv), removing the word "student" and adding, in its place, the word "students".
■ H. Redesignating paragraph (b)(2)(vi) as paragraph (b)(2)(vii).
■ I. Adding a new paragraph (b)(2)(vi).
■ J. In newly redesignated paragraph (b)(2)(vii), removing the words "support services", and adding, in their place, the words "essential supportive services (such as transportation and child care),".

The additions read as follows:

§ 206.10 What types of services may be provided?

* * * * *

(b) * * *

(1) * * *

(ix) Other activities to improve persistence and retention in postsecondary education.

(2)* * *

(vi) Internships.

* * * * *

■ 6. Section 206.11 is amended by:
■ A. In paragraph (b)(1), removing the word "and" after the punctuation";".
■ B. In paragraph (b)(2), removing the punctuation "." after the word "aid" and adding, in its place, the words ", and coordinating those services, assistance, and aid with other non-program services, assistance, and aid, including services, assistance, and aid provided by community-based organizations, which may include mentoring and guidance; and".
■ C. Adding a new paragraph (b)(3).

The addition reads as follows:

§ 206.11 What types of CAMP services must be provided?

* * * * *

(b) * * *

(3) For students attending two-year institutions of higher education, encouraging the students to transfer to four-year institutions of higher education, where appropriate, and monitoring the rate of transfer of those students.

* * * * *

§ 206.20 [Amended]

■ 7. Section 206.20(b)(2) is amended by removing the amount "$150,000" and adding, in its place, the amount "$180,000".
■ 8. Section 206.31 is added to subpart D of part 206 to read as follows:

§ 206.31 How does the Secretary evaluate points for prior experience for HEP and CAMP service delivery?

(a) In the case of an applicant for a HEP award, the Secretary considers the applicant's experience in implementing an expiring HEP project with respect to—

(1) Whether the applicant served the number of participants described in its approved application;

(2) The extent to which the applicant met or exceeded its funded objectives with regard to project participants, including the targeted number and percentage of—

(i) Participants who received a general educational development (GED) credential; and

(ii) GED credential recipients who were reported as entering postsecondary education programs, career positions, or the military; and

(3) The extent to which the applicant met the administrative requirements, including recordkeeping, reporting, and financial accountability under the terms of the previously funded award.

(b) In the case of an applicant for a CAMP award, the Secretary considers the applicant's experience in implementing an expiring CAMP project with respect to—

(1) Whether the applicant served the number of participants described in its approved application;

(2) The extent to which the applicant met or exceeded its funded objectives with regard to project participants, including the targeted number and percentage of participants who—

(i) Successfully completed the first year of college; and

(ii) Continued to be enrolled in postsecondary education after completing their first year of college; and

(3) The extent to which the applicant met the administrative requirements, including recordkeeping, reporting, and financial accountability under the terms of the previously funded award.

(Authority: 20 U.S.C. 1070d–2(e))

PART 642—TRAINING PROGRAM FOR FEDERAL TRIO PROGRAMS

■ 9. The authority citation for part 642 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–17, unless otherwise noted.

Subpart A of Part 642 [Amended]

■ 10. Section 642.1 is revised to read as follows:

§ 642.1 What is the Training Program for Federal TRIO Programs?

The Training Program for Federal TRIO programs, referred to in these regulations as the Training program, provides Federal financial assistance to train the leadership personnel and staff employed in, or preparing for employment in, Federal TRIO program projects.

(Authority: 20 U.S.C. 1070a–17)

■ 11. Section 642.2 is amended by revising the section heading to read as follows:

§ 642.2 Who are eligible applicants?

* * * * *

■ 12. Section 642.3 is amended by:
■ A. Revising the section heading.
■ B. In paragraph (a), adding the word "funded" after the word "projects".
■ C. In paragraph (b) by removing the words "staff or"; adding the words "or staff" after the word "personnel"; and adding the word "funded" after the word "projects".

The revision reads as follows:

§ 642.3 Who are eligible participants?

* * * * *

§§ 642.4 and 642.5 [Redesignated as §§ 642.5 and 642.6]

■ 13. Sections 642.4 and 642.5 are redesignated as §§ 642.5 and 642.6.

■ 14. A new § 642.4 is added to read as follows:

§ 642.4 How long is a project period?

A project period under the Training program is two years.

(Authority: 20 U.S.C. 1070a–11(b))

■ 15. Newly redesignated § 642.5 is amended by:
■ A. Revising the section heading.
■ B. Revising paragraph (a).

The revisions read as follows:

§ 642.5 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for §§ 75.215 through 75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

■ 16. Newly redesignated § 642.6 is amended by:
■ A. Revising the section heading.
■ B. In paragraph (b) by revising the introductory text; revising definitions of "Federal TRIO programs", "Institution of higher education", "Leadership personnel"; adding, in alphabetical order, new definitions for "Foster care youth", "Homeless children and youth", "Individual with a disability", and "Veteran"; and removing the authority citation following the definition of "Federal TRIO programs"; and
■ C. Adding an authority citation at the end of the section.

The revisions and additions read as follows:

§ 642.6 What definitions apply?

* * * * *

(b) *Definitions that apply to this part.*

* * * * *

Federal TRIO programs means those programs authorized under section 402A of the Act: the Upward Bound, Talent Search, Student Support Services, Educational Opportunity Centers, and Ronald E. McNair Postbaccalaureate Achievement programs.

Foster care youth means youth who are in foster care or who are aging out of the foster care system.

Homeless children and youth means persons defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

Individual with a disability means a person who has a disability, as that term is defined in section 12102 of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

* * * * *

Institution of higher education means an educational institution as defined in sections 101 and 102 of the Act.

Leadership personnel means project directors, coordinators, and other individuals involved with the supervision and direction of projects funded under the Federal TRIO programs.

Veteran means a person who—

(1) Served on active duty as a member of the Armed Forces of the United States for a period of more than 180 days and was discharged or released under conditions other than dishonorable;

(2) Served on active duty as a member of the Armed Forces of the United States and was discharged or released because of a service connected disability;

(3) Was a member of a reserve component of the Armed Forces of the United States and was called to active duty for a period of more than 30 days; or

(4) Was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code) on or after September 11, 2001.

(Authority: 20 U.S.C. 1001 *et seq.,* 1070a–11, 1070(b), 1088, and 1141)

17. Section 642.7 is added to subpart A of part 642 to read as follows:

§ 642.7 How many applications may an eligible applicant submit?

An applicant may submit more than one application for Training grants as long as each application describes a project that addresses a different absolute priority from § 642.24 that is designated in the **Federal Register** notice inviting applications.

(Authority: 20 U.S.C. 1221e–3)

18. Subpart B of part 642 is revised to read as follows:

Subpart B—What Types of Projects and Activities Does the Secretary Assist Under This Program?

Sec.
642.10 What types of projects does the Secretary assist?
642.11 What activities does the Secretary assist?
642.12 What activities may a project conduct?

Subpart B—What Types of Projects and Activities Does the Secretary Assist Under This Program?

§ 642.10 What types of projects does the Secretary assist?

The Secretary assists projects that train the leadership personnel and staff of projects funded under the Federal TRIO Programs to enable them to operate those projects more effectively.

(Authority: 20 U.S.C. 1070a–17)

§ 642.11 What activities does the Secretary assist?

(a) Each year, one or more Training Program projects must provide training for new project directors.

(b) Each year, one or more Training Program projects must offer training covering the following topics:

(1) The legislative and regulatory requirements for operating projects funded under the Federal TRIO programs.

(2) Assisting students to receive adequate financial aid from programs assisted under title IV of the Act and from other programs.

(3) The design and operation of model programs for projects funded under the Federal TRIO programs.

(4) The use of appropriate educational technology in the operation of projects funded under the Federal TRIO programs.

(5) Strategies for recruiting and serving hard-to-reach populations, including students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students who are individuals with disabilities, students who are homeless children and youths, students who are foster care youth, or other disconnected students.

(Authority: 20 U.S.C. 1070a–17)

§ 642.12 What activities may a project conduct?

A Training program project may include on-site training, on-line training, conferences, internships, seminars, workshops, and the publication of manuals designed to improve the operations of Federal TRIO program projects.

(Authority: 20 U.S.C. 1070a–17(b))

PART 642—[AMENDED]

■ 19. Part 642 is amended by redesignating subparts D and E as subparts C and D, respectively.

Subpart C of Part 642 [Amended]

§§ 642.30, 642.31, 642.32, 642.33, and 642.34 [Redesignated as §§ 642.20, 642.21, 642.22, 642.23, and 642.24]

■ 20. Newly redesignated subpart C of part 642 is amended by redesignating §§ 642.30, 642.31, 642.32, 642.33, and 642.34 as §§ 642.20, 642.21, 642.22, 642.23, and 642.24, respectively.

■ 21. Newly redesignated § 642.20 is amended by:

■ A. Revising the section heading.

■ B. In the introductory text of paragraph (a), removing the citation "§ 642.31" and adding, in its place, the citation "§ 642.21".

■ C. In paragraph (a)(1), removing the number "100" and adding, in its place, the number "75".

■ D. Revising paragraph (b).

■ E. Adding new paragraphs (c), (d), and (e).

The additions and revisions read as follows:

§ 642.20 How does the Secretary evaluate an application for a new award?

* * * * *

(b) In addition, for an applicant who is conducting a Training program in the fiscal year immediately prior to the fiscal year for which the applicant is applying, the Secretary evaluates the applicant's prior experience (PE) of high quality service delivery, as provided in § 642.22, based on the applicant's performance during the first project year of that expiring Training program grant.

(c) The Secretary selects applications for funding within each specific absolute priority established for the competition in rank order on the basis of the score received by the application in the peer review process.

(d) Within each specific absolute priority, if there are insufficient funds to fund all applications at the next peer review score, the Secretary adds the PE points awarded under § 642.22 to the peer review score to determine an adjusted total score for those applications. The Secretary makes awards at the next peer review score to the applications that have the highest total adjusted score.

(e) In the event a tie score still exists, the Secretary will select for funding the applicant that has the greatest capacity to provide training to eligible participants in all regions of the Nation, consistent with § 642.23.

* * * * *

■ 22. Newly redesignated § 642.21 is amended by:

■ A. Revising the section heading.

■ B. Revising paragraph (a)(2)(v)(C).

■ C. Revising paragraph (b)(2)(iv)(C).

■ D. Removing paragraph (f).

■ E. Adding an OMB control number parenthetical after the last paragraph in the section.

The revisions and addition read as follows:

§ 642.21 What selection criteria does the Secretary use?

* * * * *

(a) * * *

(2) * * *

(v) * * *

(C) Individuals with disabilities; and

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(C) Individuals with disabilities; and

* * * * *

(Approved by the Office of Management and Budget under control number 1840—NEW1)

* * * * *

■ 23. Newly redesignated § 642.22 is revised to read as follows:

§ 642.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 642.20(b), the Secretary—

(1) Evaluates the applicant's performance under its expiring Training program grant;

(2) To determine the number of PE points to be awarded, uses the approved project objectives for the applicant's expiring Training program grant and the information the applicant submitted in its annual performance report (APR); and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicate the APR data used to calculate PE are incorrect.

(b)(1) The Secretary may add from 1 to 15 points to the point score obtained on the basis of the selection criteria in § 642.21, based on the applicant's success in meeting the administrative requirements and programmatic objectives of paragraph (e) of this section.

(2) The maximum possible score for each criterion is indicated in the parentheses preceding the criterion.

(c) The Secretary awards no PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(d) For the criterion specified in paragraph (e)(1) of this section (Number of participants), the Secretary awards no PE points if the applicant did not serve at least the approved number of participants.

(e) The Secretary evaluates the applicant's PE on the basis of the following criteria:

(1) (4 points) *Number of participants.* Whether the applicant provided training to no less than the approved number of participants.

(2) *Training objectives.* Whether the applicant met or exceeded its objectives for:

(i) (4 points) Assisting the participants in developing increased qualifications and skills to meet the needs of disadvantaged students.

(ii) (4 points) Providing the participants with an increased knowledge and understanding of the Federal TRIO programs.

(3) (3 points) *Administrative requirements.* Whether the applicant met all the administrative requirements under the terms of the expiring grant, including recordkeeping, reporting, and financial accountability.

(Approved by the Office of Management and Budget under control number 1894–0003)

(Authority: 20 U.S.C. 1070a–11)

■ 24. Newly redesignated § 642.23 is amended by revising the section heading to read as follows:

§ 642.23 How does the Secretary ensure geographic distribution of awards?

* * * * *

■ 25. Newly redesignated § 642.24 is revised to read as follows:

§ 642.24 What are the Secretary's priorities for funding?

(a) The Secretary, after consultation with regional and State professional associations of persons having special knowledge with respect to the training of Special Programs personnel, may select one or more of the following subjects as training priorities:

(1) Basic skills instruction in reading, mathematics, written and oral communication, and study skills.

(2) Counseling.

(3) Assessment of student needs.

(4) Academic tests and testing.

(5) College and university admissions policies and procedures.

(6) Cultural enrichment programs.

(7) Career planning.

(8) Tutorial programs.

(9) Retention and graduation strategies.

(10) Strategies for preparing students for doctoral studies.

(11) Project evaluation.

(12) Budget management.

(13) Personnel management.

(14) Reporting student and project performance.

(15) Coordinating project activities with other available resources and activities.

(16) General project management for new directors.

(17) Statutory and regulatory requirements for the operation of projects funded under the Federal TRIO programs.

(18) Assisting students in receiving adequate financial aid from programs assisted under title IV of the Act and from other programs.

(19) The design and operation of model programs for projects funded under the Federal TRIO programs.

(20) The use of appropriate educational technology in the operation of projects funded under the Federal TRIO programs.

(21) Strategies for recruiting and serving hard to reach populations, including students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students who are individuals with disabilities, students who are homeless children and youths, students who are foster care youth, or other disconnected students.

(b) The Secretary annually funds training on the subjects listed in paragraphs (a)(17), (a)(18), (a)(19), (a)(20), and (a)(21) of this section.

(c) The Secretary designates one or more of the training priorities from paragraph (a) of this section in the **Federal Register** notice inviting applications for the competition.

(Authority: 20 U.S.C. 1070a–11 and 1070a–17)

■ 26. Section 642.25 is added to subpart C of part 642 to read as follows:

§ 642.25 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all of the application submission requirements included in the **Federal Register** notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the **Federal Register** notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the **Federal Register** notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term "scoring error" does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the **Federal Register** notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.* (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be

awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 642.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as provided in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to a designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840–NEW1)

(Authority: 20 U.S.C. 1070a–11)

■ 27. A new § 642.26 is added to subpart C of part 642 to read as follows:

§ 642.26 How does the Secretary set the amount of a grant?

(a) The Secretary sets the amount of a grant on the basis of—

(1) 34 CFR 75.232 and 75.233, for a new grant; and

(2) 34 CFR 75.253, for the second year of a project period.

(b) The Secretary uses the available funds to set the amount of the grant at the lesser of—

(1) 170,000; or

(2) The amount requested by the applicant.

Subpart D of Part 642 [Amended]

§§ 642.40 and 642.41 [Redesignated as §§ 642.30 and 642.31]

■ 28. Newly redesignated subpart D of part 642 is amended by redesignating §§ 642.40 and 642.41 as §§ 642.30 and 642.31, respectively.

■ 29. Newly redesignated § 642.30 is amended by:

■ A. Revising the section heading.

■ B. In paragraph (d), removing the words "if approved in writing by the Secretary".

The revision reads as follow:

§ 642.30 What are allowable costs?

* * * * *

■ 30. Newly redesignated § 642.31 is amended by revising the section heading to read as follows:

§ 642.31 What are unallowable costs?

* * * * *

PART 643—TALENT SEARCH

■ 31. The authority citation for part 643 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–12, unless otherwise noted.

■ 32. Section 643.1 is amended by:

■ A. In paragraph (b), adding the words ", and facilitate the application for," after the word "of".

■ B. Revising paragraph (c).

The revision reads as follows:

§ 643.1 What is the Talent Search program?

* * * * *

(c) Encourage persons who have not completed education programs at the secondary or postsecondary level to enter or reenter and complete these programs.

* * * * *

■ 33. Section 643.2 is amended by:

■ A. In the introductory text, adding the word "entities" after the word "following".
■ B. In paragraph (b), adding the words ", including a community-based organization with experience in serving disadvantaged youth" after the word "organization".
■ C. Removing paragraph (d).
■ D. Redesignating paragraph (c) as paragraph (d).
■ E. Adding a new paragraph (c).
■ F. In newly redesignated paragraph (d), removing the words "paragraphs (a) and (b)" and adding, in their place, the words "paragraphs (a), (b), and (c)".

The addition reads as follows:

§ 643.2 Who is eligible for a grant?

* * * * *

(c) A secondary school.

* * * * *

■ 34. Section 643.3 is amended by:
■ A. In paragraph (a)(3)(i), removing the words ", has potential for a program of postsecondary education, and needs one or more of the services provided by the project in order to undertake such a program".
■ B. In paragraph (a)(3)(ii), removing the words ", has the ability to complete such a program, and needs one or more of the services provided by the project to reenter such a program".

* * * * *

■ 35. Section 643.4 is revised to read as follows:

§ 643.4 What services does a project provide?

(a) A Talent Search project must provide the following services:

(1) Connections for participants to high quality academic tutoring services to enable the participants to complete secondary or postsecondary courses.

(2) Advice and assistance in secondary school course selection and, if applicable, initial postsecondary course selection.

(3) Assistance in preparing for college entrance examinations and completing college admission applications.

(4)(i) Information on the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and on resources for locating public and private scholarships; and

(ii) Assistance in completing financial aid applications, including the Free Application for Federal Student Aid (FAFSA).

(5) Guidance on and assistance in—

(i) Secondary school reentry;

(ii) Alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma;

(iii) Entry into general educational development (GED) programs; or

(iv) Entry into postsecondary education.

(6) Connections for participants to education or counseling services designed to improve the financial and economic literacy of the participants or the participants' parents, including financial planning for postsecondary education.

(b) A Talent Search project may provide services such as the following:

(1) Academic tutoring, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects.

(2) Personal and career counseling or activities.

(3) Information and activities designed to acquaint youth with the range of career options available to the youth.

(4) Exposure to the campuses of institutions of higher education, as well as to cultural events, academic programs, and other sites or activities not usually available to disadvantaged youth.

(5) Workshops and counseling for families of participants served.

(6) Mentoring programs involving elementary or secondary school teachers or counselors, faculty members at institutions of higher education, students, or any combination of these persons.

(7) Programs and activities as described in this section that are specially designed for participants who are limited English proficient, from groups that are traditionally underrepresented in postsecondary education, individuals with disabilities, homeless children and youths, foster care youth, or other disconnected participants.

(8) Other activities designed to meet the purposes of the Talent Search Program in § 643.1.

(Authority: 20 U.S.C. 1070a–12)

■ 36. Section 643.5 is revised to read as follows:

§ 643.5 How long is a project period?

A project period under the Talent Search program is five years.

(Authority: 20 U.S.C. 1070a–11)

■ 37. Section 643.6 is amended by revising paragraph (a) to read as follows:

§ 643.6 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for §§ 75.215 through 75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

■ 38. Section 643.7(b) is amended by:
■ A. Revising the definition of "Institution of higher education".
■ B. Revising the definition of "Veteran".
■ C. Adding, in alphabetical order, new definitions for "Different population", "Financial and economic literacy", "Foster care youth", "Homeless children and youth", "Individual with a disability", "Regular secondary school diploma", and "Rigorous secondary school program of study".

The revisions and additions read as follows:

§ 643.7 What definitions apply?

* * * * *

(b) * * *

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the Talent Search program and that—

(1) Is separate and distinct from any other population that the entity has applied for a grant to serve; or

(2) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

Financial and economic literacy means knowledge about personal financial decision-making, which may include but is not limited to knowledge about—

(1) Personal and family budget planning;

(2) Understanding credit building principles to meet long-term and short-term goals (*e.g.,* loan to debt ratio, credit scoring, negative impacts on credit scores);

(3) Cost planning for postsecondary or postbaccalaureate education (*e.g.,* spending, saving, personal budgeting);

(4) College cost of attendance (*e.g.,* public vs. private, tuition vs. fees, personal costs);

(5) Financial assistance (*e.g.,* searches, application processes, and differences between private and government loans, assistanceships); and

(6) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

Foster care youth means youth who are in foster care or are aging out of the foster care system.

* * * * *

Homeless children and youth means persons defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

Individual with a disability means a person who has a disability, as that term is defined in section 12102 of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

Institution of higher education means an educational institution as defined in sections 101 and 102 of the HEA.

* * * * *

Regular secondary school diploma means a level attained by individuals who meet or exceed the coursework and performance standards for high school completion established by the individual's State.

Rigorous secondary school program of study means a program of study that is—

(1) Established by a state educational agency (SEA) or local educational agency (LEA) and recognized as a rigorous secondary school program of study by the Secretary through the process described in 34 CFR 691.16(a) through 691.16(c) for the Academic Competitiveness Grant (ACG) Program;

(2) An advanced or honors secondary school program established by States and in existence for the 2004–2005 school year or later school years;

(3) Any secondary school program in which a student successfully completes at a minimum the following courses:

(i) Four years of English.

(ii) Three years of mathematics, including algebra I and a higher-level class such as algebra II, geometry, or data analysis and statistics.

(iii) Three years of science, including one year each of at least two of the following courses: Biology, chemistry, and physics.

(iv) Three years of social studies.

(v) One year of a language other than English;

(4) A secondary school program identified by a State-level partnership that is recognized by the State Scholars Initiative of the Western Interstate Commission for Higher Education (WICHE), Boulder, Colorado;

(5) Any secondary school program for a student who completes at least two courses from an International Baccalaureate Diploma Program sponsored by the International Baccalaureate Organization, Geneva, Switzerland, and receives a score of a "4" or higher on the examinations for at least two of those courses; or

(6) Any secondary school program for a student who completes at least two Advanced Placement courses and receives a score of "3" or higher on the College Board's Advanced Placement Program Exams for at least two of those courses.

* * * * *

Veteran means a person who—

(1) Served on active duty as a member of the Armed Forces of the United States for a period of more than 180 days and was discharged or released under conditions other than dishonorable;

(2) Served on active duty as a member of the Armed Forces of the United States and was discharged or released because of a service connected disability;

(3) Was a member of a reserve component of the Armed Forces of the United States and was called to active duty for a period of more than 30 days; or

(4) Was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code) on or after September 11, 2001.

* * * * *

Subpart B—How Does One Apply for an Award?

■ 39. Subpart B of part 643 is amended by revising the subpart heading to read as set forth above.

§ 643.10 [Redesignated as § 643.11]

■ 39a. Redesignate § 643.10 as § 643.11.

■ 40. A new § 643.10 is added to Subpart B to read as follows:

§ 643.10 How many applications may an eligible applicant submit?

(a) An applicant may submit more than one application for Talent Search grants as long as each application describes a project that serves a different target area or target schools, or another designated different population.

(b) For each grant competition, the Secretary designates, in the **Federal Register** notice inviting applications and the other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a–12; 1221e–3)

■ 41. Newly redesignated § 643.11 is amended by:

■ A. In the introductory text, removing the word "shall" and adding, in its place, the word "must".

■ B. Revising paragraph (b).

The revision reads as follows:

§ 643.11 What assurances must an applicant submit?

* * * * *

(b) The project will collaborate with other Federal TRIO projects, GEAR UP projects, or programs serving similar populations that are serving the same target schools or target area in order to minimize the duplication of services and promote collaborations so that more students can be served.

* * * * *

■ 42. Section 643.20 is amended by:

■ A. In paragraph (a)(2)(i), removing the word "or" after the words "same populations" and adding, in its place, the word "and"; removing the words "in delivering services" and adding, in their place, the words "of high quality service delivery; and adding the word "outcome" before the word "criteria".

■ B. In paragraph (a)(2)(ii), adding the word "total" after the word "maximum" the first time it appears.

■ C. Adding paragraphs (a)(2)(iii) through (a)(2)(v).

■ D. Removing paragraph (a)(3).

■ E. In paragraph (b), removing the words "through (3)" and adding, in their place, the words "and (a)(2)".

■ F. Revising paragraph (d).

The additions and revision read as follows:

§ 643.20 How does the Secretary decide which new grants to make?

(a) * * *

(2) * * *

(iii) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the **Federal Register** notice inviting applications and the other published application materials for the competition.

(iv) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(v) The final PE score is the average of the scores for the three project years assessed.

* * * * *

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

* * * * *

■ 43. Section 643.21 is amended by:

■ A. Revising paragraphs (a), (b), and (c).

■ B. Revising paragraph (d)(2).

■ C. In the OMB control number parenthetical following paragraph (g), removing the numbers "1840–0549" and adding, in their place, the numbers "1840–0065".

The revisions read as follows:

§ 643.21 What selection criteria does the Secretary use?

* * * * *

(a) *Need for the project* (24 points). The Secretary evaluates the need for a Talent Search project in the proposed target area on the basis of the extent to

which the application contains clear evidence of the following:

(1) (4 points) A high number or high percentage of the following—

(i) Low-income families residing in the target area; or

(ii) Students attending the target schools who are eligible for free or reduced priced lunch as described in sections 9(b)(1) and 17(c)(4) of the Richard B. Russell National School Lunch Act.

(2) (2 points) Low rates of high school persistence among individuals in the target schools as evidenced by the annual student persistence rates in the proposed target schools for the most recent year for which data are available.

(3) (4 points) Low rates of students in the target school or schools who graduate high school with a regular secondary school diploma in the standard number of years for the most recent year for which data are available.

(4) (6 points) Low postsecondary enrollment and completion rates among individuals in the target area and schools as evidenced by—

(i) Low rates of enrollment in programs of postsecondary education by graduates of the target schools in the most recent year for which data are available; and

(ii) A high number or high percentage of individuals residing in the target area with education completion levels below the baccalaureate degree level.

(5) (2 points) The extent to which the target secondary schools do not offer their students the courses or academic support to complete a rigorous secondary school program of study or have low participation or low success by low-income or first generation students in such courses.

(6) (6 points) Other indicators of need for a TS project, including low academic achievement and low standardized test scores of students enrolled in the target schools, a high ratio of students to school counselors in the target schools, and the presence of unaddressed academic or socio-economic problems of eligible individuals, including foster care youth and homeless children and youth in the target schools or the target area.

(b) *Objectives* (8 points). The Secretary evaluates the quality of the applicant's objectives and proposed targets (percentages) in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources:

(1) (2 points) Secondary school persistence.

(2) (2 points) Secondary school graduation (regular secondary school diploma).

(3) (1 point) Secondary school graduation (rigorous secondary school program of study).

(4) (2 points) Postsecondary education enrollment.

(5) (1 point) Postsecondary degree attainment.

(c) *Plan of operation* (30 points). The Secretary evaluates the quality of the applicant's plan of operation on the basis of the following:

(1) (3 points) The plan to inform the residents, schools, and community organizations in the target area of the purpose, objectives, and services of the project and the eligibility requirements for participation in the project.

(2) (3 points) The plan to identify and select eligible project participants.

(3) (10 points) The plan for providing the services delineated in § 643.4 as appropriate based on the project's assessment of each participant's need for services.

(4) (6 points) The plan to work in a coordinated, collaborative, and cost-effective manner as part of an overarching college access strategy with the target schools or school system and other programs for disadvantaged students to provide participants with access to and assistance in completing a rigorous secondary school program of study.

(5) (6 points) The plan, including timelines, personnel, and other resources, to ensure the proper and efficient administration of the project, including the project's organizational structure; the time commitment of key project staff; and financial, personnel, and records management.

(6) (2 points) The plan to follow former participants as they enter, continue in, and complete postsecondary education.

(d) * * *

(2) (8 points) Resources secured through written commitments from community partners.

(i) An applicant that is an institution of higher education must include in its application commitments from the target schools and community organizations;

(ii) An applicant that is a secondary school must include in its commitments from institutions of higher education, community organizations, and, as appropriate, other secondary schools and the school district; and

(iii) An applicant that is a community organization must include in its application commitments from the target schools and institutions of higher education.

* * * * *

■ 44. Section 643.22 is revised to read as follows:

§ 643.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 643.20(a)(2)(i), the Secretary—

(1) Evaluates the applicant's performance under its expiring Talent Search project;

(2) Uses the approved project objectives for the applicant's expiring Talent Search grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of PE points; and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) The Secretary does not award any PE points for the criterion specified in paragraph (d)(1) of this section (Number of participants) if the applicant did not serve at least the approved number of participants.

(d) For purposes of the evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) (3 points) *Number of participants.* Whether the applicant provided services to no less than the approved number of participants.

(2) (3 points) *Secondary school persistence.* Whether the applicant met or exceeded its objective regarding the continued secondary school enrollment of participants.

(3) (3 points) *Secondary school graduation* (regular secondary school diploma). Whether the applicant met or exceeded its objective regarding the graduation of participants served during the project year from secondary school with a regular secondary school diploma in the standard number of years.

(4) (1.5 points) *Secondary school graduation* (rigorous secondary school program of study). Whether the applicant met or exceeded its objective regarding the graduation of participants

served during the project year who completed a rigorous secondary school program of study.

(5) (3 points) *Postsecondary enrollment.* Whether the applicant met or exceeded its objective regarding the participants expected to graduate from high school in the school year who enrolled in an institution of higher education within the time period specified in the approved objective.

(6) (1.5 points) *Postsecondary completion.* Whether the applicant met or exceeded its objective regarding project participants who enrolled in and completed a program of postsecondary education within the number of years specified in the approved objective. The applicant may determine success in meeting the objective by using a randomly selected sample of participants in accordance with the parameters established by the Secretary in the **Federal Register** notice inviting applications or other published application materials for the competition.

(Approved by the Office of Management and Budget under control number 1840—NEW7)

(Authority: 20 U.S.C. 1070a–12)

§ 643.23 [Amended]

■ 45. Section 643.23 is amended by:

■ A. In the introductory text of paragraph (b), removing the words "beginning in fiscal year 1994".

■ B. In paragraph (b)(1), removing the amount "$180,000" and adding, in its place, the amount "$200,000".

■ 46. A new § 643.24 is added to subpart C of part 643 to read as follows:

§ 643.24 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all application submission requirements included in the **Federal Register** notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the **Federal Register** notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the **Federal Register** notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term "scoring error" does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the **Federal Register** notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.* (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 643.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as provided in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has at least 15 calendar days

after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to the designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840–NEW2)

(Authority: 20 U.S.C. 1070a–11)

■ 47. Section 643.30 is amended by:

■ A. In the introductory text, removing the words "34 CFR part 74, subpart Q" and adding, in their place, the words "34 CFR 74.27, 75.530, and 80.22, as applicable".

■ B. In the introductory text of paragraph (a), adding the word "project" before the word "staff".

■ C. In paragraph (a)(1), removing the words "to obtain information relating to the admission of participants to those institutions".

■ D. In paragraph (a)(2), removing the word "and".

■ E. In paragraph (a)(3), adding the words "for participants" after the word "trips"; removing the words "in the target area"; and removing the punctuation "." at the end of the paragraph and adding, in its place, the words "; and".

■ F. Adding a new paragraph (a)(4).

■ G. In paragraph (b), adding the words "and test preparation programs for participants" after the word "materials".

■ H. Revising paragraph (c) introductory text.

■ I. Revising paragraph (f).

■ J. Adding new paragraphs (g) and (h).

The revisions and additions read as follows:

§ 643.30 What are allowable costs?

* * * * *

(a) * * *

(4) Transportation to institutions of higher education, secondary schools not attended by the participants, or other locations at which the participant receives instruction that is part of a rigorous secondary school program of study.

* * * * *

(c) Fees required for admission applications for postsecondary education, college entrance examinations, or alternative education examinations if—

* * * * *

(f) Purchase, lease, or rental of computer hardware, software, and other equipment, service agreements for such equipment, and supplies that support the delivery of services to participants, including technology used by participants in a rigorous secondary school program of study.

(g) Purchase, lease, service agreement, or rental of computer equipment and software needed for project administration and recordkeeping.

(h) Tuition costs for a course that is part of a rigorous secondary school program of study if—

(1) The course or a similar course is not offered at the secondary school that the participant attends or at another school within the school district;

(2) The grantee demonstrates to the Secretary's satisfaction that using grant funds is the most cost-effective way to deliver the course or courses necessary for the completion of a rigorous secondary school program of study for program participants;

(3) The course is taken through an accredited institution of higher education;

(4) The course is comparable in content and rigor to courses that are part of a rigorous secondary school program of study as defined in § 643.7(b);

(5) The secondary school accepts the course as meeting one or more of the course requirements for obtaining a regular secondary school diploma;

(6) A waiver of the tuition costs is unavailable;

(7) The tuition is paid with Talent Search grant funds to an institution of higher education on behalf of a participant; and

(8) The Talent Search project pays for no more than the equivalent of two courses for a participant each school year.

■ 48. Section 643.31 is amended in paragraph (a) by removing the phrase "Tuition, stipends," and by adding, in its place, the word "Stipends".

■ 49. Section 643.32 is amended by:

■ A. Revising paragraph (b).
■ B. In paragraph (c) introductory text, removing the word "shall" and adding, in its place, the word "must".
■ C. In paragraph (c)(3), removing the word "and".
■ D. In paragraph (c)(4), removing the punctuation "." and adding, in its place, the words "; and".
■ E. Adding a new paragraph (c)(5).
■ F. Revising paragraph (d).
■ G. In the OMB control number parenthetical following paragraph (d), removing the numbers "1840–0549" and adding, in their place, the numbers "1840–NEW2".

The revisions read as follows:

§ 643.32 What other requirements must a grantee meet?

* * * * *

(b) *Number of Participants.* For each year of the project period, a grantee must serve at least the number of participants that the Secretary identifies in the **Federal Register** notice inviting applications for a competition. Through this notice, the Secretary also provides the minimum and maximum grant award amounts for the competition.

* * * * *

(c) * * *

(5) To the extent practicable, any services the TS participant receives during the project year from another Federal TRIO program or another federally funded program that serves populations similar to those served under the TS program.

(d) *Project director.* (1) A grantee must employ a full-time project director unless—

(i) The director is also administering one or two additional programs for disadvantaged students operated by the sponsoring institution or agency; or

(ii) The Secretary grants a waiver of this requirement.

(2) The grantee must give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirements in paragraph (d)(1) of this section if the applicant demonstrates that the project director will be able to effectively administer more than three programs and that this arrangement would promote effective coordination between the TS program and other Federal TRIO Programs (sections 402B through 402F of the HEA) or similar programs funded through other sources.

* * * * *

PART 644—EDUCATIONAL OPPORTUNITY CENTERS

■ 50. The authority citation for part 644 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–16, unless otherwise noted.

■ 51. Section 644.1 is amended by:
■ A. In the introductory text, removing the words "to provide".
■ B. In paragraph (a), removing the word "Information" and adding, in its place, the words "To provide information"; removing the word "for" and adding, in its place, the word "to"; and removing the word "and" that appears after the punctuation ";".
■ C. In paragraph (b), removing the word "Assistance" and adding, in its place, the words "To provide assistance"; and removing the punctuation "." at the end of the sentence and adding, in its place, the word "; and".
■ D. Adding a new paragraph (c).

The addition reads as follows:

§ 644.1 What is the Educational Opportunity Centers program?

* * * * *

(c) To improve the financial and economic literacy of participants on topics such as—

(1) Basic personal income, household money management, and financial planning skills; and

(2) Basic economic decision-making skills.

* * * * *

■ 52. Section 644.2 is amended by:
■ A. In the introductory text of the section, adding the word "entities" after the word "following".
■ B. In paragraph (b), adding the words ", including a community-based organization with experience in serving disadvantaged youth" after the word "organization".
■ C. Removing paragraph (d).
■ D. Redesignating paragraph (c) as paragraph (d).
■ E. Adding a new paragraph (c).
■ F. In newly redesignated paragraph (d), removing the word "and" before the citation "(b)" and adding, in its place, the punctuation ","; and adding the words ", and (c)" after the citation "(b)".

The addition reads as follows:

§ 644.2 Who is eligible for a grant?

* * * * *

(c) A secondary school.

* * * * *

■ 53. Section 644.4 is amended by:
■ A. Redesignating paragraphs (e), (f), (g), (h), (i), (j), and (k) as paragraphs (f), (g), (h), (i), (j), (k), and (l), respectively.
■ B. Adding a new paragraph (e).
■ C. In newly redesignated paragraph (g), removing the word "Personal" and adding, in its place, the words "Individualized personal, career, and academic".
■ D. Revising newly redesignated paragraph (k).

The addition and revision read as follows:

§ 644.4 What services may a project provide?

* * * * *

(e) Education or counseling services designed to improve the financial and economic literacy of participants.

* * * * *

(k) Programs and activities described in this section that are specially designed for participants who are limited English proficient, participants from groups that are traditionally underrepresented in postsecondary education, participants who are individuals with disabilities, participants who are homeless children and youth, participants who are foster care youth, or other disconnected participants.

* * * * *

■ 54. Section 644.5 is revised to read as follows:

§ 644.5 How long is a project period?

A project period under the Educational Opportunity Centers program is five years.

(Authority: 20 U.S.C. 1070a–11)

■ 55. Section 644.6 is amended by revising paragraph (a) to read as follows:

§ 644.6 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for §§ 75.215 through 75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

■ 56. Section 644.7(b) is amended by:
■ A. Adding, in alphabetical order, new definitions for "Different population", "Financial and economic literacy", "Foster care youth", "Homeless children and youth", and "Individual with a disability".
■ B. Revising the definition of "Institution of higher education".
■ C. Revising the definition of "Veteran".

The additions and revisions read as follows:

§ 644.7 What definitions apply?

* * * * *

(b) * * *

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the Educational Opportunity Centers program and that—

(i) Is separate and distinct from any other population that the entity has

applied for a grant under this chapter to serve; or

(ii) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

Financial and economic literacy means knowledge about personal financial decision-making, which may include but is not limited to knowledge about—

(i) Personal and family budget planning;

(ii) Understanding credit building principles to meet long-term and short-term goals (*e.g.,* loan to debt ratio, credit scoring, negative impacts on credit scores);

(iii) Cost planning for postsecondary or postbaccalaureate education (*e.g.,* spending, saving, personal budgeting);

(iv) College cost of attendance (*e.g.,* public vs. private, tuition vs. fees, personal costs);

(v) Financial assistance (*e.g.,* searches, application processes, and differences between private and government loans, assistanceships); and

(vi) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

Foster care youth means youth who are in foster care or are aging out of the foster care system.

* * * * *

Homeless children and youth means those persons defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

Individual with a disability means a person who has a disability, as that term is defined in section 12102 of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

Institution of higher education means an educational institution as defined in sections 101 and 102 of the HEA.

* * * * *

Veteran means a person who—

(i) Served on active duty as a member of the Armed Forces of the United States for a period of more than 180 days and was discharged or released under conditions other than dishonorable;

(ii) Served on active duty as a member of the Armed Forces of the United States and was discharged or released because of a service connected disability;

(iii) Was a member of a reserve component of the Armed Forces of the United States and was called to active duty for a period of more than 30 days; or

(iv) Was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code) on or after September 11, 2001.

* * * * *

Subpart B—How Does One Apply for an Award?

■ 57. The heading for subpart B of part 644 is revised to read as set forth above.

§ 644.10 [Redesignated as § 644.11]

■ 58. In subpart B of part 644, § 644.10 is redesignated as § 644.11.

■ 59. A new § 644.10 is added to subpart B of part 644 to read as follows:

§ 644.10 How many applications may an eligible applicant submit?

(a) An applicant may submit more than one application for Educational Opportunity Centers grants as long as each application describes a project that serves a different target area or another designated different population.

(b) For each grant competition, the Secretary designates, in the **Federal Register** notice inviting applications and other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a–11, 1221e–3)

■ 60. Newly redesignated § 644.11 is amended by:

■ A. In the introductory text, removing the word "shall" and adding, in its place, the word "must".

■ B. Revising paragraph (b).

The revision reads as follows:

§ 644.11 What assurances must an applicant submit?

* * * * *

(b) The project will collaborate with other Federal TRIO projects, GEAR UP projects, or programs serving similar populations that are serving the same target schools or target area in order to minimize the duplication of services and promote collaborations so that more students can be served.

* * * * *

■ 61. Section 644.20 is amended by:

■ A. In paragraph (a)(2)(i), removing the word "or" after the words "same populations" and adding, in its place, the word "and"; removing the words "in delivering services" and adding, in their place, the words "of high quality service delivery; and adding the word "outcome" before the word "criteria".

■ B. In paragraph (a)(2)(ii), adding the word "total" after the word "maximum" the first time it appears.

■ C. Adding new paragraphs (a)(2)(iii) through (a)(2)(v).

■ D. Removing paragraph (a)(3).

■ E. In paragraph (b), removing the words "paragraphs (a)(1) through (3)" and adding, in their place, the words "paragraph (a)".

■ F. Revising paragraph (d).

The revision and additions read as follows:

§ 644.20 How does the Secretary decide which new grants to make?

(a) * * *

(2) * * *

(iii) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the **Federal Register** notice inviting applications and the other published application materials for the competition.

(iv) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(v) The final PE score is the average of the scores for the three project years assessed.

* * * * *

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

* * * * *

■ 62. Section 644.21 is amended by:

■ A. Revising paragraph (b).

■ B. In the OMB control number parenthetical following paragraph (g), removing the numbers "1840–0065" and adding, in their place, the numbers "1840–NEW3".

The revision reads as follows:

§ 644.21 What selection criteria does the Secretary use?

* * * * *

(b) *Objectives* (8 points). The Secretary evaluates the quality of the applicant's objectives and proposed targets (percentages) in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources:

(1) (2 points) Secondary school diploma or equivalent.

(2) (3 points) Postsecondary enrollment.

(3) (1.5 points) Financial aid applications.

(4) (1.5 points) College admission applications.

* * * * *

■ 63. Section 644.22 is revised to read as follows:

§ 644.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 644.20(a)(2)(i), the Secretary—

(1) Evaluates the applicant's performance under its expiring Educational Opportunity Centers project;

(2) Uses the approved project objectives for the applicant's expiring Educational Opportunity Centers grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of PE points; and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE points are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) The Secretary does not award PE points for the criterion specified in paragraph (d)(1) of this section (Number of participants) if the applicant did not serve at least the approved number of participants.

(d) For purposes of the PE evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) (3 points) *Number of participants.* Whether the applicant provided services to no less than the approved number of participants.

(2) (3 points) *Secondary school diploma.* Whether the applicant met or exceeded its approved objective with regard to participants served during the project year who do not have a secondary school diploma or its equivalent who receive a secondary school diploma or its equivalent within the time period specified in the approved objective.

(3) (5 points) *Postsecondary enrollment.* Whether the applicant met or exceeded its approved objective with regard to the secondary school graduates served during the project year who enroll in programs of postsecondary education within the time period specified in the approved objective.

(4) (2 points) *Financial aid applications.* Whether the applicant met or exceeded its objective regarding participants applying for financial aid.

(5) (2 points) *College admission applications.* Whether the applicant met or exceeded its objective regarding participants applying for college admission.

(Approved by the Office of Management and Budget under control number 1840–NEW8)

(Authority: 20 U.S.C. 1070a–16)

■ 64. Section 644.23 is amended by:

■ A. In the introductory text of paragraph (b), removing the words "beginning in fiscal year 1994".

■ B. Revising paragraph (b)(1).

The revision reads as follows:

§ 644.23 How does the Secretary set the amount of a grant?

* * * * *

(b) * * *

(1) $200,000; or

* * * * *

■ 65. Section 644.24 is added to subpart C of part 644 to read as follows:

§ 644.24 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all of the application submission requirements included in the **Federal Register** notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the **Federal Register** notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the **Federal Register** notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term "scoring error" does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information

needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the **Federal Register** notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.* (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 644.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as provided in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to the designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840—NEW3)

(Authority: 20 U.S.C. 1070a–11)

■ 66. Section 644.30 is amended by:

■ A. In the introductory text, removing the words "34 CFR part 74, subpart Q" and adding, in their place, the words "34 CFR 74.27, 75.530, and 80.22, as applicable".

■ B. In the introductory text of paragraph (a), adding the word "project" before the word "staff".

■ C. In paragraph (a)(1), removing the words "to obtain information relating to the admission of participants to those institutions".

■ D. Revising paragraph (a)(3).

■ E. In paragraph (b), adding the words "and test preparation programs for participants" after the word "materials".

■ F. Revising paragraph (c) introductory text.

■ G. Revising paragraph (f).

The revisions read as follows:

§ 644.30 What are allowable costs?

* * * * *

(a) * * *

(3) Field trips for participants to observe and meet with persons who are employed in various career fields and can act as role models for participants.

* * * * *

(c) Fees required for admission applications for postsecondary education, college entrance examinations, or alternative education examinations if—

* * * * *

(f) Purchase, lease, or rental of computer hardware, software, and other equipment, service agreements for such equipment, and supplies for participant development, project administration, or project recordkeeping.

* * * * *

■ 67. Section 644.32 is amended by:

■ A. Revising paragraph (b).

■ B. In paragraph (c) introductory text, removing the word "shall" and adding, in its place, the word "must".

■ C. In paragraph (c)(2), removing the word "and".

■ D. In paragraph (c)(3), removing the punctuation "." and adding, in its place, the words "; and".

■ E. Adding a new paragraph (c)(4).
■ F. Revising paragraph (d).
■ G. In the OMB control number parenthetical following paragraph (d), removing the numbers "1840–0065" and adding, in their place, the numbers "1840—NEW8".

The revisions and addition reads as follows:

§ 644.32 What other requirements must a grantee meet?

* * * * *

(b) *Number of Participants.* For each year of the project period, a grantee must serve at least the number of participants that the Secretary identifies in the **Federal Register** notice inviting applications for a competition. Through this notice, the Secretary also provides the minimum and maximum grant award amounts for the competition.

(c) * * *

(4) To the extent practicable, any services the participant receives during the project year from another Federal TRIO program or another federally funded program that serves populations similar to those served under the EOC program.

(d) *Project director.* (1) A grantee must employ a full-time project director unless—

(i) The director is also administering one or two additional programs for disadvantaged students operated by the sponsoring institution or agency; or

(ii) The Secretary grants a waiver of this requirement.

(2) The grantee must give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirements in paragraph (d)(1) of this section if the applicant demonstrates that that the project director will be able to effectively administer more than three programs and that this arrangement would promote effective coordination between the program and other Federal TRIO programs (sections 402B through 402F of the HEA) and similar programs funded through other sources.

* * * * *

PART 645—UPWARD BOUND PROGRAM

■ 68. The authority citation for part 645 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–13, unless otherwise noted.

■ 69. Section 645.2 is amended by:
■ A. In paragraph (a), removing the word "Institutions" and adding, in its place, the words "An institution".
■ B. Revising paragraphs (b), (c), and (d).

The revisions read as follows:

§ 645.2 Who is eligible for a grant?

* * * * *

(b) A public or private agency or organization, including a community-based organization with experience in serving disadvantaged youth.

(c) A secondary school.

(d) A combination of the types of institutions, agencies, and organizations described in paragraphs (a), (b), and (c) of this section.

* * * * *

■ 70. Section 645.3 is amended by:
■ A. In paragraph (b)(1), removing the word "or" after the punctuation ";";
■ B. In paragraph (b)(2), removing the punctuation "." and adding, in its place, the word "; or";
■ C. Adding a new paragraph (b)(3).
■ D. In paragraph (d), removing the words "but has not entered the twelfth grade".

The addition reads as follows:

§ 645.3 Who is eligible to participate in an Upward Bound project?

* * * * *

(b) * * *

(3) An individual who has a high risk for academic failure.

* * * * *

■ 71. Section 645.4 is amended by:
■ A. Revising the section heading.
■ B. Removing paragraph (a).
■ C. Redesignating paragraphs (b), (c), and (d) as paragraphs (a), (b), and (c), respectively.

The revision reads as follows:

§ 645.4 What are the grantee requirements for documenting the low-income and first-generation status of participants?

* * * * *

■ 72. Section 645.5 is amended by revising paragraph (a) to read as follows:

§ 645.5 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for §§ 75.215 through 75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

■ 73. Section 645.6(b) is amended by:
■ A. Revising the definition of "Institution of higher education".
■ B. Revising the definition of "Veteran".
■ C. Adding, in alphabetical order, new definitions for "Different population", "Financial and economic literacy", "Foster care youth", "Homeless children and youth", "Individual who has a high risk for academic failure", "Individual with a disability", "Regular secondary school diploma", "Rigorous secondary school program of study", and "Veteran who has a high risk for academic failure".

The revisions and additions read as follows:

§ 645.6 What definitions apply to the Upward Bound Program?

* * * * *

(b) * * *

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the Upward Bound program and that—

(1) Is separate and distinct from any other population that the entity has applied for a grant to serve; or

(2) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

* * * * *

Financial and economic literacy means knowledge about personal financial decision-making, which may include but is not limited to knowledge about—

(1) Personal and family budget planning;

(2) Understanding credit building principles to meet long-term and short-term goals (*e.g.,* loan to debt ratio, credit scoring, negative impacts on credit scores);

(3) Cost planning for postsecondary or postbaccalaureate education (*e.g.,* spending, saving, personal budgeting);

(4) College cost of attendance (*e.g.,* public vs. private, tuition vs. fees, personal costs);

(5) Financial assistance (*e.g.,* searches, application processes, and differences between private and government loans, assistanceships); and

(6) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

Foster care youth means youth who are in foster care or are aging out of the foster care system.

Homeless children and youth means persons defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

* * * * *

Individual who has a high risk for academic failure (regular Upward Bound participant) means an individual who—

(1) Has not achieved at the proficient level on State assessments in reading or language arts;

(2) Has not achieved at the proficient level on State assessments in math;

(3) Has not successfully completed pre-algebra or algebra by the beginning of the tenth grade; or

(4) Has a grade point average of 2.5 or less (on a 4.0 scale) for the most recent school year for which grade point averages are available.

Individual with a disability means a person who has a disability, as that term is defined in section 12102 of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

Institution of higher education means an educational institution as defined in sections 101 and 102 of the HEA.

* * * * *

Regular secondary school diploma means a diploma attained by individuals who meet or exceed the coursework and performance standards for high school completion established by the individual's State.

Rigorous secondary school program of study means a program of study that is—

(1) Established by a State educational agency (SEA) or local educational agency (LEA) and recognized as a rigorous secondary school program of study by the Secretary through the process described in 34 CFR 691.16(a) through (c) for the Academic Competitiveness Grant (ACG) Program;

(2) An advanced or honors secondary school program established by States and in existence for the 2004–2005 school year or later school years;

(3) Any secondary school program in which a student successfully completes at a minimum the following courses:

(i) Four years of English.

(ii) Three years of mathematics, including algebra I and a higher-level class such as algebra II, geometry, or data analysis and statistics.

(iii) Three years of science, including one year each of at least two of the following courses: biology, chemistry, and physics.

(iv) Three years of social studies.

(v) One year of a language other than English;

(4) A secondary school program identified by a State-level partnership that is recognized by the State Scholars Initiative of the Western Interstate Commission for Higher Education (WICHE), Boulder, Colorado;

(5) Any secondary school program for a student who completes at least two courses from an International Baccalaureate Diploma Program sponsored by the International Baccalaureate Organization, Geneva, Switzerland, and receives a score of a "4" or higher on the examinations for at least two of those courses; or

(6) Any secondary school program for a student who completes at least two Advanced Placement courses and receives a score of "3" or higher on the College Board's Advanced Placement Program Exams for at least two of those courses.

* * * * *

Veteran means a person who—

(1) Served on active duty as a member of the Armed Forces of the United States for a period of more than 180 days and was discharged or released under conditions other than dishonorable;

(2) Served on active duty as a member of the Armed Forces of the United States and was discharged or released because of a service connected disability;

(3) Was a member of a reserve component of the Armed Forces of the United States and was called to active duty for a period of more than 30 days; or

(4) Was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code) on or after September 11, 2001.

Veteran who has a high risk for academic failure means a veteran who—

(1) Has been out of high school or dropped out of a program of postsecondary education for five or more years;

(2) Has scored on standardized tests below the level that demonstrates a likelihood of success in a program of postsecondary education; or

(3) Meets the definition of an individual with a disability as defined in § 645.6(b).

* * * * *

■ 74. Section 645.11 is revised to read as follows:

§ 645.11 What services do all Upward Bound projects provide?

(a) Any project assisted under this part must provide—

(1) Academic tutoring to enable students to complete secondary or postsecondary courses, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects;

(2) Advice and assistance in secondary and postsecondary course selection;

(3) Assistance in preparing for college entrance examinations and completing college admission applications;

(4)(i) Information on the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and resources for locating public and private scholarships; and

(ii) Assistance in completing financial aid applications, including the Free Application for Federal Student Aid;

(5) Guidance on and assistance in—

(i) Secondary school reentry;

(ii) Alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma;

(iii) Entry into general educational development (GED) programs; or

(iv) Entry into postsecondary education; and

(6) Education or counseling services designed to improve the financial and economic literacy of students or the students' parents, including financial planning for postsecondary education.

(b) Any project that has received funds under this part for at least two years must include as part of its core curriculum in the next and succeeding years, instruction in—

(1) Mathematics through pre-calculus;

(2) Laboratory science;

(3) Foreign language;

(4) Composition; and

(5) Literature.

(Authority: 20 U.S.C. 1070a–13)

§§ 645.12, 645.13, and 645.14 [Redesignated as §§ 645.13, 645.14, and 645.15]

■ 75. Sections 645.12, 645.13, and 645.14 of subpart B of part 645 are redesignated as §§ 645.13, 645.14, and 645.15 of subpart B of part 645, respectively.

■ 76. A new § 645.12 is added to subpart B of part 645 to read as follows:

§ 645.12 What services may regular Upward Bound and Upward Bound Math-Science projects provide?

Any project assisted under this part may provide such services as—

(a) Exposure to cultural events, academic programs, and other activities not usually available to disadvantaged youth;

(b) Information, activities, and instruction designed to acquaint youth participating in the project with the range of career options available to the youth;

(c) On-campus residential programs;

(d) Mentoring programs involving elementary school or secondary school teachers or counselors, faculty members at institutions of higher education, students, or any combination of these persons;

(e) Work-study positions where youth participating in the project are exposed to careers requiring a postsecondary degree;

(f) Programs and activities as described in § 645.11 that are specially designed for participants who are limited English proficient, participants from groups that are traditionally underrepresented in postsecondary

education, participants who are individuals with disabilities, participants who are homeless children and youths, participants in or who are aging out of foster care, or other disconnected participants; and

(g) Other activities designed to meet the purposes of the Upward Bound program in § 645.1.

(Authority: 20 U.S.C. 1070a–13)

■ 77. Newly redesignated § 645.15 is amended by—

■ A. Revising the section heading.

■ B. In the introductory text, removing the words "§ 645.11(a) and may be provided under § 645.11(b)" and adding, in their place, the citation "§ 645.11".

■ C. In paragraph (b), removing the word "and".

■ D. In paragraph (c), removing the punctuation "." and adding, in its place, the word "; and".

■ E. Adding a new paragraph (d).

The revision and addition read as follows:

§ 645.15 What additional services may Veterans Upward Bound projects provide?

* * * * *

(d) Provide special services, including mathematics and science preparation, to enable veterans to make the transition to postsecondary education.

* * * * *

■ 78. Section 645.20 is revised to read as follows:

§ 645.20 How many applications for an Upward Bound award may an eligible applicant submit?

(a) An applicant may submit more than one application as long as each application describes a project that serves a different target area or target school, or another designated different population.

(b) For each grant competition, the Secretary designates, in the **Federal Register** notice inviting applications and other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a–13, 1221e–3)

■ 79. Section 645.21 is revised to read as follows:

§ 645.21 What assurances must an applicant include in an application?

(a) An applicant for a Regular Upward Bound award must assure the Secretary that—

(1) Not less than two-thirds of the project's participants will be low-income individuals who are potential first-generation college students;

(2) The remaining participants will be low-income individuals, potential first-generation college students, or individuals who have a high risk for academic failure;

(3) No student will be denied participation in a project because the student would enter the project after the 9th grade; and

(4) The project will collaborate with other Federal TRIO projects, GEAR UP projects, or programs serving similar populations that are serving the same target schools or target area in order to minimize the duplication of services and promote collaborations so that more students can be served.

(b) An applicant for an Upward Bound Math and Science Centers award must assure the Secretary that—

(1) Not less than two-thirds of the project's participants will be low-income individuals who are potential first-generation college students;

(2) The remaining participants will be either low-income individuals or potential first-generation college students;

(3) No student will be denied participation in a project because the student would enter the project after the 9th grade; and

(4) The project will collaborate with other Federal TRIO projects, GEAR UP projects, or programs serving similar populations that are serving the same target schools or target area in order to minimize the duplication of services and promote collaborations so that more students can be served.

(c) An applicant for a Veterans Upward Bound award must assure the Secretary that—

(1) Not less than two-thirds of the project's participants will be low-income individuals who are potential first-generation college students;

(2) The remaining participants will be low-income individuals, potential first-generation college students, or veterans who have a high risk for academic failure; and

(3) The project will collaborate with other Federal TRIO projects or programs serving similar populations in the target area in order to minimize the duplication of services and promote collaborations so that more students can be served.

(Authority: 20 U.S.C. 1070a–13)

■ 80. Section 645.30 is amended by:

■ A. In paragraph (a)(2)(i), removing the word "or" after the words "same target population" and adding, in its place, the word "and"; removing the words "in delivering services" and adding, in their place, the words "of high quality service delivery"; and adding the word "outcome" before the word "criteria".

■ B. In paragraph (a)(2)(ii), adding the word "total" after the word "maximum" the first time it appears.

■ C. Adding new paragraphs (a)(2)(iii) through (a)(2)(v).

■ D. Revising paragraph (d).

The additions and revision read as follows:

§ 645.30 How does the Secretary decide which grants to make?

(a) * * *

(2) * * *

(iii) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the **Federal Register** notice inviting applications and the other published application materials for the competition.

(iv) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(v) The final PE score is the average of the scores for the three project years assessed.

* * * * *

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

* * * * *

■ 81. Section 645.31 is amended by:

■ A. Revising paragraph (b).

■ B. Revising paragraph (d)(2).

The revisions read as follows:

§ 645.31 What selection criteria does the Secretary use?

* * * * *

(b) *Objectives* (9 points). The Secretary evaluates the quality of the applicant's objectives and proposed targets (percentages) in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources:

(1) For Regular Upward Bound and Upward Bound Math and Science Centers—

(i) (1 point) Academic performance (GPA);

(ii) (1 point) Academic performance (standardized test scores);

(iii) (2 points) Secondary school retention and graduation (with regular secondary school diploma);

(iv) (1 point) Completion of rigorous secondary school program of study;

(v) (3 points) Postsecondary enrollment; and

(vi) (1 point) Postsecondary completion.

(2) For Veterans Upward Bound—

(i) (2 points) Academic performance (standardized test scores);

(ii) (3 points) Education program retention and completion;

(iii) (3 points) Postsecondary enrollment; and

(iv) (1 point) Postsecondary completion.

* * * * *

(d) * * *

(2) Resources secured through written commitments from community partners.

(i) An applicant that is an institution of higher education must include in its application commitments from the target schools and community organizations;

(ii) An applicant that is a secondary school must include in its commitments from institutions of higher education, community organizations, and, as appropriate, other secondary schools and the school district;

(iii) An applicant that is a community organization must include in its application commitments from the target schools and institutions of higher education.

* * * * *

■ 82. Section 645.32 is revised to read as follows:

§ 645.32 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 645.30(a)(2)(i), the Secretary—

(1) Evaluates the applicant's performance under its expiring Upward Bound project;

(2) Uses the approved project objectives for the applicant's expiring Upward Bound grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of PE points; and

(3) May adjust a calculated PE score or decide not to award any PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE points are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) The Secretary does not award PE points for the criteria specified in paragraphs (e)(1)(i) and (e)(2)(i) of this section (Number of participants) if the applicant did not serve at least the approved number of participants.

(d) The Secretary uses the approved number of participants, or the actual number of participants served in a given year if greater than the approved number of participants, as the denominator for calculating whether the applicant has met its approved objectives related to the following PE criteria:

(1) Regular Upward Bound and Upward Bound Math and Science Centers PE criteria in paragraph (e)(1)(ii) of this section (Academic performance) and paragraph (e)(1)(iii) of this section (Secondary school retention and graduation).

(2) Veterans Upward Bound PE criteria in paragraph (e)(2)(iii) of this section (Education program retention and completion).

(e) For purposes of the PE evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) *Regular Upward Bound and Upward Bound Math and Science Centers.*

(i) (3 points) *Number of participants.* Whether the applicant provided services to no less than the approved number of participants.

(ii) *Academic Performance.* (A) (1.5 points) Whether the applicant met or exceeded its approved objective with regard to participants served during the project year who had a cumulative GPA at the end of the school year that was not less than the GPA specified in the approved objective.

(B) (1.5 points) Whether the applicant met or exceeded its approved objective with regard to participants served during the project period who met the academic performance levels on standardized tests as specified in the approved objectives.

(iii) (3 points) *Secondary school retention and graduation.* Whether the applicant met or exceeded its approved objective with regard to participants served during the project year who returned the next school year or graduated from secondary school with a regular secondary school diploma.

(iv) (1.5 points) *Rigorous secondary school program of study.* Whether the applicant met or exceeded its approved objective with regard to current and prior participants with an expected high school graduation date in the school year who completed a rigorous secondary school program of study.

(v) (3 points) *Postsecondary enrollment.* Whether the applicant met or exceeded its approved objective with regard current and prior participants with an expected high school graduation date in the school year who enrolled in a program of postsecondary education within the time period specified in the approved objective.

(vi) (1.5 points) *Postsecondary completion.* Whether the applicant met or exceeded its approved objective with regard to participants who enrolled in a program of postsecondary education and attained a postsecondary degree within the number of years specified in the approved objective.

(2) *Veterans Upward Bound.*

(i) (3 points) *Number of participants.* Whether the applicant provided services to no less than the approved number of participants.

(ii) (3 points) *Academic improvement on standardized test.* Whether the applicant met or exceeded its approved objective with regard to participants who completed their Veterans Upward Bound educational program during the project year and who improved their academic performance as measured by a standardized test taken by participants before and after receiving services from the project.

(iii) (3 points) *Education program retention and completion.* Whether the applicant met or exceeded its approved objective with regard to participants served during the project year who remained in or completed their Veterans Upward Bound educational program.

(iv) (3 points) *Postsecondary enrollment.* Whether the applicant met or exceeded its approved objective with regard to participants who completed their Veterans Upward Bound educational program and enrolled in an institution of higher education within the time period specified in the approved objective.

(v) (3 points) *Postsecondary completion.* Whether the applicant met or exceeded its approved objective with regard to participants who enrolled in and completed a program of postsecondary education within the number of years specified in the approved objective.

(Approved by the Office of Management and Budget under control number 1840–NEW9)

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

§ 645.33 [Amended]

■ 83. Section 645.33 is amended by, in paragraph (b)(1), removing the amount "$190,000" and adding, in its place, the amount "$200,000".

■ 84. Section 645.34 is revised to read as follows:

§ 645.34 How long is a project period?

A project period under the Upward Bound program is five years.

(Authority: 20 U.S.C. 1070a–11)

■ 85. A new § 645.35 is added to subpart D of part 645 to read as follows:

§ 645.35 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all of the application submission requirements included in the **Federal Register** notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the **Federal Register** notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the **Federal Register** notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term "scoring error" does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the **Federal Register** notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.* (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 645.30 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as provided in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to the designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds

available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840–NEW4)

(Authority: 20 U.S.C. 1070a–11)

■ 86. Section 645.40 is amended by:

■ A. In the introductory text, removing the words "34 CFR part 74, subpart Q" and adding, in their place, the words "34 CFR 74.27, 75.530, and 80.22, as applicable".

■ B. Revising paragraph (n).

■ C. Redesignating paragraph (o) as paragraph (p).

■ D. Adding new paragraph (o).

■ E. Adding new paragraph (q).

The revision and additions read as follows:

§ 645.40 What are allowable costs?

* * * * *

(n) Purchase, lease, or rental of computer hardware, software, and other equipment, service agreements for such equipment, and supplies that support the delivery of services to participants, including technology used by participants in a rigorous secondary school program of study.

(o) Purchase, lease, or rental of computer equipment and software, service agreements for such equipment, and supplies needed for project administration and recordkeeping.

* * * * *

(q) Tuition costs for a course that is part of a rigorous secondary school program of study if—

(1) The course or a similar course is not offered at the secondary school that the participant attends or at another school within the school district;

(2) The grantee demonstrates to the Secretary's satisfaction that using grant funds is the most cost-effective way to deliver the course or courses necessary for the completion of a rigorous secondary school program of study for program participants;

(3) The course is taken through an accredited institution of higher education;

(4) The course is comparable in content and rigor to courses that are part of a rigorous secondary school program of study as defined in § 645.6(b);

(5) The secondary school accepts the course as meeting one or more of the course requirements for obtaining a regular secondary school diploma;

(6) A waiver of the tuition costs is unavailable;

(7) The tuition is paid with Upward Bound grant funds to an institution of higher education on behalf of a participant; and

(8) The Upward Bound project pays for no more than the equivalent of two courses for a participant each school year.

* * * * *

■ 87. Section 645.42 is amended by revising paragraph (d)(1)(ii) to read as follows:

§ 645.42 What are Upward Bound stipends?

* * * * *

(d) * * *

(1) * * *

(ii) The stipend may not exceed $60 per month for the summer school recess for a period not to exceed three months, except that youth participating in a work-study position may be paid $300 per month during the summer school recess.

* * * * *

■ 88. Section 645.43 is amended by:

■ A. Revising paragraph (a).

■ B. Revising paragraph (b).

■ C. In paragraph (c) introductory text, removing the word "shall" and adding, in its place, the word "must".

■ D. In paragraph (c)(4), removing the punctuation "." and adding, in its place, the words "; and".

■ E. Adding a new paragraph (c)(5).

■ F. Adding an OMB control number parenthetical following paragraph (c).

The additions read as follows:

§ 645.43 What other requirements must a grantee meet?

(a) *Number of Participants.* For each year of the project period, a grantee must serve at least the number of participants that the Secretary identifies in the **Federal Register** notice inviting applications for a competition. Through this notice, the Secretary also provides the minimum and maximum grant award amounts for the competition.

(b) *Project director.* (1) A grantee must employ a full-time project director unless—

(i) The director is also administering one or two additional programs for disadvantaged students operated by the sponsoring institution or agency; or

(ii) The Secretary grants a waiver of this requirement.

(2) The grantee must give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirements in paragraph (b)(1) of this section if the applicant demonstrates that the project director will be able to effectively administer more than three programs and that this arrangement would promote effective coordination between the program and other Federal TRIO programs (sections 402B through 402F of the HEA) and similar programs funded through other sources.

(c) * * *

(5) To the extent practicable, any services the participant receives during the project year from another Federal TRIO program or another federally funded program that serves populations similar to those served under the UB program.

(Approved by the Office of Management and Budget under control number 1840–NEW9)

* * * * *

PART 646—STUDENT SUPPORT SERVICES

■ 89. The authority citation for part 646 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–14, unless otherwise noted.

■ 90. Section 646.1 is amended by:
■ A. In paragraph (a), adding the word "college" before the word "retention".
■ B. Revising paragraph (c).
■ C. Adding new paragraph (d).

The revision and addition read as follows:

§ 646.1 What is the Student Support Services program?

* * * * *

(c) Foster an institutional climate supportive of the success of students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, individuals with disabilities, homeless children and youth, foster care youth, or other disconnected students; and

(d) Improve the financial and economic literacy of students in areas such as—

(1) Basic personal income, household money management, and financial planning skills; and

(2) Basic economic decision-making skills.

* * * * *

■ 91. Section 646.4 is revised to read as follows:

§ 646.4 What activities and services does a project provide?

(a) A Student Support Services project must provide the following services:

(1) Academic tutoring, directly or through other services provided by the institution, to enable students to complete postsecondary courses, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects.

(2) Advice and assistance in postsecondary course selection.

(3)(i) Information on both the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and resources for locating public and private scholarships; and

(ii) Assistance in completing financial aid applications, including the Free Application for Federal Student Aid.

(4) Education or counseling services designed to improve the financial and economic literacy of students, including financial planning for postsecondary education.

(5) Activities designed to assist participants enrolled in four-year institutions of higher education in applying for admission to, and obtaining financial assistance for enrollment in, graduate and professional programs.

(6) Activities designed to assist students enrolled in two-year institutions of higher education in applying for admission to, and obtaining financial assistance for enrollment in, a four-year program of postsecondary education.

(b) A Student Support Services project may provide the following services:

(1) Individualized counseling for personal, career, and academic matters provided by assigned counselors.

(2) Information, activities, and instruction designed to acquaint students participating in the project with the range of career options available to the students.

(3) Exposure to cultural events and academic programs not usually available to disadvantaged students.

(4) Mentoring programs involving faculty or upper class students, or a combination thereof.

(5) Securing temporary housing during breaks in the academic year for—

(i) Students who are homeless children and youths or were formerly homeless children and youths; and

(ii) Foster care youths.

(6) Programs and activities as described in paragraph (a) of this section or paragraphs (b)(1) through (b)(4) of this section that are specially designed for students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students who are individuals with disabilities, students who are homeless children and youths, students who are foster care youth, or other disconnected students.

(7) Other activities designed to meet the purposes of the Student Support Services Program in § 646.1.

(Authority: 20 U.S.C. 1070a–14)

■ 92. Section 646.5 is revised to read as follows:

§ 646.5 How long is a project period?

A project period under the Student Support Services program is five years.

(Authority: 20 U.S.C. 1070a–11)

■ 93. Section 646.6 is amended by revising paragraph (a) to read as follows:

§ 646.6 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for §§ 75.215 through 75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

■ 94. Section 646.7 is amended by:
■ A. Removing paragraph (a).
■ B. Redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.
■ C. In newly redesignated paragraph (b), revising the definition of "Different campus"; removing the definition of "Different population of participants"; revising the definition of "Individual with a disability"; and adding, in alphabetical order, new definitions for "Different population", "Financial and economic literacy", "First generation college student", "Foster care youth", "Homeless children and youth", "Institution of higher education", and "Low-income individual".

The revisions and additions read as follows:

§ 646.7 What definitions apply?

* * * * *

(b) * * *

Different campus means a site of an institution of higher education that—

(1) Is geographically apart from the main campus of the institution;

(2) Is permanent in nature; and

(3) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential.

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the Student Support Services program and that—

(1) Is separate and distinct from any other population that the entity has applied for a grant to serve; or

(2) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

Financial and economic literacy means knowledge about personal financial decision-making, which may include but is not limited to knowledge about—

(1) Personal and family budget planning;

(2) Understanding credit building principles to meet long-term and short-term goals (*e.g.*, loan to debt ratio, credit scoring, negative impacts on credit scores);

(3) Cost planning for postsecondary or postbaccalaureate education (e.g., spending, saving, personal budgeting);

(4) College cost of attendance (*e.g.*, public vs. private, tuition vs. fees, personal costs);

(5) Financial assistance (*e.g.,* searches, application processes, differences between private and government loans, assistanceships); and

(6) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

First generation college student means—

(1) A student neither of whose natural or adoptive parents received a baccalaureate degree;

(2) A student who, prior to the age of 18, regularly resided with and received support from only one parent and whose supporting parent did not receive a baccalaureate degree; or

(3) An individual who, prior to the age of 18, did not regularly reside with or receive support from a natural or an adoptive parent.

Foster care youth means youth who are in foster care or are aging out of the foster care system.

Homeless children and youth means persons defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 1143a).

Individual with a disability means a person who has a disability, as that term is defined in section 12102 of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

Institution of higher education means an educational institution as defined in sections 101 and 102 of the Act.

* * * * *

Low-income individual means an individual whose family's taxable income did not exceed 150 percent of the poverty level amount in the calendar year preceding the year in which the individual initially participated in the project. The poverty level amount is determined by using criteria of poverty established by the Bureau of the Census of the U.S. Department of Commerce.

* * * * *

■ 95. Subpart B of part 646 is revised to read as follows:

Subpart B—How Does One Apply for an Award?

Sec.
646.10 How many applications may an eligible applicant submit and for what different populations may an eligible application be submitted?
646.11 What assurances and other information must an applicant include in an application?

Subpart B—How Does One Apply for an Award?

§ 646.10 How many applications may an eligible applicant submit and for what different populations may an eligible application be submitted?

(a) An eligible applicant may submit more than one application as long as each application describes a project that serves a different campus or a designated different population.

(b) For each grant competition, the Secretary designates, in the **Federal Register** notice inviting applications and other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a–11 and 1070a–14; 20 U.S.C. 1221e–3)

§ 646.11 What assurances and other information must an applicant include in an application?

(a) An applicant must assure the Secretary in the application that—

(1) Not less than two-thirds of the project participants will be—

(i) Low-income individuals who are first generation college students; or

(ii) Individuals with disabilities;

(2) The remaining project participants will be low-income individuals, first generation college students, or individuals with disabilities; and

(3) Not less than one-third of the individuals with disabilities served also will be low-income individuals.

(b) The applicant must describe in the application its efforts, and where applicable, past history, in—

(1) Providing sufficient financial assistance to meet the full financial need of each student in the project; and

(2) Maintaining the loan burden of each student in the project at a manageable level.

(c) The applicant must assure the Secretary in the application that a student will not be served by more than one SSS project at any one time and that the SSS project will collaborate with other SSS and McNair projects and other State and institutional programs at the grantee-institution so that more students can be served.

(d) The applicant must assure the Secretary in the application that the institution's financial aid office will consult with the SSS project with respect to which SSS participants should receive grant aid and the amount of the grant aid awards.

(Approved by the Office of Management and Budget under control number 1840–NEW5)

(Authority: 20 U.S.C. 1070a–14)

■ 96. Section 646.20 is amended by:

■ A. In paragraph (a)(2)(i), removing the word "or" after the words "same population" and adding, in its place, the word "and"; removing the words "in delivering services" and adding, in their place, the words "of high quality service delivery; and adding the word "outcome" before the word "criteria".

■ B. Revising paragraph (a)(2)(ii).

■ C. Adding new paragraphs (a)(2)(iii) through (a)(2)(v).

■ D. Revising paragraph (d).

The revisions and additions read as follows:

§ 646.20 How does the Secretary decide which new grants to make?

(a) * * *

(2) * * *

(ii) The maximum total score for all the criteria in § 646.22 is 15 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(iii) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the **Federal Register** notice inviting applications and the other published application materials for the competition.

(iv) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(v) The final PE score is the average of the scores for the three project years assessed.

* * * * *

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

* * * * *

■ 97. Section 646.21 is amended by:

■ A. Revising paragraph (b).

■ B. Revising the OMB control number at the end of the section.

The revisions read as follows:

§ 646.21 What selection criteria does the Secretary use to evaluate an application?

* * * * *

(b) *Objectives* (8 points). The Secretary evaluates the quality of the applicant's proposed objectives in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources.

(1) (3 points) Retention in postsecondary education.

(2) (2 points) In good academic standing at grantee institution.

(3) Two-year institutions only. (i) (1 point) Certificate or degree completion; and

(ii) (2 points) Certificate or degree completion and transfer to a four-year institution.

(4) Four-year institutions only. (3 points) Completion of a baccalaureate degree.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–NEW5)

* * * * *

■ 98. Section 646.22 is revised to read as follows:

§ 646.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 646.20(a)(2)(i), the Secretary—

(1) Evaluates the applicant's performance under its expiring Student Support Services project;

(2) Uses the approved project objectives for the applicant's expiring Student Support Services grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of prior PE points; and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE points are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) The Secretary does not award PE points for the criterion specified in paragraph (e)(1) of this section (Number of participants) if the applicant did not serve at least the approved number of participants.

(d) The Secretary uses the approved number of participants, or the actual number of participants served in a given year if greater than the approved number of participants, as the denominator for calculating whether the applicant has met its approved objectives related to paragraph (e)(2) of this section (Postsecondary retention) and paragraph (e)(3) of this section (Good academic standing).

(e) For purposes of the PE evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) (3 points) *Number of participants.* Whether the applicant provided services to no less than the approved number of participants.

(2) (4 points) *Postsecondary retention.* Whether the applicant met or exceeded its objective regarding the participants served during the project year who continue to be enrolled in a program of postsecondary education from one academic year to the beginning of the next academic year or who complete a program of postsecondary education at the grantee institution during the academic year or transfer from a two-year institution to a four-year institution during the academic year.

(3) (4 points) *Good academic standing.* Whether the applicant met or exceeded its objective regarding the participants served during the project year who are in good academic standing at the grantee institution.

(4) (4 points) *Degree completion (for an applicant institution of higher education offering primarily a baccalaureate or higher degree).* Whether the applicant met or exceeded its objective regarding the current and prior participants receiving a baccalaureate degree at the grantee institution within the specified number of years.

(5) *Degree completion and transfer (for an applicant institution of higher education offering primarily an associate degree).* Whether the applicant met or exceeded its objectives regarding the current and prior participants at the grantee institution who—

(i) (2 points) Complete a degree or certificate within the number of years specified in the approved objective; and

(ii) (2 points) Transfer within the number of years specified in the approved objective to institutions of higher education that offer baccalaureate degrees.

(Approved by the Office of Management and Budget under control number 1840–NEW10)

(Authority: 20 U.S.C. 1070a–11; 1070a–14)

§ 646.23 [Amended]

■ 99. Section 646.23(b)(1) is amended by removing the amount "$170,000" and adding, in its place, the amount "$200,000".

■ 100. A new § 646.24 is added to subpart C of part 646 to read as follows:

§ 646.24 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all of the application submission requirements included in the **Federal Register** notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the **Federal Register** notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the

wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the **Federal Register** notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term "scoring error" does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the **Federal Register** notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.* (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 646.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as provided in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to the designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840–NEW5)

(Authority: 20 U.S.C. 1070a–11)

■ 101. Section 646.30 is amended by:

■ A. In the introductory text, removing the words "34 CFR part 74, subpart Q" and adding, in their place, the words "34 CFR 74.27, 75.530, and 80.22, as applicable".

■ B. Revising paragraph (e)

■ C. Revising paragraph (f).

■ D. Adding new paragraphs (i) and (j).

The revisions and additions read as follows:

§ 646.30 What are allowable costs?

* * * * *

(e) Transportation and, with the prior approval of the Secretary, meals and lodging for participants and staff during approved educational and cultural activities sponsored by the project.

(f) Purchase, lease, or rental of computer hardware, software, and other equipment, service agreements for such equipment, and supplies for participant development, project administration, or project recordkeeping.

* * * * *

(i) Grant aid to eligible students who—

(1) Are in their first two years of postsecondary education and who are receiving Federal Pell Grants under

subpart 1 of part A of title IV of the Act; or

(2) Have completed their first two years of postsecondary education and who are receiving Federal Pell Grants under subpart 1 of part A of title IV of the Act if the institution demonstrates to the satisfaction of the Secretary that—

(i) These students are at high risk of dropping out; and

(ii) It will first meet the needs of all its eligible first- and second-year students for services under this paragraph.

(j) Temporary housing during breaks in the academic year for—

(1) Students who are homeless children and youths or were formerly homeless children and youths; and

(2) Students who are foster care youth.

* * * * *

§ 646.31 [Amended]

■ 102. Section 646.31(b) is amended by adding the words ", except for Grant aid under § 646.30(i)" after the word "support".

§ 646.32 [Amended]

■ 103. Section 646.32 is amended by:

■ A. Redesignating paragraphs (a), (b), (c), and (d) as paragraphs (b), (c), and (d), and (e) respectively.

■ B. Adding a new paragraph (a).

■ C. In newly redesignated paragraph (b)(2), removing the words "Higher Education".

■ D. In newly redesignated paragraph (b), removing paragraph (b)(3).

■ E. In newly redesignated paragraph (c) introductory text, removing the word "shall" and adding, in its place, the word "must".

■ F. In newly redesignated paragraph (c)(3), removing the word "and".

■ G. In newly redesignated paragraph (c)(4), removing the punctuation "." and adding, in its place, the words "; and".

■ H. Adding a new paragraph (c)(5).

■ I. Revising newly redesignated paragraph (d).

■ J. In the OMB control number parenthetical following paragraph (e), removing the numbers "1840–0017" and adding, in their place, the numbers "1840–NEW5".

The revisions and additions read as follows:

§ 646.32 What other requirements must a grantee meet?

(a) *Number of Participants.* For each year of the project period, a grantee must serve at least the number of participants that the Secretary identifies in the **Federal Register** notice inviting applications for a competition. Through this notice, the Secretary also provides the minimum and maximum grant award amounts for the competition.

* * * * *

(c) * * *

(5) To the extent practicable, any services the participant receives during the project year from another Federal TRIO program or another federally funded program that serves populations similar to those served under the SSS program.

(d) *Project director.* (1) A grantee must employ a full-time project director unless—

(i) The director is also administering one or two additional programs for disadvantaged students operated by the sponsoring institution or agency; or

(ii) The Secretary grants a waiver of this requirement.

(2) The grantee must give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirements in paragraph (d)(1) of this section if the applicant demonstrates that the project director will be able to effectively administer more than three programs and that this arrangement would promote effective coordination between the program and other Federal TRIO programs (sections 402B through 402F of the HEA) or similar programs funded through other sources.

* * * * *

■ 104. Section 646.33 is added to subpart D of part 646 to read as follows:

§ 646.33 What are the matching requirements for a grantee that uses Student Support Services program funds for student grant aid?

(a) Except for grantees described in paragraph (b) of this section, a grantee that uses Student Support Services program funds for grant aid to eligible students described in § 646.30(i) must—

(1) Match the Federal funds used for grant aid, in cash, from non-Federal funds, in an amount that is not less than 33 percent of the total amount of Federal grant funds used for Grant aid; and

(2) Use no more than 20 percent of the Federal program funds awarded the grantee each year for grant aid.

(b) A grant recipient that is an institution of higher education eligible to receive funds under part A or B of title III or title V of the HEA, as amended, is not required to match the Federal funds used for grant aid.

(Approved by the Office of Management and Budget under control number 1840–NEW10)

(Authority: 20 U.S.C. 1070a–11)

PART 647—RONALD E. MCNAIR POSTBACCALAUREATE ACHIEVEMENT PROGRAM

■ 105. The authority citation for part 647 continues to read as follows:

Authority: 20 U.S.C. 1070a–11 and 1070a–15, unless otherwise noted.

■ 106. Section 647.4 is revised to read as follows:

§ 647.4 What activities and services does a project provide?

(a) A McNair project must provide the following services and activities:

(1) Opportunities for research or other scholarly activities at the grantee institution or at graduate centers that are designed to provide students with effective preparation for doctoral study.

(2) Summer internships.

(3) Seminars and other educational activities designed to prepare students for doctoral study.

(4) Tutoring.

(5) Academic counseling.

(6) Assistance to students in securing admission to, and financial assistance for, enrollment in graduate programs.

(b) A McNair project may provide the following services and activities:

(1) Education or counseling services designed to improve the financial and economic literacy of students, including financial planning for postsecondary education.

(2) Mentoring programs involving faculty members at institutions of higher education, students, or a combination of faculty members and students.

(3) Exposure to cultural events and academic programs not usually available to disadvantaged students.

(4) Other activities designed to meet the purpose of the McNair Program in § 647.1.

(Authority: 20 U.S.C. 1070a–15)

■ 107. Section 647.5 is revised to read as follows:

§ 647.5 How long is a project period?

A project period under the McNair program is five years.

(Authority: 20 U.S.C. 1070a–11)

■ 108. Section 647.6 is amended by revising paragraph (a) to read as follows:

§ 647.6 What regulations apply?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for §§ 75.215 through 75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

* * * * *

■ 109. Section 647.7(b) is amended by:

■ A. Removing the definition of "Summer internship".

■ B. In the definition of "Graduate center", revising the introductory text.
■ C. Revising the definition of "Groups underrepresented in graduate education".
■ D. Revising the definition of "Institution of higher education".
■ E. Adding, in alphabetical order, new definitions for "Different campus", "Different population", "Financial and economic literacy", and "Research or scholarly activity".

The revisions and additions read as follows:

§ 647.7 What definitions apply?

* * * * *

(b) * * *

Different campus means a site of an institution of higher education that—

(1) Is geographically apart from the main campus of the institution;

(2) Is permanent in nature; and

(3) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential.

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the McNair TRIO program and that—

(1) Is separate and distinct from any other population that the entity has applied for a grant to serve; or

(2) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

Financial and economic literacy means knowledge about personal financial decision-making, which may include but is not limited to knowledge about—

(1) Personal and family budget planning;

(2) Understanding credit-building principles to meet long-term and short-term goals (*e.g.,* loan to debt ratio, credit scoring, negative impacts on credit scores);

(3) Cost planning for postsecondary or postbaccalaureate education (e.g., spending, saving, personal budgeting);

(4) College cost of attendance (*e.g.,* public vs. private, tuition vs. fees, personal costs);

(5) Financial assistance (*e.g.,* searches, application processes, and differences between private and government loans, assistanceships); and

(6) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

* * * * *

Graduate center means an institution of higher education as defined in sections 101 and 102 of the HEA; and that—

* * * * *

Groups underrepresented in graduate education. The following ethnic and racial groups are considered underrepresented in graduate education: Black (non-Hispanic), Hispanic, American Indian, Alaskan Native (as defined in section 7306 of the Elementary and Secondary Education Act of 1965, as amended (ESEA)), Native Hawaiians (as defined in section 7207 of the ESEA), and Native American Pacific Islanders (as defined in section 320 of the HEA).

Institution of higher education means an educational institution as defined in sections 101 and 102 of the HEA.

* * * * *

Research or scholarly activity means an educational activity that is more rigorous than is typically available to undergraduates in a classroom setting, that is definitive in its start and end dates, contains appropriate benchmarks for completion of various components, and is conducted under the guidance of an appropriate faculty member with experience in the relevant discipline.

* * * * *

Subpart B—How Does One Apply for an Award?

■ 110. Subpart B of part 647 is amended by revising the subpart heading to read as set forth above.

§ 647.10 [Redesignated as § 647.11]

■ 110a. Redesignate § 647.10 as § 647.11.

■ 111. Section 647.10 is added to subpart B of part 647 to read as follows:

§ 647.10 How many applications may an eligible applicant submit?

(a) An applicant may submit more than one application for McNair grants as long as each application describes a project that serves a different campus or a designated different population.

(b) For each grant competition, the Secretary designates, in the **Federal Register** notice inviting applications and the other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a–15; 20 U.S.C. 1221e–3))

■ 112. Newly redesignated § 647.11 is amended by adding paragraph (d) to read as follows:

§ 647.11 What assurances must an applicant submit?

* * * * *

(d) A student will not be served by more than one McNair project at any one time and that the McNair project will collaborate with other McNair and SSS projects and other State and institutional programs at the grantee-institution, including those supporting undergraduate research, so that more students can be served.

* * * * *

(Authority: 20 U.S.C. 1070a–15; 20 U.S.C. 1221e–3))

■ 113. Section 647.20 is amended by:
■ A. In paragraph (a)(2)(i), adding the words "of high quality service delivery" after the words "prior experience" and adding the word "outcome" before the word "criteria".
■ B. Revising paragraph (a)(2)(ii).
■ C. Adding new paragraphs (a)(2)(iv), (a)(2)(v), and (a)(2)(vi).
■ D. Revising paragraph (d).

The revisions and additions read as follows:

§ 647.20 How does the Secretary decide which new grants to make?

(a) * * *

(2) * * *

(ii) The maximum total score for all the criteria in § 647.22 is 15 points. The maximum score for each criterion is indicated in parentheses with the criterion.

* * * * *

(iv) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the **Federal Register** notice inviting applications and the other published application materials for the competition.

(v) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(vi) The final PE score is the average of the scores for the three project years assessed.

* * * * *

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

* * * * *

■ 114. Section 647.21 is amended by:
■ A. Revising paragraph (b).
■ B. Adding an OMB control number parenthetical following paragraph (d).

The revision and addition read as follows:

§ 647.21 What selection criteria does the Secretary use?

* * * * *

(b) *Objectives* (9 points). The Secretary evaluates the quality of the applicant's objectives and proposed targets (percentages) in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources:

(1) (2 points) Research or scholarly activity.

(2) (3 points) Enrollment in a graduate program.

(3) (2 points) Continued enrollment in graduate study.

(4) (2 points) Doctoral degree attainment.

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(Approved by the Office of Management and Budget under control number 1840–NEW6)

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■ 115. Section 647.22 is revised to read as follows:

§ 647.22 How does the Secretary evaluate prior experience?

(a) In the case of an applicant described in § 647.20(a)(2)(i), the Secretary—

(1) Evaluates an applicant's performance under its expiring McNair project;

(2) Uses the approved project objectives for the applicant's expiring McNair grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of PE points; and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) The Secretary does not award any PE points for the criteria specified in paragraph (e)(1) of this section (Number of participants) if the applicant did not serve at least the approved number of participants.

(d) The Secretary uses the approved number of participants, or the actual number of participants served in a given year if greater than the approved number of participants, as the denominator for calculating whether the applicant has met its approved objective related to paragraph (e)(2) of this section (Research and scholarly activities).

(e) For purposes of the PE evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) (3 points) *Number of participants.* Whether the applicant provided services to no less than the approved number of participants.

(2) (3 points) *Research or scholarly activities.* Whether the applicant met or exceeded its objective for providing participants served during the project year with appropriate research and scholarly activities each academic year.

(3) (3 points) *Graduate school enrollment.* Whether the applicant met or exceeded its objective with regard to the acceptance and enrollment in graduate programs of participants served during the project year who complete the baccalaureate program during the academic year.

(4) (4 points) *Continued enrollment in graduate school.* Whether the applicant met or exceeded its objective with regard to the continued enrollment in graduate school of prior participants.

(5) (2 points) *Doctoral degree attainment.* Whether the applicant met or exceeded its objective with regard to the attainment of doctoral level degrees of prior participants in the specified number of years.

(Approved by the Office of Management and Budget under control number 1840–NEW11)

(Authority: 20 U.S.C. 1070a–11 and 1070a–15)

§ 647.23 [Amended]

■ 116. Section 647.23 is amended by:

■ A. In paragraph (b), introductory text, removing the words "beginning in fiscal year 1995".

■ B. In paragraph (b)(1), removing the amount "$190,000" and adding, in its place, the amount "$200,000".

■ 117. Section 647.24 is added to subpart C of part 647 to read as follows:

§ 647.24 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all of the application submission requirements included in the **Federal Register** notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the **Federal Register** notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's

agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the **Federal Register** notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term "scoring error" does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the **Federal Register** notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.* (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 647.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as provided in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to a designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840–NEW6)

(Authority: 20 U.S.C. 1070a–11)

■ 118. Section 647.30 amended by:

■ A. In paragraph (b), removing the amount "$2,400" and, adding, in its place, the amount "$2,800".

■ B. Revising paragraph (d).

The revision reads as follows:

§ 647.30 What are allowable costs?

* * * * *

(d) Purchase, lease, or rental of computer hardware, software, and other equipment, service agreements for such equipment, and supplies for participant development, project administration, or project recordkeeping.

■ 119. Section 647.32 is amended by:

■ A. Redesignating paragraphs (a), (b), (c), and (d) as (b), (c), (d), and (e), respectively.

■ B. Adding a new paragraph (a).

■ C. In newly redesignated paragraph (c), adding a new paragraph (c)(5).

■ D. Adding an OMB control number parenthetical following newly-redesignated paragraph (e).

The addition and revisions read as follows:

§ 647.32 What other requirements must a grantee meet?

(a) *Number of Participants.* For each year of the project period, a grantee must serve at least the number of participants that the Secretary identifies in the **Federal Register** notice inviting applications for a competition. Through this notice, the Secretary also provides the minimum and maximum grant award amounts for the competition.

* * * * *

(c) * * *

(5) To the extent practicable, any services the participant receives during the project year from another Federal TRIO program or another federally funded program that serves populations similar to those served under the McNair program.

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(Approved by the Office of Management and Budget under control number 1840–NEW11)

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PART 694—GAINING EARLY AWARENESS AND READINESS FOR UNDERGRADUATE PROGRAMS (GEAR UP)

■ 120. The authority citation for Part 694 continues to read as follows:

Authority: 20 U.S.C. 1070a–21 to 1070a–28.

■ 121. Section 694.1 is amended by revising paragraph (a) introductory text to read as follows:

§ 694.1 What is the maximum amount that the Secretary may award each fiscal year to a Partnership or a State under this program?

(a) *Partnership grants.* The Secretary may establish the maximum amount that may be awarded each fiscal year for a GEAR UP Partnership grant in a notice published in the **Federal Register**. The maximum amount for which a Partnership may apply may not exceed the lesser of the maximum amount established by the Secretary, if applicable, or the amount calculated by multiplying—

* * * * *

■ 122. Section 694.4 is amended by revising paragraph (b)(2) to read as follows:

§ 694.4 Which students must a State or Partnership serve when there are changes in the cohort?

* * * * *

(b) * * *

(2) Must continue to provide GEAR UP services to at least those students in the cohort who attend one or more participating schools that together enroll a substantial majority of the students in the cohort.

* * * * *

■ 123. Section 694.7 is revised to read as follows:

§ 694.7 What are the matching requirements for a GEAR UP grant?

(a) In order to be eligible for GEAR UP funding—

(1) An applicant must state in its application the percentage of the cost of the GEAR UP project the applicant will provide for each year from non-Federal funds, subject to the requirements in paragraph (b) of this section; and

(2) A grantee must make substantial progress towards meeting the matching percentage stated in its approved application for each year of the project period.

(b) Except as provided in §§ 694.8 and 694.9, the non-Federal share of the cost of the GEAR UP project must be not less than 50 percent of the total cost of the project (i.e., one dollar of non-Federal contributions for every one dollar of Federal funds obligated for the project) over the project period.

(c) The non-Federal share of the cost of a GEAR UP project may be provided in cash or in-kind.

(Authority: 20 U.S.C. 1070a–23)

■ 124. Part 694 is amended by redesignating §§ 694.8, 694.9, 694.10, 694.11, 694.12, 694.13, and 694.15 as follows:

Old section	New section
§ 694.8	§ 694.10
§ 694.9	§ 694.11
§ 694.10	§ 694.13
§ 694.11	§ 694.15
§ 694.12	§ 694.17
§ 694.13	§ 694.18
§ 694.15	§ 694.19

■ 125. New § 694.8 is added to read as follows:

§ 694.8 Under what conditions may the Secretary approve a request from a Partnership applying for a GEAR UP grant to waive a portion of the matching requirement?

(a) The Secretary may approve a Partnership applicant's request for a waiver of up to 75 percent of the matching requirement for up to two years if the applicant demonstrates in its application a significant economic hardship that stems from a specific, exceptional, or uncontrollable event, such as a natural disaster, that has a devastating effect on the members of the Partnership and the community in which the project would operate.

(b)(1) The Secretary may approve a Partnership applicant's request to waive up to 50 percent of the matching requirement for up to two years if the applicant demonstrates in its application a pre-existing and an on-going significant economic hardship that precludes the applicant from meeting its matching requirement.

(2) In determining whether an applicant is experiencing an on-going economic hardship that is significant enough to justify a waiver under this paragraph, the Secretary considers documentation of such factors as:

(i) Severe distress in the local economy of the community to be served by the grant (*e.g.,* there are few employers in the local area, large employers have left the local area, or significant reductions in employment in the local area).

(ii) Local unemployment rates that are higher than the national average.

(iii) Low or decreasing revenues for State and County governments in the area to be served by the grant.

(iv) Significant reductions in the budgets of institutions of higher education that are participating in the grant.

(v) Other data that reflect a significant economic hardship for the geographical area served by the applicant.

(3) At the time of application, the Secretary may provide tentative approval of an applicant's request for a waiver under paragraph (b)(1) of this section for all remaining years of the project period. Grantees that receive tentative approval of a waiver for more than two years under this paragraph must submit to the Secretary every two years by such time as the Secretary may direct documentation that demonstrates that—

(i) The significant economic hardship upon which the waiver was granted still exists; and

(ii) The grantee tried diligently, but unsuccessfully, to obtain contributions needed to meet the matching requirement.

(c) The Secretary may approve a Partnership applicant's request in its application to match its contributions to its scholarship fund, established under section 404E of the HEA, on the basis of two non-Federal dollars for every one Federal dollar of GEAR UP funds.

(d) The Secretary may approve a request by a Partnership applicant that has three or fewer institutions of higher education as members to waive up to 70 percent of the matching requirement if the Partnership applicant includes—

(1) A fiscal agent that is eligible to receive funds under title V, or Part B of

title III, or section 316 or 317 of the HEA, or a local educational agency;

(2) Only participating schools with a 7th grade cohort in which at least 75 percent of the students are eligible for free or reduced-price lunch under the Richard B. Russell National School Lunch Act; and

(3) Only local educational agencies in which at least 50 percent of the students enrolled are eligible for free or reduced-price lunch under the Richard B. Russell National School Lunch Act.

(Authority: 20 U.S.C. 1070a–23)

■ 126. New § 694.9 is added to read as follows:

§ 694.9 Under what conditions may the Secretary approve a request from a Partnership that has received a GEAR UP grant to waive a portion of the matching requirement?

(a) After a grant is awarded, the Secretary may approve a Partnership grantee's written request for a waiver of up to—

(1) 50 percent of the matching requirement for up to two years if the grantee demonstrates that—

(i) The matching contributions described for those two years in the grantee's approved application are no longer available; and

(ii) The grantee has exhausted all funds and sources of potential contributions for replacing the matching funds.

(2) 75 percent of the matching requirement for up to two years if the grantee demonstrates that matching contributions from the original application are no longer available due to an uncontrollable event, such as a natural disaster, that has a devastating economic effect on members of the Partnership and the community in which the project would operate.

(b) In determining whether the grantee has exhausted all funds and sources of potential contributions for replacing matching funds, the Secretary considers the grantee's documentation of key factors such as the following and their direct impact on the grantee:

(1) A reduction of revenues from State government, County government, or the local educational agency (LEA).

(2) An increase in local unemployment rates.

(3) Significant reductions in the operating budgets of institutions of higher education that are participating in the grant.

(4) A reduction of business activity in the local area (*e.g.,* large employers have left the local area).

(5) Other data that reflect a significant decrease in resources available to the grantee in the local geographical area served by the grantee.

(c) If a grantee has received one or more waivers under this section or under § 694.8, the grantee may request an additional waiver of the matching requirement under this section no earlier than 60 days before the expiration of the grantee's existing waiver.

(d) The Secretary may grant an additional waiver request for up to 50 percent of the matching requirement for a period of up to two years beyond the expiration of any previous waiver.

(Authority: 20 U.S.C. 1070a–23)

■ 127. New § 694.12 is added to read as follows:

§ 694.12 Under what conditions do State and Partnership GEAR UP grantees make section 404E scholarship awards?

(a)(1) *State Grantees.* All State grantees must establish or maintain a financial assistance program that awards section 404E scholarships to students in accordance with the requirements of § 694.13 or § 694.14, as applicable.

(2) *Partnership Grantees.* Partnerships may, but are not required, to award scholarships to eligible students. If a Partnership awards scholarships to eligible students pursuant to section 404E of the HEA, it must comply with the requirements of § 694.13 or § 694.14, as applicable.

(b)(1) *Section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made prior to August 14, 2008.* A State or Partnership grantee making section 404E scholarship awards using funds from GEAR UP grant awards that were made prior to August 14, 2008, must provide such scholarship awards in accordance with the requirements of § 694.13 unless it elects to provide the scholarships in accordance with the requirements of § 694.14 pursuant to paragraph (b)(2) of this section.

(2) *Election to use § 694.14 requirements.* A State or Partnership grantee making section 404E scholarship awards using funds from GEAR UP grant awards that were made prior to August 14, 2008, may provide such scholarship awards in accordance with the requirements of § 694.14 (rather than the requirements of § 694.13) provided that the grantee—

(i) Informs the Secretary, in writing, of its election to make the section 404E scholarship awards in accordance with the requirements of § 694.14; and

(ii) Such election does not decrease the amount of the scholarship promised to any individual student under the grant.

(c) *Section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made on or after August 14, 2008.* A State or Partnership grantee making section 404E scholarship awards using funds from GEAR UP grant awards that were made on or after August 14, 2008, must provide such scholarship awards in accordance with the requirements of § 694.14.

(Authority: 20 U.S.C. 1070a–25)

■ 128. Newly redesignated § 694.13 is revised to read as follows:

§ 694.13 What are the requirements concerning section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made prior to August 14, 2008?

The following requirements apply to section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made prior to August 14, 2008 unless the grantee elects to provide such scholarship awards in accordance with the requirements of § 694.14 pursuant to § 694.12(b)(2).

(a)(1) The maximum scholarship amount that an eligible student may receive under this section must be established by the grantee.

(2) The minimum scholarship amount that an eligible student receives in a fiscal year pursuant to this section must not be less than the lesser of—

(i) 75 percent of the average cost of attendance for an in-State student, in a four-year program of instruction, at public institutions of higher education in the student's State; or

(ii) The maximum Federal Pell Grant award funded under section 401 of the HEA for the award year in which the scholarship is awarded.

(3) If an eligible student who is awarded a GEAR UP scholarship attends an institution of higher education on a less than full-time basis during any award year, the State or Partnership awarding the GEAR UP scholarship may reduce the scholarship amount, but in no case may the percentage reduction in the scholarship be greater than the percentage reduction in tuition and fees charged to that student.

(b) Scholarships provided under this section may not be considered for the purpose of awarding Federal grant assistance under title IV of the HEA, except that in no case may the total amount of student financial assistance awarded to a student under title IV of the HEA exceed the student's total cost of attendance.

(c) Grantees providing section 404E scholarship awards in accordance with this section—

(1) Must award GEAR UP scholarships first to students who will receive, or are eligible to receive, a Federal Pell Grant during the award year in which the GEAR UP scholarship is being awarded; and

(2) May, if GEAR UP scholarship funds remain after awarding scholarships to students under paragraph (c)(1) of this section, award GEAR UP scholarships to other eligible students (*i.e.,* students who are not eligible to receive a Federal Pell Grant) after considering the need of those students for GEAR UP scholarships.

(d) For purposes of this section, an eligible student is a student who—

(1) Is less than 22 years old at the time of award of the student's first GEAR UP scholarship;

(2) Has received a secondary school diploma or its recognized equivalent on or after January 1, 1993;

(3) Is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of higher education that is located within the State's boundaries, except that, at the grantee's option, a State or Partnership may offer scholarships to students who attend institutions of higher education outside the State; and

(4) Has participated in activities under § 694.21 or § 694.22.

(e) A State using a priority approach may award scholarships under paragraph (a) of this section to eligible students identified by priority at any time during the grant award period rather than reserving scholarship funds for use only in the seventh year of a project or after the grant award period.

(f) A State or a Partnership that makes scholarship awards from GEAR UP funds in accordance with this section must award continuation scholarships in successive award years to each student who received an initial scholarship and who is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of higher education.

(Authority: 20 U.S.C. 1070a–21 to 1070a–28)

■ 129. Section 694.14 is revised to read as follows:

§ 694.14 What are the requirements concerning section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made on or after August 14, 2008?

The following requirements apply to section 404E scholarship awards provided by grantees whose initial GEAR UP grant awards were made on or after August 14, 2008 and any section 404E scholarship awards for grantees whose initial GEAR UP grant awards were issued prior to August 14, 2008, but who, pursuant to § 694.12(b)(2), elected to use the § 694.14 requirements (rather than the § 694.13 requirements).

(a)(1) The maximum scholarship amount that an eligible student may receive under section 404E of the HEA must be established by the grantee.

(2) The minimum scholarship amount that an eligible student receives in a fiscal year must not be less than the minimum Federal Pell Grant award under section 401 of the HEA at the time of award.

(3) If an eligible student who is awarded a GEAR UP scholarship attends an institution of higher education on a less than full-time basis during any award year, the State or Partnership awarding the GEAR UP scholarship may reduce the scholarship amount, but in no case may the percentage reduction in the scholarship be greater than the percentage reduction in tuition and fees charged to that student.

(b) For purposes of this section, an eligible student is a student who—

(1) Is less than 22 years old at the time of award of the first GEAR UP scholarship;

(2) Has received a secondary school diploma or its recognized equivalent on or after January 1, 1993;

(3) Is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of higher education that is located within the State's boundaries, except that, at the grantee's option, a State or Partnership may offer scholarships to students who attend institutions of higher education outside the State; and

(4) Has participated in the activities required under § 694.21.

(c)(1) By the time students who have received services from a State grant have completed the twelfth grade, a State that has not received a waiver under section 404E(b)(2) of the HEA of the requirement to spend at least 50 percent of its GEAR UP funds on scholarships must have in reserve an amount that is not less than the minimum Federal Pell Grant multiplied by the number of students the State estimates will enroll in an institution of higher education.

(2) Consistent with paragraph (a) of this section and § 694.16(a), States must use funds held in reserve to make scholarships to eligible students.

(3) Scholarships must be made to all students who are eligible under the definition in paragraph (b) of this section. A grantee may not impose additional eligibility criteria that would have the effect of limiting or denying a scholarship to an eligible student.

(d) A State using a priority approach may award scholarships under paragraph (a) of this section to eligible students identified by priority at any time during the grant award period rather than reserving scholarship funds for use only in the seventh year of a project or after the grant award period.

(e) States providing scholarships must provide information on the eligibility requirements for the scholarships to all participating students upon the students' entry into the GEAR UP program.

(f) A State must provide scholarship funds as described in this section to all eligible students who attend an institution of higher education in the State, and may provide these scholarship funds to eligible students who attend institutions of higher education outside the State.

(g) A State or a Partnership that chooses to participate in the scholarship component in accordance with section 404E of the HEA may award continuation scholarships in successive award years to each student who received an initial scholarship and who is enrolled or accepted for enrollment in a program of undergraduate instruction at an institution of higher education.

(h) A GEAR UP scholarship, provided under section 404E of the HEA, may not be considered in the determination of a student's eligibility for other grant assistance provided under title IV of the HEA, except that in no case may the total amount of student financial assistance awarded to a student under title IV of the HEA exceed the student's total cost of attendance.

(Authority: 20 U.S.C. 1070a–25)

■ 130. Newly redesignated § 694.15 is revised to read as follows:

§ 694.15 May a Partnership that does not award scholarships under section 404E of the HEA provide, as part of a GEAR UP project, financial assistance for postsecondary education using non-Federal funds?

A GEAR UP Partnership that does not participate in the GEAR UP scholarship component may provide financial assistance for postsecondary education with non-Federal funds, and those funds may be used to satisfy the matching requirement.

(Authority: 20 U.S.C. 1070a–21 to 1070a–28)

■ 131. Section 694.16 is added to read as follows:

§ 694.16 What are the requirements for redistribution or return of scholarship funds not awarded to a project's eligible students?

The following requirements apply only to section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made on or after August 14, 2008, and to any section 404E scholarship awards for grantees whose initial GEAR UP grant awards were made prior to August 14, 2008, but who, pursuant to § 694.12(b)(2), elect to use the § 694.14 requirements (rather than the § 694.13 requirements):

(a) Scholarship funds held in reserve by States under § 694.14(c) or by Partnerships under section 404D(b)(7) of the HEA that are not used by eligible students as defined in § 694.14(b) within six years of the students' scheduled completion of secondary school may be redistributed by the grantee to other eligible students.

(b) Any Federal scholarship funds that are not used by eligible students within six years of the students' scheduled completion of secondary school, and are not redistributed by the grantee to other eligible students, must be returned to the Secretary within 45 days after the six-year period for expending the scholarship funds expires.

(c) Grantees that reserve funds for scholarships must annually furnish information, as the Secretary may require, on the amount of Federal and non-Federal funds reserved and held for GEAR UP scholarships and the disbursement of these scholarship funds to eligible students until these funds are fully expended or returned to the Secretary.

(d) A scholarship fund is subject to audit or monitoring by authorized representatives of the Secretary throughout the life of the fund.

(Authority: 20 U.S.C. 1070a–25(e))

■ 132. Newly redesignated § 694.18 is revised to read as follows:

§ 694.18 What requirements must be met by a Partnership or State participating in GEAR UP with respect to 21st Century Scholarship Certificates?

(a) A State or Partnership must provide, in accordance with procedures the Secretary may specify, a 21st Century Scholar Certificate to each student participating in its GEAR UP project.

(b) 21st Century Scholarship Certificates must be personalized and indicate the amount of Federal financial aid for college and the estimated amount of any scholarship provided under section 404E of the HEA, if applicable, that a student may be eligible to receive.

(Authority: 20 U.S.C. 1070a–26)

■ 133. Newly redesignated § 694.19 is revised to read as follows:

§ 694.19 What priorities does the Secretary establish for a GEAR UP grant?

The Secretary awards competitive preference priority points to an eligible applicant for a State grant that has both—

(a) Carried out a successful State GEAR UP grant prior to August 14, 2008, determined on the basis of data (including outcome data) submitted by the applicant as part of its annual and final performance reports, and the applicant's history of compliance with applicable statutory and regulatory requirements; and

(b) A prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies.

(Authority: 20 U.S.C. 1070a–21(b))

■ 134. New § 694.20 is added to read as follows:

§ 694.20 When may a GEAR UP grantee provide services to students attending an institution of higher education?

(a) The Secretary authorizes an eligible State or Partnership to provide GEAR UP services to students attending an institution of higher education if the State or Partnership—

(1) Applies for and receives a new GEAR UP award after August 14, 2008, and

(2) In its application, requested a seventh year so that it may continue to provide services to students through their first year of attendance at an institution of higher education.

(b) A State grantee that uses a priority (rather than or in addition to a cohort) approach to identify participating students may, consistent with its approved application and at any time during the project period, provide services to students during their first year of attendance at an institution of higher education, provided that the grantee continues to provide all required services throughout the Federal budget period to GEAR UP students still enrolled in a local educational agency.

(c) If a grantee is awarded a seven year grant, consistent with the grantee's approved application, during the seventh year of the grant the grantee—

(1) Must provide services to students in their first year of attendance at an institution of higher education; and

(2) May choose to provide services to high school students who have yet to graduate.

(d) Grantees that continue to provide services under this part to students through their first year of attendance at an institution of higher education must, to the extent practicable, coordinate with other campus programs, including academic support services to enhance, not duplicate service.

(Authority: 20 U.S.C. 1070a–21(b)(2))

■ 135. New § 694.21 is added to read as follows:

§ 694.21 What are required activities for GEAR UP projects?

A grantee must provide comprehensive mentoring, outreach, and supportive services to students participating in the GEAR UP program. These services must include the following activities:

(a) Providing information regarding financial aid for postsecondary education to eligible participating students.

(b) Encouraging student enrollment in rigorous and challenging curricula and coursework, in order to reduce the need for remedial coursework at the postsecondary level.

(c) Implementing activities to improve the number of participating students who—

(1) Obtain a secondary school diploma, and

(2) Complete applications for, and enroll in, a program of postsecondary education.

(d) In the case of a State grantee that has not received a 100-percent waiver under section 404E(b)(2) of the HEA, providing scholarships in accordance with section 404E of the HEA.

(Authority: 20 U.S.C. 1070a–24(a))

■ 136. New § 694.22 is added to read as follows:

§ 694.22 What other activities may all GEAR UP projects provide?

A grantee may use grant funds to carry out one or more of the following services and activities:

(a) Providing tutors and mentors, who may include adults or former participants in a GEAR UP program, for eligible students.

(b) Conducting outreach activities to recruit priority students (identified in section 404D(d) of the HEA) to participate in program activities.

(c) Providing supportive services to eligible students.

(d) Supporting the development or implementation of rigorous academic curricula, which may include college

preparatory, Advanced Placement, or International Baccalaureate programs, and providing participating students access to rigorous core academic courses that reflect challenging State academic standards.

(e) Supporting dual or concurrent enrollment programs between the secondary school and institution of higher education partners of a GEAR UP Partnership, and other activities that support participating students in—

(1) Meeting challenging State academic standards;

(2) Successfully applying for postsecondary education;

(3) Successfully applying for student financial aid; and

(4) Developing graduation and career plans, including career awareness and planning assistance as they relate to a rigorous academic curriculum.

(f) Providing special programs or tutoring in science, technology, engineering, or mathematics.

(g) For Partnerships, providing scholarships described in section 404E of the HEA, and for all grantees providing appropriate administrative support for GEAR UP scholarships.

(h) Introducing eligible students to institutions of higher education, through trips and school-based sessions.

(i) Providing an intensive extended school day, school year, or summer program that offers—

(1) Additional academic classes; or

(2) Assistance with college admission applications.

(j) Providing other activities designed to ensure secondary school completion and postsecondary education enrollment of at-risk children, such as:

(1) Identification of at-risk children.

(2) After-school and summer tutoring.

(3) Assistance to at-risk children in obtaining summer jobs.

(4) Academic counseling.

(5) Financial and economic literacy education or counseling.

(6) Volunteer and parent involvement.

(7) Encouraging former or current participants of a GEAR UP program to serve as peer counselors.

(8) Skills assessments.

(9) Personal and family counseling, and home visits.

(10) Staff development.

(11) Programs and activities that are specially designed for students who are limited English proficient.

(k) Enabling eligible students to enroll in Advanced Placement or International Baccalaureate courses, or college entrance examination preparation courses.

(l) Providing services to eligible students in the participating cohort described in § 694.3 through the first year of attendance at an institution of higher education.

(m) Fostering and improving parent and family involvement in elementary and secondary education by promoting the advantages of a college education, and emphasizing academic admission requirements and the need to take college preparation courses, through parent engagement and leadership activities.

(n) Disseminating information that promotes the importance of higher education, explains college preparation and admission requirements, and raises awareness of the resources and services provided by the eligible entities to eligible students, their families, and communities.

(o) For a GEAR UP Partnership grant, in the event that matching funds described in the approved application are no longer available, engaging other potential partners in a collaborative manner to provide matching resources and to participate in other activities authorized in §§ 694.21, 694.22, and 694.23.

(Authority: 20 U.S.C. 1070a–24(b))

■ 137. New § 694.23 is added to read as follows:

§ 694.23 What additional activities are allowable for State GEAR UP projects?

In addition to the required and permissible activities identified in §§ 694.21 and 694.22, a State may use grant funds to carry out one or more of the following services and activities:

(a) Providing technical assistance to—

(1) Secondary schools that are located within the State; or

(2) Partnerships that are eligible to apply for a GEAR UP grant and that are located within the State.

(b) Providing professional development opportunities to individuals working with eligible cohorts of students.

(c) Providing administrative support to help build the capacity of Partnerships to compete for and manage grants awarded under the GEAR UP program.

(d) Providing strategies and activities that align efforts in the State to prepare eligible students to attend and succeed in postsecondary education, which may include the development of graduation and career plans.

(e) Disseminating information on the use of scientifically valid research and best practices to improve services for eligible students.

(f)(1) Disseminating information on effective coursework and support services that assist students in achieving the goals described in paragraph (f)(2)(ii) of this section, and

(2) Identifying and disseminating information on best practices with respect to—

(i) Increasing parental involvement; and

(ii) Preparing students, including students with disabilities and students who are limited English proficient, to succeed academically in, and prepare financially for, postsecondary education.

(g) Working to align State academic standards and curricula with the expectations of postsecondary institutions and employers.

(h) Developing alternatives to traditional secondary school that give students a head start on attaining a recognized postsecondary credential (including an industry-recognized certificate, an apprenticeship, or an associate's or a bachelor's degree), including school designs that give students early exposure to college-level courses and experiences and allow students to earn transferable college credits or an associate's degree at the same time as a secondary school diploma.

(i) Creating community college programs for individuals who have dropped out of high school that are personalized drop-out recovery programs, and that allow drop-outs to complete a secondary school diploma and begin college-level work.

(Authority: 20 U.S.C. 1070a–24)

■ 138. New § 694.24 is added to read as follows:

§ 694.24 What services may a GEAR UP project provide to students in their first year at an institution of higher education?

Consistent with their approved applications and § 694.20, a grantee may provide any services to students in their first year of attendance at an institution of higher education that will help those students succeed in school, and that do not duplicate services otherwise available to them. Examples of services that may be provided include—

(a) Orientation services including introduction to on-campus services and resources;

(b) On-going counseling to students either in person or though electronic or other means of correspondence;

(c) Assistance with course selection for the second year of postsecondary education;

(d) Assistance with choosing and declaring an academic major;

(e) Assistance regarding academic, social, and personal areas of need;

(f) Referrals to providers of appropriate services;

(g) Tutoring, mentoring, and supplemental academic support;

(h) Assistance with financial planning;

(i) Career counseling and advising services; or

(j) Advising students about transferring to other schools.

(Authority: 20 U.S.C. 1070a–24)

■ 139. New § 694.25 is added to read as follows:

§ 694.25 Are GEAR UP grantees required to provide services to students who were served under a previous GEAR UP grant?

If a Partnership or State is awarded a GEAR UP grant on or after August 14, 2008 (i.e., initial grant), the grant ends before all students who received GEAR UP services under the grant have completed the twelfth grade, and the grantee receives a new award in a subsequent GEAR UP competition (i.e., new grant), the grantee must—

(a) Continue to provide services required by or authorized under §§ 694.21, 694.22, and 694.23 to all students who received GEAR UP services under the initial grant and remain enrolled in secondary schools until they complete the twelfth grade; and

(b) Provide the services specified in paragraph (a) of this section by using Federal GEAR UP funds awarded for the new grant or funds from the non-Federal matching contribution required under the new grant.

(Authority: 20 U.S.C. 1070a–21(b)(3)(B) and 1070a–22(d)(1)(C))

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Federal Register

Tuesday,
October 26, 2010

Part III

Department of the Treasury

Financial Crimes Enforcement Network

31 CFR Part 103

31 CFR Chapter X

Transfer and Reorganization of Bank Secrecy Act Regulations; Final Rule

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 103

31 CFR Chapter X

RIN 1506–AA92

Transfer and Reorganization of Bank Secrecy Act Regulations

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

ACTION: Final rule.

SUMMARY: FinCEN is issuing this final rule to move the Bank Secrecy Act (BSA) regulations to a new chapter in the Code of Federal Regulations (CFR). The new chapter contains the BSA regulations, which are generally reorganized by financial industry. Moving the BSA regulations to a new chapter and organizing the chapter by financial industry creates a user-friendly way to find regulations applicable to a particular financial industry. This new organization within the new chapter also allows for the renumbering of the BSA regulations in a manner that makes it easier to find regulatory requirements than under the numbering system currently used in the existing regulations. FinCEN also makes minor technical changes to the BSA regulations such as updating mailing addresses and points of contact.

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

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

SUPPLEMENTARY INFORMATION:

I. Background

On November 7, 2008, FinCEN published a proposal to transfer and reorganize its regulations as part of an ongoing effort to increase the efficiency and effectiveness of its regulatory oversight.[1] Moving the regulations to a new chapter within Title 31 provides FinCEN with the opportunity to restructure its regulations so that they can readily be identified as being specific to a particular regulated industry or as being generally applicable to all regulated industries or covered persons. FinCEN received eight public comments on the Chapter X NPRM, which will be discussed below in the Section-by-Section Analysis.

Making the regulatory obligations more clear in their structure and more readily accessible to regulated institutions facilitates compliance and thereby advances the purposes of the BSA. Additionally, the transfer of FinCEN's regulations allows for better integration with the government-wide eRulemaking program.

Since publication of the Chapter X NPRM, FinCEN has further improved public access to its rulemaking and non-rulemaking documents. On November 17, 2009, FinCEN issued a Final Rule amending the procedures for publicly issuing an administrative ruling relating to the BSA.[2] Since the effective date of that Final Rule (December 17, 2009), FinCEN posts administrative rulings with precedential value on its Web site, rather than publishing them in the **Federal Register**. FinCEN believes that posting administrative rulings with precedential value on FinCEN's Web site will make those rulings easier to find. All administrative rulings with precedential value will be available by mail to any person who makes a written request that specifically identifies the administrative ruling that is sought.

Subsequent to the publication of the Chapter X NPRM, FinCEN published several final rules, *e.g.,* the Administrative Ruling Final Rule. All final rules that were published in the timeframe between the Chapter X NPRM and this Final Rule have been incorporated into FinCEN's regulations in the Chapter X format.

II. Effective Date

The effective date of this Final Rule will be March 1, 2011.

III. Section-by-Section Analysis

A. Technical Corrections

In the Chapter X NPRM, FinCEN proposed to make non-substantive technical corrections to the BSA implementing regulations. These corrections included updating titles and offices to represent organizational changes within the Treasury Department and FinCEN, changing mailing addresses, and updating names of Federal government agencies. The comments that FinCEN received relating to the technical corrections were comments or suggestions that would substantively alter the BSA. Because such comments are outside the scope of this rulemaking, FinCEN did not make any changes on the basis of those comments.

On April 14, 2010, FinCEN issued a final rule to include mutual funds within the general definition of "financial institution" in the BSA regulations.[3] In that rule, FinCEN finalized two definitions of the term "mutual fund," one for the general definition section and the other for the anti-money laundering program rules for mutual funds.[4] Although the two definitions contain minor textual differences, they were not intended to and do not have substantive distinctions. Similarly, there are textual differences between those two definitions and the definition of mutual fund used for the regulations implementing the Customer Identification Program requirements for mutual funds. Again, the textual differences were not intended to and do not signify substantive distinctions. Therefore, in order to be consistent and eliminate the textual anomalies within the various definitions for mutual fund that are currently within Part 103, the text of the definition of mutual fund from the Part 103 Customer Identification Programs for Mutual Funds will now be used as the definition of mutual fund in Chapter X for all purposes, except as provided in the regulatory text for the special measures provisions of Subpart F of the General Provisions Part.

B. Restructuring and Numbering Logic

As discussed in the Chapter X NPRM, FinCEN is restructuring its regulations to make them more accessible for covered individuals and financial institutions. Chapter X is comprised of a General Provisions Part and separate financial institution specific Parts for those financial institutions subject to FinCEN regulations. The General Provisions Part (Part 1010) contains regulatory requirements that apply to more than one type of financial institution, and in some cases, individuals. The financial institution specific Parts contain regulatory requirements specific to a particular type of financial institution. Each Part, whether general or specific, contains similarly titled and ordered Subparts. For consistency across all Parts and to facilitate ease of reference, FinCEN has renumbered its regulations so that the same numbering format is used for the regulations in each Subpart.

[1] *See* 73 FR 66414 (November 7, 2008) (Transfer and Reorganization of Bank Secrecy Act Regulations) (referred to herein as the "Chapter X NPRM").

[2] *See* 74 FR 59096 (November 17, 2009) (Final Rule for amending the Bank Secrecy Act Regulations Administrative Ruling System) (hereinafter, the "Administrative Ruling Final Rule").

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

[4] *See* Id.

The comments received by FinCEN were generally supportive of FinCEN's effort to organize the BSA implementing regulations into an easier to follow format. Some commenters noted that the renumbering format could serve to minimize any misunderstanding regarding whether a particular industry has a specific regulatory requirement.

One commenter noted the structure of Chapter X is problematic because users would be required to refer to both the industry-specific Part, as well as the General Provisions Part to determine regulatory requirements. Some commenters noted that a potential problem with the structure of Chapter X and the location of the definitions is that it would require users to flip back and forth between Parts to confirm both the definitions and requirements. While there will be some cross-referencing between Parts for financial institutions, FinCEN concluded that the structure of Chapter X is best for identifying the current regulatory requirements for each type of financial institution and any future regulatory changes.

Some commenters requested that all definitions be placed in the General Provisions Part, thus limiting the need for cross-referencing. FinCEN considered this suggestion while drafting this Final Rule but ultimately found the approach unworkable because it created large sub-categories of definitions that diluted the contextual distinction that applies to certain defined terms. For example, the definition for "account," as one commenter noted, has several different meanings. The reason for these definitional differences lies not only with the products and services the covered institution offers, but also with the specific regulatory obligations involved. Placing all definitions of "account" in the General Definitions Subpart of Part 1010, as requested by the commenter, would require several sub-definitions to reference the applicable regulations. So in the case of the term "account," by removing "account" from the definition section in the rules implementing Section 312 of the USA PATRIOT Act and placing them in the General Definitions Subpart of Part 1010, the needed context as to why the definition is different is lost. While there may be some cross-referencing of definitions with the implementation of Chapter X, keeping the definitional structure as proposed helps provide context as to why words are defined differently.

Many of the comments FinCEN received on the Chapter X NPRM were substantive in nature or suggested changes that would alter industry regulatory requirements. One commenter suggested removing dates in the regulations that were perceived as no longer relevant, such as the dates in the Civil Penalties provisions of the previous 31 CFR 103.57. While some dates in the regulations appear to be so long-standing as to be obsolete, they still represent substantive differences in compliance obligations and corresponding penalties. All comments to the Chapter X NPRM that requested a substantive change, or would result in a substantive change, are considered outside the scope of this rulemaking and have not been incorporated into this Final Rule.

C. Removal of Appendices to 31 CFR Part 103

In the Chapter X NPRM, FinCEN did not publish the Appendices in 31 CFR Part 103. In the preamble to the Chapter X NPRM, FinCEN proposed to publish those Appendices that would be transferred to Chapter X in a subsequent notice of proposed rulemaking. After a further review of the Appendices, FinCEN determined that it was not necessary to issue a second notice of proposed rulemaking for the Appendices located in 31 CFR Part 103. This is because, as described in more detail below, FinCEN has determined that none of the Appendices will need to be included in Chapter X; instead, the material contained in the Appendices that is still required by the regulations will be made available on FinCEN's Web site. The following is a description of the disposition of each 31 CFR Part 103 Appendix:

Appendix A to 31 CFR Part 103

As part of the Administrative Ruling Final Rule, certain administrative rulings contained in Appendix A to 31 CFR Part 103 (proposed as Appendix D to Chapter X) have been posted on FinCEN's Web site and others were formally rescinded.[5] As stated in the preamble to the Administrative Ruling Final Rule, some of the administrative rulings included in Appendix A to 31 CFR Part 103 remain FinCEN's interpretation of the applicable rules and maintain their precedential value; therefore, those rulings have been posted to the FinCEN Web site. Because FinCEN has chosen to post administrative rulings on its public Web site, FinCEN will not be publishing the proposed Appendix D to Chapter X in this Final Rule. In the Administrative Ruling Final Rule, FinCEN did not indicate whether Administrative Ruling 88–2 would be posted on the FinCEN public Web site or rescinded. Administrative Ruling 88–2 has been posted on the FinCEN public Web site. The disposition of this particular ruling was inadvertently omitted from the Administrative Ruling Final Rule.

Appendix B to 31 CFR Part 103

The requirement for a financial institution to provide FinCEN with the certification currently found in Appendix B to 31 CFR Part 103 (Certification for Purposes of Section 314(b) of the USA PATRIOT Act and 31 CFR 103.110) prior to sharing information under 31 CFR 103.110 (new 31 CFR 1010.540) was replaced in September 2002 with a requirement to provide notice to FinCEN prior to such information sharing.[6] Although the certification requirement was replaced with a notice requirement, the Certification contained at Appendix B to 31 CFR Part 103 was not removed from the CFR. FinCEN's removal of the Certification in this Final Rule is a technical correction, rather than a substantive change. The Certification contained at Appendix B to 31 CFR Part 103 will not be transferred to Chapter X and the Certification will not be made available on FinCEN's public Web site. As indicated above, financial institutions providing notice to FinCEN prior to sharing information under new 31 CFR 1010.540 shall continue to do so using the notice that is currently provided on FinCEN's public Web site.[7]

Appendix C to 31 CFR Part 103

For similar reasons, FinCEN is removing Appendix C to 31 CFR Part 103 (proposed Appendix E to Chapter X). The interpretative guidance contained within Appendix C to 31 CFR Part 103 are posted on FinCEN's public Web site and will not be published in the CFR.[8]

Appendix A to Subpart H of 31 CFR Part 103

Appendix A to Subpart H of 31 CFR Part 103 contains the Notice for Purposes of Subsection 314(b) of the USA Patriot Act and 31 CFR 103.110. This Notice is currently available on the FinCEN public Web site and will not be published in the Code of Federal Regulations as part of Chapter X.

[5] *See* 74 FR 59096, 59097 (November 17, 2009). *See also http://www.fincen.gov/statutes_regs/rulings/.*

[6] *See* 67 FR 60579, 60580 (September 26, 2002) (Final Rule for Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity).

[7] *See http://www.fincen.gov/statutes_regs/patriot/section314b.html.*

[8] *See http://www.fincen.gov/statutes_regs/guidance/2000_2004.html.*

Financial institutions that are required to provide notice to FinCEN for purposes of the new 31 CFR 1010.540 can access the notice via the FinCEN Web site. This notice will be made available by mail to any financial institution that specifically requests a paper copy of the notice.

Appendix A and Appendix B to Subpart I of 31 CFR Part 103

FinCEN is also removing Appendix A to Subpart I of 31 CFR Part 103 and Appendix B to Subpart I of 31 CFR Part 103.[9] The forms contained in Appendix A to Subpart I of 31 CFR Part 103 and Appendix B to Subpart I of 31 CFR Part 103 will be provided to the public via FinCEN's Web site in a manner that will be more easily accessible and usable than being printed in the CFR.

D. Chapter X Distribution Table

For convenience, FinCEN is providing a table summarizing the distribution of the 31 CFR Part 103 provisions to the final layout of Chapter X as follows:

DISTRIBUTION TABLE

31 CFR Part 103 Section	31 CFR Parts 1000–1099 (Chapter X) Section
103.11	1010.100.
103.12	1010.301.
103.15(a)–(g)	1024.320(a)–(g).
103.16(a)	Deleted.
103.16(b)–(i)	1025.320(a)–(h).
103.17(a)–(h)	1026.320(a)–(h).
103.18(a)–(f)	1020.320(a)–(f).
103.19(a)–(h)	1023.320(a)–(h).
103.20(a)–(f)	1022.320(a)–(f).
103.21(a)–(g)	1021.320(a)–(g).
103.22(a)	Deleted.
103.22(b)(1)	1010.311.
103.22(b)(2)(i)–(iii)	1021.311(a)–(c).
103.22(c)(1)&(2)	1010.313(a)&(b).
103.22(c)(3)	1021.313.
103.22(d)(1) Sentences 1 and 3	1020.315(a).
103.22(d)(1) Sentence 2	1010.315.
103.22(d)(2)–(9)	1020.315(b)–(i).
103.23(a)–(d)	1010.340(a)–(d).
103.24	1010.350.
103.25(a)–(e)	1010.360(a)–(e).
103.26(a)–(d)	1010.370(a)–(d).
103.27(a)(1)	1010.306(a)(1).
103.27(a)(2)	Deleted.
103.27(a)(3)&(4)	1010.306(a)(2)&(3).
103.27(b)–(e)	1010.306(b)–(e).
103.28	1010.312.
103.29(a)–(c)	1010.415(a)–(c).
103.30(a)–(c)	1010.330(a)–(c).
103.30(d)(1)(i)–(iv)	1021.330(a)–(d).
103.30(d)(2)	1010.330(d)(2).
103.30(d)(3)	1010.330(d)(1).
103.30(e)	1010.330(e).
103.31	1010.401.
103.32	1010.420.
103.33(a)–(d)	1010.410(a)–(d).
103.33(e)	1020.410(a).
103.33(f)&(g)	1010.410(e)&(f).
103.34(a)&(b)	1020.410(b)&(c).
103.35(a)&(b)	1023.410(a)&(b).
103.36(a)–(c)	1021.410(a)–(c).
103.37(a)–(c)	1022.410(a)–(c).
103.38(a)–(d)	1010.430(a)–(d).
103.39	1010.440.
103.41(a)–(f)	1022.380(a)–(f).
103.51	1010.980.
103.52(a)&(b)	1010.940(a)&(b).
103.53(a)–(f)	1010.950(a)–(f).
103.54	1010.960.
103.55(a)–(c)	1010.970(a)–(c).
103.56(a)–(g)	1010.810(a)–(g).
103.57(a)–(h)	1010.820(a)–(h).
103.58	1010.830.
103.59(a)–(d)	1010.840(a)–(d).
103.60(a)–(c)	1010.850(a)–(c).
103.61	1010.920.
103.62(a)–(c)	1010.930(a)–(c).

[9] Appendix A to Subpart I of 31 CFR Part 103 (proposed as Appendix B to Chapter X) is the Certification Regarding Correspondent Accounts. Appendix B to Subpart I of 31 CFR Part 103 (proposed as Appendix C to Chapter X) is the Recertification Regarding Correspondent Accounts for Foreign Banks. These Appendices will not appear in Chapter X.

DISTRIBUTION TABLE—Continued

31 CFR Part 103 Section	31 CFR Parts 1000–1099 (Chapter X) Section
103.63(a)–(c)	1010.314(a)–(c).
103.64(a)	1021.210(b).
103.64(b)(1)	1021.100(a).
103.64(b)(2)	1021.100(b).
103.64(b)(3)	1021.100(c).
103.64(b)(4)	1021.100(d).
103.64(b)(5)	1021.100(e).
103.71	1010.911.
103.72(a)–(c)	1010.912(a)–(c).
103.73(a)&(b)	1010.913(a)&(b).
103.74(a)–(c)	1010.914(a)–(c).
103.75(a)–(c)	1010.915(a)–(c).
103.76	1010.916.
103.77	1010.917.
103.80	1010.710.
103.81(a)–(e)	1010.711(a)–(e).
103.82	1010.712.
103.83(a)&(b)	1010.713(a)&(b).
103.84	1010.714.
103.85	1010.715.
103.86(a)–(d)	1010.716(a)–(d).
103.87(a)&(b)	1010.717(a)&(b).
103.90(a)	1010.505(b).
103.90(b)	1010.505(c).
103.90(c)	1010.505(a).
103.90(d)	1010.505(d).
103.100(a)(1)	Deleted.
103.100(a)(2)	1010.520(a)(1).
103.100(a)(3)	Deleted.
103.100(a)(4)	1010.520(a)(2).
103.100(b)	1010.520(b).
103.110(a)(1)	Deleted.
103.110(a)(2)&(3)	1010.540(a)(1)&(2).
103.110(b)–(d)	1010.540(b)–(d).
103.120(a)(1)	1020.100(d)(1). 1023.100(e)(1).
103.120(a)(2)	1010.100(r).
103.120(a)(3)	1010.100(tt).
103.120(a)(4)	Deleted.
103.120(b)	1020.210.
103.120(c)(1)&(2)	1023.210(a)&(b). 1026.210(b)(1)&(2).
103.120(d)	1021.210(a).
103.121(a)(1)	1020.100(a).
103.121(a)(2)	1020.100(b).
103.121(a)(3)	1020.100(c).
103.121(a)(4)	Deleted.
103.121(a)(5)	1020.100(d)(2).
103.121(a)(6)	1010.100(yy).
103.121(a)(7)	1010.100(iii).
103.121(a)(8)	1010.100(iii).
103.121(b)–(d)	1020.220(a)–(c).
103.122(a)(1)	1023.100(a).
103.122(a)(2)	1023.100(b).
103.122(a)(3)	1023.100(c).
103.122(a)(4)	1023.100(d).
103.122(a)(5)	Deleted.
103.122(a)(6)	1023.100(e).
103.122(a)(7)	Deleted.
103.122(a)(8)	Deleted.
103.122(a)(9)	Deleted.
103.122(b)–(d)	1023.220(a)–(c).
103.123(a)(1)	1026.100(a).
103.123(a)(2)	Deleted.
103.123(a)(3)	1026.100(b).
103.123(a)(4)	1026.100(c).
103.123(a)(5)	1026.100(d).
103.123(a)(6)	Deleted.
103.123(a)(7)	1026.100(e).
103.123(a)(8)	1026.100(f).
103.123(a)(9)	1026.100(g).
103.123(a)(10)	1026.100(h).

DISTRIBUTION TABLE—Continued

31 CFR Part 103 Section	31 CFR Parts 1000–1099 (Chapter X) Section
103.123(a)(11)	Deleted.
103.123(a)(12)	Deleted.
103.123(a)(13)	Deleted.
103.123(b)–(d)	1026.220(a)–(c).
103.125(a)–(e)	1022.210(a)–(e).
103.130(a)	Deleted.
103.130(b)&(c)	1024.210(a)&(b).
103.131(a)(1)	1024.100(a).
103.131(a)(2)	1024.100(c).
103.131(a)(3)	1010.100(r).
103.131(a)(4)	1024.100(d).
103.131(a)(5)	1010.100(gg).
103.131(a)(6)	1010.100(iii).
103.131(a)(7)	1010.100(yy).
103.131(a)(8)	1010.100(iii).
103.131(b)–(d)	1024.220(a)–(c).
103.135(a)(1)	1028.100(e).
103.135(a)(2)	1028.100(d).
103.135(a)(3)	1028.100(a).
103.135(a)(4)	1028.100(f).
103.135(a)(5)	1028.100(b).
103.135(a)(6)	1028.100(c).
103.135(b)&(c)	1028.210(a)&(b).
103.137(a)(1)	1025.100(a).
103.137(a)(2)	Deleted.
103.137(a)(3)	Deleted.
103.137(a)(4)	1025.100(b).
103.137(a)(5)	1025.100(c).
103.137(a)(6)	1025.100(d).
103.137(a)(7)	1025.100(e).
103.137(a)(8)	1025.100(f).
103.137(a)(9)	1025.100(g).
103.137(a)(10)	1025.100(h).
103.137(a)(11)	Deleted.
103.137(a)(12)	Deleted.
103.137(b)–(e)	1025.210(a)–(d).
103.140(a)(1)	1027.100(a).
103.140(a)(2)	1027.100(b).
103.140(a)(3)	1027.100(c).
103.140(a)(4)	1027.100(d).
103.140(a)(5)	1027.100(e).
103.140(a)(6)	Deleted.
103.140(a)(7)	1027.100(f).
103.140(b)–(d)	1027.210(a)–(c).
103.170(a)–(d)	1010.205(a)–(d).
103.175(a)	1010.100(c).
103.175(b)	1010.605(a).
103.175(c)	1010.605(b).
103.175(d)	1010.605(c).
103.175(e)	1010.605(d).
103.175(f)	1010.605(e).
103.175(g)	Deleted.
103.175(h)	1010.605(f).
103.175(i)	1010.605(g).
103.175(j)	1010.605(h).
103.175(k)	1010.605(i).
103.175(l)	1010.605(j).
103.175(m)	1010.605(k).
103.175(n)	1010.605(l).
103.175(o)	1010.605(m).
103.175(p)	1010.605(n).
103.175(q)	1010.605(o).
103.175(r)	1010.605(p).
103.175(s)	Deleted.
103.175(t)	Deleted.
103.176(a)–(g)	1010.610(a)–(g).
103.177(a)–(f)	1010.630(a)–(f).
103.178(a)–(e)	1010.620(a)–(e).
103.185(a)–(f)	1010.670(a)–(f).
103.186(a)(1)	1010.651(a)(2).
103.186(a)(2)	1010.651(a)(3).
103.186(a)(3)	1010.651(a)(1).

DISTRIBUTION TABLE—Continued

31 CFR Part 103 Section	31 CFR Parts 1000–1099 (Chapter X) Section
103.186(b)	1010.651(b).
103.187(a)(1)	1010.652(a)(2).
103.187(a)(2)	1010.652(a)(3).
103.187(a)(3)	1010.652(a)(4).
103.187(a)(4)	1010.652(a)(1).
103.187(b)	1010.652(b).
103.188(a)(1)	1010.653(a)(1).
103.188(a)(2)	1010.653(a)(2).
103.188(a)(3)	1010.653(a)(3).
103.188(a)(4)	1010.653(a)(4).
103.188(b)	1010.653(b).
103.192(a)(1)	1010.654(a)(1).
103.192(a)(2)	1010.654(a)(2).
103.192(a)(3)	1010.654(a)(3).
103.192(a)(4)	1010.654(a)(4).
103.192(b)	1010.654(b).
103.193(a)(1)	1010.655(a)(1).
103.193(a)(2)	1010.655(a)(2).
103.193(a)(3)	1010.655(a)(3).
103.193(a)(4)	1010.655(a)(4).
103.193(b)	1010.655(b).
Appendix A to Subpart H	Deleted. Notice is available on FinCEN's public Web site.
Appendix A to Subpart I	Deleted. Certification will be available on the FinCEN public Web site.
Appendix B to Subpart I	Deleted. Re-certification will be available on the FinCEN public Web site.
Appendix A to Part 103	Deleted. Administrative Rulings with precedential value have been posted on the FinCEN public Web site.
Appendix B to Part 103	Deleted. Certification will no longer be available.
Appendix C to Part 103	Deleted. Interpretive guidance will be posted on the FinCEN public Web site.

IV. Regulatory Matters

A. Executive Order 12866

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

B. Unfunded Mandates Reform Act of 1995

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

C. Regulatory Flexibility Act

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

FinCEN believes the costs that may arise as a result of restructuring these regulations will be confined to training, publication and computer programming. The new regulatory structure will require financial institution compliance personnel to be retrained to assure familiarity with the new numbering format but does not require changes to program, recordkeeping, or reporting requirements. FinCEN has attempted to mitigate any substantial costs of retraining by providing a Distribution Table.

Publication costs incurred to reproduce informational materials supplied by financial institutions to customers and the public should be minimized by the time interval afforded between the proposed rule, analysis and publication of this final rule.

FinCEN's analysis of the small entities that are subject to this regulation indicates that the vast majority of such entities file paper reports with FinCEN. These entities should incur no additional filing costs because they will continue to obtain the most current copy of the form available on the FinCEN Web site to file a report. For financial institutions that file electronically using computer programs, the citation to Chapter X should not have an effect on completion of the required fields contained in FinCEN forms. As an example, FinCEN's Form 104, the Currency Transaction Report, will require the same completion of each field in the same order. While the underlying regulatory citations may be changing, the completion of FinCEN forms will not.

D. Paperwork Reduction Act

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

unless it displays a valid OMB control number.

List of Subjects in 31 CFR Part 103 and 31 CFR Parts 1010 and 1020 Through 1028

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

Department of the Treasury

31 CFR Chapter I

Authority and Issuance

■ For the reasons set forth above, under the authority of 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307, Part 103 of Title 31 of the Code of Federal Regulations is removed.

Department of the Treasury

Financial Crimes Enforcement Network

31 CFR Chapter X

Authority and Issuance

■ For the reasons set forth above, Chapter X, consisting of parts 1000 through 1099, is added to Title 31 to read as follows:

CHAPTER X—FINANCIAL CRIMES ENFORCEMENT NETWORK, DEPARTMENT OF THE TREASURY

PARTS 1000–1009 [RESERVED]

PART 1010—GENERAL PROVISIONS

Subpart A—General Definitions

Sec.
1010.100 General definitions.

Subpart B—Programs

1010.200 General.
1010.205 Exempted anti-money laundering programs for certain financial institutions.
1010.210 Anti-money laundering programs.
1010.220 Customer identification program requirements.

Subpart C—Reports Required To Be Made

1010.300 General.
1010.301 Determination by the Secretary.
1010.305 [Reserved]
1010.306 Filing of reports.
1010.310 Reports of transactions in currency.
1010.311 Filing obligations for reports of transactions in currency.
1010.312 Identification required.
1010.313 Aggregation.
1010.314 Structured transactions.
1010.315 Exemptions for non-bank financial institutions.
1010.320 Reports of suspicious transactions.
1010.330 Reports relating to currency in excess of $10,000 received in a trade or business.
1010.340 Reports of transportation of currency or monetary instruments.
1010.350 Reports of foreign financial accounts.
1010.360 Reports of transactions with foreign financial agencies.
1010.370 Reports of certain domestic coin and currency transactions.

Subpart D—Records Required To Be Maintained

1010.400 General.
1010.401 Determination by the Secretary.
1010.405 [Reserved]
1010.410 Records to be made and retained by financial institutions.
1010.415 Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks.
1010.420 Records to be made and retained by persons having financial interests in foreign financial accounts.
1010.430 Nature of records and retention period.
1010.440 Person outside the United States.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

1010.500 General.
1010.505 Definitions.
1010.520 Information sharing between government agencies and financial institutions.
1010.530 [Reserved]
1010.540 Voluntary information sharing among financial institutions.

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures

1010.600 General.

Special Due Diligence for Correspondent Accounts and Private Banking Accounts

1010.605 Definitions.
1010.610 Due diligence programs for correspondent accounts for foreign financial institutions.
1010.620 Due diligence programs for private banking accounts.
1010.630 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.
1010.640 [Reserved]

Special Measures Under Section 311 of the USA Patriot Act and Law Enforcement Access to Foreign Bank Records

1010.651 Special measures against Burma.
1010.652 Special measures against Myanmar Mayflower Bank and Asia Wealth Bank.
1010.653 Special measures against Commercial Bank of Syria.
1010.654 Special measures against VEF Bank.
1010.655 Special measures against Banco Delta Asia.
1010.670 Summons or subpoena of foreign bank records; Termination of correspondent relationship.

Subpart G—Administrative Rulings

1010.710 Scope.
1010.711 Submitting requests.
1010.712 Nonconforming requests.
1010.713 Oral communications.
1010.714 Withdrawing requests.
1010.715 Issuing rulings.
1010.716 Modifying or rescinding rulings.
1010.717 Disclosing information.

Subpart H—Enforcement; Penalties; and Forfeiture

1010.810 Enforcement.
1010.820 Civil penalty.
1010.830 Forfeiture of currency or monetary instruments.
1010.840 Criminal penalty.
1010.850 Enforcement authority with respect to transportation of currency or monetary instruments.

Subpart I—Summons

1010.911 General.
1010.912 Persons who may issue summons.
1010.913 Contents of summons.
1010.914 Service of summons.
1010.915 Examination of witnesses and records.
1010.916 Enforcement of summons.
1010.917 Payment of expenses.

Subpart J—Miscellaneous

1010.920 Access to records.
1010.930 Rewards for informants.
1010.940 Photographic or other reproductions of Government obligations.
1010.950 Availability of information.
1010.960 Disclosure.
1010.970 Exceptions, exemptions, and reports.
1010.980 Dollars as including foreign currency.

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

Subpart A—General Definitions

§ 1010.100 General definitions.

When used in this chapter and in forms prescribed under this chapter, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this subpart. Terms applicable to a particular type of financial institution or specific part or subpart of this chapter are located in that part or subpart. Terms may have different meanings in different parts or subparts.

(a) *Accept.* A receiving financial institution, other than the recipient's financial institution, accepts a transmittal order by executing the transmittal order. A recipient's financial institution accepts a transmittal order by paying the recipient, by notifying the recipient of the receipt of the order or by otherwise becoming obligated to carry out the order.

(b) *At one time.* For purposes of § 1010.340 of this part, a person who

transports, mails, ships or receives; is about to or attempts to transport, mail or ship; or causes the transportation, mailing, shipment or receipt of monetary instruments, is deemed to do so "at one time" if:

(1) That person either alone, in conjunction with or on behalf of others;

(2) Transports, mails, ships or receives in any manner; is about to transport, mail or ship in any manner; or causes the transportation, mailing, shipment or receipt in any manner of;

(3) Monetary instruments;

(4) Into the United States or out of the United States;

(5) Totaling more than $10,000;

(6)(i) On one calendar day; or

(ii) If for the purpose of evading the reporting requirements of § 1010.340, on one or more days.

(c) *Attorney General.* The Attorney General of the United States.

(d) *Bank.* Each agent, agency, branch or office within the United States of any person doing business in one or more of the capacities listed below:

(1) A commercial bank or trust company organized under the laws of any State or of the United States;

(2) A private bank;

(3) A savings and loan association or a building and loan association organized under the laws of any State or of the United States;

(4) An insured institution as defined in section 401 of the National Housing Act;

(5) A savings bank, industrial bank or other thrift institution;

(6) A credit union organized under the law of any State or of the United States;

(7) Any other organization (except a money services business) chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a State;

(8) A bank organized under foreign law;

(9) Any national banking association or corporation acting under the provisions of section 25(a) of the Act of Dec. 23, 1913, as added by the Act of Dec. 24, 1919, ch. 18, 41 Stat. 378, as amended (12 U.S.C. 611–32).

(e) *Bank Secrecy Act.* The Currency and Foreign Transactions Reporting Act, its amendments, and the other statutes relating to the subject matter of that Act, have come to be referred to as the Bank Secrecy Act. These statutes are codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 18 U.S.C. 1956, 18 U.S.C. 1957, 18 U.S.C. 1960, and 31 U.S.C. 5311–5314 and 5316–5332 and notes thereto.

(f) *Beneficiary.* The person to be paid by the beneficiary's bank.

(g) *Beneficiary's bank.* The bank or foreign bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(h) *Broker or dealer in securities.* A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934.

(i) *Business day.* As used in this chapter with respect to banks, business day means that day, as normally communicated to its depository customers, on which a bank routinely posts a particular transaction to its customer's account.

(j) *Commodity.* Any good, article, service, right, or interest described in section 1a(4) of the Commodity Exchange Act ("CEA"), 7 U.S.C. 1a(4).

(k) *Common carrier.* Any person engaged in the business of transporting individuals or goods for a fee who holds himself out as ready to engage in such transportation for hire and who undertakes to do so indiscriminately for all persons who are prepared to pay the fee for the particular service offered.

(l) *Contract of sale.* Any sale, agreement of sale, or agreement to sell as described in section 1a(7) of the CEA, 7 U.S.C. 1a(7).

(m) *Currency.* The coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes U.S. silver certificates, U.S. notes and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country.

(n) *Deposit account.* Deposit accounts include transaction accounts described in paragraph (ccc) of this section, savings accounts, and other time deposits.

(o) *Domestic.* When used herein, refers to the doing of business within the United States, and limits the applicability of the provision where it appears to the performance by such institutions or agencies of functions within the United States.

(p) *Established customer.* A person with an account with the financial institution, including a loan account or deposit or other asset account, or a person with respect to which the financial institution has obtained and maintains on file the person's name and address, as well as taxpayer identification number (*e.g.,* social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, and to which the financial institution provides financial services relying on that information.

(q) *Execution date.* The day on which the receiving financial institution may properly issue a transmittal order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received, and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the recipient on the payment date.

(r) *Federal functional regulator.*

(1) The Board of Governors of the Federal Reserve System;

(2) The Office of the Comptroller of the Currency;

(3) The Board of Directors of the Federal Deposit Insurance Corporation;

(4) The Office of Thrift Supervision;

(5) The National Credit Union Administration;

(6) The Securities and Exchange Commission; or

(7) The Commodity Futures Trading Commission.

(s) *FinCEN.* FinCEN means the Financial Crimes Enforcement Network, a bureau of the Department of the Treasury.

(t) *Financial institution.* Each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed below:

(1) A bank (except bank credit card systems);

(2) A broker or dealer in securities;

(3) A money services business as defined in paragraph (ff) of this section;

(4) A telegraph company;

(5)(i) *Casino.* A casino or gambling casino that: Is duly licensed or authorized to do business as such in the United States, whether under the laws of a State or of a Territory or Insular Possession of the United States, or under the Indian Gaming Regulatory Act or other Federal, State, or tribal law or arrangement affecting Indian lands (including, without limitation, a casino operating on the assumption or under the view that no such authorization is required for casino operation on Indian lands); and has gross annual gaming revenue in excess of $1 million. The

term includes the principal headquarters and every domestic branch or place of business of the casino.

(ii) For purposes of this paragraph (t)(5), "gross annual gaming revenue" means the gross gaming revenue received by a casino, during either the previous business year or the current business year of the casino. A casino or gambling casino which is a casino for purposes of this chapter solely because its gross annual gaming revenue exceeds $1,000,000 during its current business year, shall not be considered a casino for purposes of this chapter prior to the time in its current business year that its gross annual gaming revenue exceeds $1,000,000.

(iii) Any reference in this chapter, other than in this paragraph (t)(5) and in paragraph (t)(6) of this section, to a casino shall also include a reference to a card club, unless the provision in question contains specific language varying its application to card clubs or excluding card clubs from its application;

(6)(i) *Card club.* A card club, gaming club, card room, gaming room, or similar gaming establishment that is duly licensed or authorized to do business as such in the United States, whether under the laws of a State, of a Territory or Insular Possession of the United States, or of a political subdivision of any of the foregoing, or under the Indian Gaming Regulatory Act or other Federal, State, or tribal law or arrangement affecting Indian lands (including, without limitation, an establishment operating on the assumption or under the view that no such authorization is required for operation on Indian lands for an establishment of such type), and that has gross annual gaming revenue in excess of $1,000,000. The term includes the principal headquarters and every domestic branch or place of business of the establishment. The term "casino," as used in this chapter shall include a reference to "card club" to the extent provided in paragraph (t)(5)(iii) of this section.

(ii) For purposes of this paragraph (t)(6), "gross annual gaming revenue" means the gross revenue derived from or generated by customer gaming activity (whether in the form of per-game or per-table fees, however computed, rentals, or otherwise) and received by an establishment, during either the establishment's previous business year or its current business year. A card club that is a financial institution for purposes of this chapter solely because its gross annual revenue exceeds $1,000,000 during its current business year, shall not be considered a financial institution for purposes of this chapter prior to the time in its current business year when its gross annual revenue exceeds $1,000,000;

(7) A person subject to supervision by any state or Federal bank supervisory authority;

(8) A futures commission merchant;

(9) An introducing broker in commodities; or

(10) A mutual fund.

(u) *Foreign bank.* A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.

(v) *Foreign financial agency.* A person acting outside the United States for a person (except for a country, a monetary or financial authority acting as a monetary or financial authority, or an international financial institution of which the United States Government is a member) as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold.

(w) *Funds transfer.* The series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95–630, 92 Stat. 3728, 15 U.S.C. 1693, *et seq.*), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

(x) *Futures commission merchant.* Any person registered or required to be registered as a futures commission merchant with the Commodity Futures Trading Commission ("CFTC") under the CEA, except persons who register pursuant to section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2).

(y) *Indian Gaming Regulatory Act.* The Indian Gaming Regulatory Act of 1988, codified at 25 U.S.C. 2701–2721 and 18 U.S.C. 1166–68.

(z) *Intermediary bank.* A receiving bank other than the originator's bank or the beneficiary's bank.

(aa) *Intermediary financial institution.* A receiving financial institution, other than the transmittor's financial institution or the recipient's financial institution. The term intermediary financial institution includes an intermediary bank.

(bb) *Introducing broker-commodities.* Any person registered or required to be registered as an introducing broker with the CFTC under the CEA, except persons who register pursuant to section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2).

(cc) *Investment security.* An instrument which:

(1) Is issued in bearer or registered form;

(2) Is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment;

(3) Is either one of a class or series or by its terms is divisible into a class or series of instruments; and

(4) Evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

(dd) *Monetary instruments.* (1) Monetary instruments include:

(i) Currency;

(ii) Traveler's checks in any form;

(iii) All negotiable instruments (including personal checks, business checks, official bank checks, cashier's checks, third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee (for the purposes of § 1010.340), or otherwise in such form that title thereto passes upon delivery;

(iv) Incomplete instruments (including personal checks, business checks, official bank checks, cashier's checks, third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), and money orders) signed but with the payee's name omitted; and

(v) Securities or stock in bearer form or otherwise in such form that title thereto passes upon delivery.

(2) Monetary instruments do not include warehouse receipts or bills of lading.

(ee) [Reserved]

(ff) *Money services business.* Each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed in paragraphs (ff)(1) through (ff)(6) of this section. Notwithstanding the preceding sentence, the term "money services business" shall not include a bank, nor shall it include a person registered with, and regulated or

examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(1) *Currency dealer or exchanger.* A currency dealer or exchanger (other than a person who does not exchange currency in an amount greater than $1,000 in currency or monetary or other instruments for any person on any day in one or more transactions).

(2) *Check casher.* A person engaged in the business of a check casher (other than a person who does not cash checks in an amount greater than $1,000 in currency or monetary or other instruments for any person on any day in one or more transactions).

(3) *Issuer of traveler's checks, money orders, or stored value.* An issuer of traveler's checks, money orders, or, stored value (other than a person who does not issue such checks or money orders or stored value in an amount greater than $1,000 in currency or monetary or other instruments to any person on any day in one or more transactions).

(4) *Seller or redeemer of traveler's checks, money orders, or stored value.* A seller or redeemer of traveler's checks, money orders, or stored value (other than a person who does not sell such checks or money orders or stored value in an amount greater than $1,000 in currency or monetary or other instruments to or redeem such instruments for an amount greater than $1,000 in currency or monetary or other instruments from, any person on any day in one or more transactions).

(5) *Money transmitter*—(i) *In general.* Money transmitter:

(A) Any person, whether or not licensed or required to be licensed, who engages as a business in accepting currency, or funds denominated in currency, and transmits the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both, or an electronic funds transfer network; or

(B) Any other person engaged as a business in the transfer of funds.

(ii) *Facts and circumstance: Limitation.* Whether a person "engages as a business" in the activities described in paragraph (ff)(5)(i) of this section is a matter of facts and circumstances. Generally, the acceptance and transmission of funds as an integral part of the execution and settlement of a transaction other than the funds transmission itself (for example, in connection with a bona fide sale of securities or other property), will not cause a person to be a money transmitter within the meaning of paragraph (ff)(5)(i) of this section.

(6) *U.S. Postal Service.* The United States Postal Service, except with respect to the sale of postage or philatelic products.

(gg) *Mutual fund.* An "investment company" (as the term is defined in section 3 of the Investment Company Act (15 U.S.C. 80a–3)) that is an "open-end company" (as that term is defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) that is registered or is required to register with the Commission under section 8 of the Investment Company Act (15 U.S.C. 80a–8).

(hh) *Option on a commodity.* Any agreement, contract, or transaction described in section 1a(26) of the CEA, 7 U.S.C. 1a(26).

(ii) *Originator.* The sender of the first payment order in a funds transfer.

(jj) *Originator's bank.* The receiving bank to which the payment order of the originator is issued if the originator is not a bank or foreign bank, or the originator if the originator is a bank or foreign bank.

(kk) *Payment date.* The day on which the amount of the transmittal order is payable to the recipient by the recipient's financial institution. The payment date may be determined by instruction of the sender, but cannot be earlier than the day the order is received by the recipient's financial institution and, unless otherwise prescribed by instruction, is the date the order is received by the recipient's financial institution.

(ll) *Payment order.* An instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank or foreign bank to pay, a fixed or determinable amount of money to a beneficiary if:

(1) The instruction does not state a condition to payment to the beneficiary other than time of payment;

(2) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(3) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds transfer system, or communication system for transmittal to the receiving bank.

(mm) *Person.* An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.

(nn) *Receiving bank.* The bank or foreign bank to which the sender's instruction is addressed.

(oo) *Receiving financial institution.* The financial institution or foreign financial agency to which the sender's instruction is addressed. The term receiving financial institution includes a receiving bank.

(pp) *Recipient.* The person to be paid by the recipient's financial institution. The term recipient includes a beneficiary, except where the recipient's financial institution is a financial institution other than a bank.

(qq) *Recipient's financial institution.* The financial institution or foreign financial agency identified in a transmittal order in which an account of the recipient is to be credited pursuant to the transmittal order or which otherwise is to make payment to the recipient if the order does not provide for payment to an account. The term recipient's financial institution includes a beneficiary's bank, except where the beneficiary is a recipient's financial institution.

(rr) *Secretary.* The Secretary of the Treasury or any person duly authorized by the Secretary to perform the function mentioned.

(ss) *Security.* Security means any instrument or interest described in section 3(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10).

(tt) *Self-regulatory organization:*

(1) Shall have the same meaning as provided in section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(26)); and

(2) Means a "registered entity" or a "registered futures association" as provided in section 1a(29) or 17, respectively, of the Commodity Exchange Act (7 U.S.C. 1a(29), 21).

(uu) *Sender.* The person giving the instruction to the receiving financial institution.

(vv) *State.* The States of the United States and, wherever necessary to carry out the provisions of this chapter, the District of Columbia.

(ww) *Stored value.* Funds or monetary value represented in digital electronics format (whether or not specially encrypted) and stored or capable of storage on electronic media in such a way as to be retrievable and transferable electronically.

(xx) *Structure (structuring).* For purposes of § 1010.314, a person structures a transaction if that person, acting alone, or in conjunction with, or on behalf of, other persons, conducts or attempts to conduct one or more

transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading the reporting requirements under §§ 1010.311, 1010.313, 1020.315, 1021.311 and 1021.313 of this chapter. "In any manner" includes, but is not limited to, the breaking down of a single sum of currency exceeding $10,000 into smaller sums, including sums at or below $10,000, or the conduct of a transaction, or series of currency transactions at or below $10,000. The transaction or transactions need not exceed the $10,000 reporting threshold at any single financial institution on any single day in order to constitute structuring within the meaning of this definition.

(yy) *Taxpayer Identification Number.* Taxpayer Identification Number ("TIN") is defined by section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the Internal Revenue Service regulations implementing that section (*e.g.,* social security number or employer identification number).

(zz) *Territories and Insular Possessions.* The Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and all other territories and possessions of the United States other than the Indian lands and the District of Columbia.

(aaa) [Reserved]

(bbb) *Transaction.* (1) Except as provided in paragraph (bbb)(2) of this section, transaction means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, security, contract of sale of a commodity for future delivery, option on any contract of sale of a commodity for future delivery, option on a commodity, purchase or redemption of any money order, payment or order for any money remittance or transfer, purchase or redemption of casino chips or tokens, or other gaming instruments or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

(2) For purposes of §§ 1010.311, 1010.313, 1020.315, 1021.311, 1021.313, and other provisions of this chapter relating solely to the report required by those sections, the term "transaction in currency" shall mean a transaction involving the physical transfer of currency from one person to another. A transaction which is a transfer of funds by means of bank check, bank draft, wire transfer, or other written order, and which does not include the physical transfer of currency, is not a transaction in currency for this purpose.

(ccc) *Transaction account.* Transaction accounts include those accounts described in 12 U.S.C. 461(b)(1)(C), money market accounts and similar accounts that take deposits and are subject to withdrawal by check or other negotiable order.

(ddd) *Transmittal of funds.* A series of transactions beginning with the transmittor's transmittal order, made for the purpose of making payment to the recipient of the order. The term includes any transmittal order issued by the transmittor's financial institution or an intermediary financial institution intended to carry out the transmittor's transmittal order. The term transmittal of funds includes a funds transfer. A transmittal of funds is completed by acceptance by the recipient's financial institution of a transmittal order for the benefit of the recipient of the transmittor's transmittal order. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95–630, 92 Stat. 3728, 15 U.S.C. 1693, *et seq.*), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

(eee) *Transmittal order.* The term transmittal order includes a payment order and is an instruction of a sender to a receiving financial institution, transmitted orally, electronically, or in writing, to pay, or cause another financial institution or foreign financial agency to pay, a fixed or determinable amount of money to a recipient if:

(1) The instruction does not state a condition to payment to the recipient other than time of payment;

(2) The receiving financial institution is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(3) The instruction is transmitted by the sender directly to the receiving financial institution or to an agent or communication system for transmittal to the receiving financial institution.

(fff) *Transmittor.* The sender of the first transmittal order in a transmittal of funds. The term transmittor includes an originator, except where the transmittor's financial institution is a financial institution or foreign financial agency other than a bank or foreign bank.

(ggg) *Transmittor's financial institution.* The receiving financial institution to which the transmittal order of the transmittor is issued if the transmittor is not a financial institution or foreign financial agency, or the transmittor if the transmittor is a financial institution or foreign financial agency. The term transmittor's financial institution includes an originator's bank, except where the originator is a transmittor's financial institution other than a bank or foreign bank.

(hhh) *United States.* The States of the United States, the District of Columbia, the Indian lands (as that term is defined in the Indian Gaming Regulatory Act), and the Territories and Insular Possessions of the United States.

(iii) *U.S. person.* (1) A United States citizen; or (2) A person other than an individual (such as a corporation, partnership or trust), that is established or organized under the laws of a State or the United States. Non-U.S. person means a person that is not a U.S. person.

(jjj) *U.S. Postal Service.* The United States Postal Service, except with respect to the sale of postage or philatelic products.

Subpart B—Programs

§ 1010.200 General.

Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to Subpart B of its Chapter X Part for any additional program requirements. Unless otherwise indicated, the program requirements contained in this Subpart B apply to all financial institutions (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)).

§ 1010.205 Exempted anti-money laundering programs for certain financial institutions.

(a) *Exempt financial institutions.* Subject to the provisions of paragraphs (c) and (d) of this section, the following financial institutions (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) are exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs:

(1) An agency of the United States Government, or of a State or local government, carrying out a duty or power of a business described in 31 U.S.C. 5312(a)(2); and

(2) [Reserved]

(b) *Temporary exemption for certain financial institutions.* (1) Subject to the provisions of paragraphs (c) and (d) of this section, the following financial institutions (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) are exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs:

(i) Pawnbroker;

(ii) Loan or finance company;

(iii) Travel agency;

(iv) Telegraph company;

(v) Seller of vehicles, including automobiles, airplanes, and boats;

(vi) Person involved in real estate closings and settlements;

(vii) Private banker;

(viii) Commodity pool operator;

(ix) Commodity trading advisor; or

(x) Investment company.

(2) Subject to the provisions of paragraphs (c) and (d) of this section, a bank (as defined in § 1010.100(d)) that is not subject to regulation by a Federal functional regulator (as defined in § 1010.100(r)) is exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs.

(3) Subject to the provisions of paragraphs (c) and (d) of this section, a person described in § 1010.100(t)(7) is exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs.

(c) *Limitation on exemption.* The exemptions described in paragraph (b) of this section shall not apply to any financial institution that is otherwise required to establish an anti-money laundering program by this chapter.

(d) *Compliance obligations of deferred financial institutions.* Nothing in this section shall be deemed to relieve an exempt financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31 of the U.S.C. and this chapter.

§ 1010.210 Anti-money laundering programs.

Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to Subpart B of its Chapter X Part for any additional anti-money laundering program requirements.

§ 1010.220 Customer identification program requirements.

Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to Subpart B of its Chapter X Part for any additional customer identification program requirements.

Subpart C—Reports Required To Be Made

§ 1010.300 General.

Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to its Chapter X Part for any additional reporting requirements. Unless otherwise indicated, the reporting requirements contained in this Subpart C apply to all financial institutions.

§ 1010.301 Determination by the Secretary.

The Secretary hereby determines that the reports required by this chapter have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

§ 1010.305 [Reserved]

§ 1010.306 Filing of reports.

(a)(1) A report required by § 1010.311 or § 1021.311, shall be filed by the financial institution within 15 days following the day on which the reportable transaction occurred.

(2) A copy of each report filed pursuant to §§ 1010.311, 1010.313, 1020.315, 1021.311 and 1021.313, shall be retained by the financial institution for a period of five years from the date of the report.

(3) All reports required to be filed by §§ 1010.311, 1010.313, 1020.315, 1021.311 and 1021.313, shall be filed with the Commissioner of Internal Revenue, unless otherwise specified.

(b)(1) A report required by § 1010.340(a) shall be filed at the time of entry into the United States or at the time of departure, mailing or shipping from the United States, unless otherwise specified by the Commissioner of Customs and Border Protection.

(2) A report required by § 1010.340(b) shall be filed within 15 days after receipt of the currency or other monetary instruments.

(3) All reports required by § 1010.340 shall be filed with the Customs officer in charge at any port of entry or departure, or as otherwise specified by the Commissioner of Customs and Border Protection. Reports required by § 1010.340(a) for currency or other monetary instruments not physically accompanying a person entering or departing from the United States, may be filed by mail on or before the date of entry, departure, mailing or shipping. All reports required by § 1010.340(b) may also be filed by mail. Reports filed by mail shall be addressed to the Commissioner of Customs and Border Protection, Attention: Currency Transportation Reports, Washington, DC 20229.

(c) Reports required to be filed by § 1010.350 shall be filed with the Commissioner of Internal Revenue on or before June 30 of each calendar year with respect to foreign financial accounts exceeding $10,000 maintained during the previous calendar year.

(d) Reports required by § 1010.311, § 1010.313, § 1010.340, § 1010.350, § 1020.315, § 1021.311 or § 1021.313 of this chapter shall be filed on forms prescribed by the Secretary. All information called for in such forms shall be furnished.

(e) Forms to be used in making the reports required by § 1010.311, § 1010.313, § 1010.350, § 1020.315, § 1021.311 or § 1021.313 of this chapter may be obtained from the Internal Revenue Service. Forms to be used in making the reports required by § 1010.340 may be obtained from the U.S. Customs and Border Protection.

§ 1010.310 Reports of transactions in currency.

Sections 1010.310 through 1010.314 set forth the rules for the reporting by financial institutions of transactions in currency. Unless otherwise indicated, the transactions in currency reporting requirements in §§ 1010.310 through 1010.314 apply to all financial institutions. Each financial institution should refer to Subpart C of its Chapter X Part for any additional transactions in currency reporting requirements.

§ 1010.311 Filing obligations for reports of transactions in currency.

Each financial institution other than a casino shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than $10,000, except as otherwise provided in this section. In the case of the U.S. Postal Service, the obligation contained in the preceding sentence shall not apply to payments or transfers made solely in connection with the purchase of postage or philatelic products.

§ 1010.312 Identification required.

Before concluding any transaction with respect to which a report is required under § 1010.311, § 1010.313, § 1020.315, § 1021.311 or § 1021.313 of this chapter, a financial institution shall verify and record the name and address of the individual presenting a transaction, as well as record the identity, account number, and the social security or taxpayer identification number, if any, of any person or entity on whose behalf such transaction is to be effected. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States must be made by passport, alien identification card, or other official document evidencing nationality or residence (*e.g.,* a Provincial driver's license with indication of home address). Verification of identity in any other case shall be made by examination of a document, other than a bank signature card, that is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors (*e.g.,* a driver's license or credit card). A bank signature card may

be relied upon only if it was issued after documents establishing the identity of the individual were examined and notation of the specific information was made on the signature card. In each instance, the specific identifying information (*i.e.,* the account number of the credit card, the driver's license number, *etc.*) used in verifying the identity of the customer shall be recorded on the report, and the mere notation of "known customer" or "bank signature card on file" on the report is prohibited.

§ 1010.313 Aggregation.

(a) *Multiple branches.* A financial institution includes all of its domestic branch offices, and any recordkeeping facility, wherever located, that contains records relating to the transactions of the institution's domestic offices, for purposes of the transactions in currency reporting requirements in this chapter.

(b) *Multiple transactions.* In the case of financial institutions other than casinos, for purposes of the transactions in currency reporting requirements in this chapter, multiple currency transactions shall be treated as a single transaction if the financial institution has knowledge that they are by or on behalf of any person and result in either cash in or cash out totaling more than $10,000 during any one business day (or in the case of the U.S. Postal Service, any one day). Deposits made at night or over a weekend or holiday shall be treated as if received on the next business day following the deposit.

§ 1010.314 Structured transactions.

No person shall for the purpose of evading the transactions in currency reporting requirements of this chapter with respect to such transaction:

(a) Cause or attempt to cause a domestic financial institution to fail to file a report required under the transactions in currency reporting requirements of this chapter;

(b) Cause or attempt to cause a domestic financial institution to file a report required under the transactions in currency reporting requirements of this chapter that contains a material omission or misstatement of fact; or

(c) Structure (as that term is defined in § 1010.100(xx)) or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

§ 1010.315 Exemptions for non-bank financial institutions.

A non-bank financial institution is not required to file a report otherwise required by § 1010.311 with respect to a transaction in currency between the institution and a commercial bank.

§ 1010.320 Reports of suspicious transactions.

Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to subpart C of its financial institution part in this Chapter for any additional suspicious transaction reporting requirements.

§ 1010.330 Reports relating to currency in excess of $10,000 received in a trade or business.

(a) *Reporting requirement*—(1) *Reportable transactions*—(i) *In general.* Any person (solely for purposes of section 5331 of title 31, United States Code and this section, "person" shall have the same meaning as under 26 U.S.C.7701(a)(1)) who, in the course of a trade or business in which such person is engaged, receives currency in excess of $10,000 in 1 transaction (or 2 or more related transactions) shall, except as otherwise provided, make a report of information with respect to the receipt of currency. This section does not apply to amounts received in a transaction reported under 31 U.S.C. 5313 and §§ 1010.311, 1010.313, 1020.315, 1021.311 or 1021.313 of this chapter.

(ii) *Certain financial transactions.* Section 6050I of title 26 of the United States Code requires persons to report information about financial transactions to the IRS, and 31 U.S.C. 5331 requires persons to report similar information about certain transactions to FinCEN. This information shall be reported on the same form as prescribed by the Secretary.

(2) *Currency received for the account of another.* Currency in excess of $10,000 received by a person for the account of another must be reported under this section. Thus, for example, a person who collects delinquent accounts receivable for an automobile dealer must report with respect to the receipt of currency in excess of $10,000 from the collection of a particular account even though the proceeds of the collection are credited to the account of the automobile dealer (*i.e.,* where the rights to the proceeds from the account are retained by the automobile dealer and the collection is made on a fee-for-service basis).

(3) *Currency received by agents*—(i) *General rule.* Except as provided in paragraph (a)(3)(ii) of this section, a person who in the course of a trade or business acts as an agent (or in some other similar capacity) and receives currency in excess of $10,000 from a principal must report the receipt of currency under this section.

(ii) *Exception.* An agent who receives currency from a principal and uses all of the currency within 15 days in a currency transaction (the "second currency transaction") which is reportable under section 5312 of title 31, or 31 U.S.C. 5331 and this section, and who discloses the name, address, and TIN of the principal to the recipient in the second currency transaction need not report the initial receipt of currency under this section. An agent will be deemed to have met the disclosure requirements of this paragraph (a)(3)(ii) if the agent discloses only the name of the principal and the agent knows that the recipient has the principal's address and taxpayer identification number.

(iii) *Example.* The following example illustrates the application of the rules in paragraphs (a)(3)(i) and (ii) of this section:

Example. B, the principal, gives D, an attorney, $75,000 in currency to purchase real property on behalf of B. Within 15 days D purchases real property for currency from E, a real estate developer, and discloses to E, B's name, address, and taxpayer identification number. Because the transaction qualifies for the exception provided in paragraph (a)(3)(ii) of this section, D need not report with respect to the initial receipt of currency under this section. The exception does not apply, however, if D pays E by means other than currency, or effects the purchase more than 15 days following receipt of the currency from B, or fails to disclose B's name, address, and taxpayer identification number (assuming D does not know that E already has B's address and taxpayer identification number), or purchases the property from a person whose sale of the property is not in the course of that person's trade or business. In any such case, D is required to report the receipt of currency from B under this section.

(b) *Multiple payments.* The receipt of multiple currency deposits or currency installment payments (or other similar payments or prepayments) relating to a single transaction (or two or more related transactions), is reported as set forth in paragraphs (b)(1) through (b)(3) of this section.

(1) *Initial payment in excess of $10,000.* If the initial payment exceeds $10,000, the recipient must report the initial payment within 15 days of its receipt.

(2) *Initial payment of $10,000 or less.* If the initial payment does not exceed $10,000, the recipient must aggregate the initial payment and subsequent payments made within one year of the initial payment until the aggregate amount exceeds $10,000, and report with respect to the aggregate amount within 15 days after receiving the

payment that causes the aggregate amount to exceed $10,000.

(3) *Subsequent payments.* In addition to any other required report, a report must be made each time that previously unreportable payments made within a 12-month period with respect to a single transaction (or two or more related transactions), individually or in the aggregate, exceed $10,000. The report must be made within 15 days after receiving the payment in excess of $10,000 or the payment that causes the aggregate amount received in the 12-month period to exceed $10,000. (If more than one report would otherwise be required for multiple currency payments within a 15-day period that relate to a single transaction (or two or more related transactions), the recipient may make a single combined report with respect to the payments. The combined report must be made no later than the date by which the first of the separate reports would otherwise be required to be made.)

(4) *Example.* The following example illustrates the application of the rules in paragraphs (b)(1) through (b)(3) of this section:

Example. On January 10, Year 1, M receives an initial payment in currency of $11,000 with respect to a transaction. M receives subsequent payments in currency with respect to the same transaction of $4,000 on February 15, Year 1, $6,000 on March 20, Year 1, and $12,000 on May 15, Year 1. M must make a report with respect to the payment received on January 10, Year 1, by January 25, Year 1. M must also make a report with respect to the payments totaling $22,000 received from February 15, Year 1, through May 15, Year 1. This report must be made by May 30, Year 1, that is, within 15 days of the date that the subsequent payments, all of which were received within a 12-month period, exceeded $10,000.

(c) *Meaning of terms.* The following definitions apply for purposes of this section—

(1) *Currency.* Solely for purposes of 31 U.S.C. 5331 and this section, *currency* means—

(i) The coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued; and

(ii) A cashier's check (by whatever name called, including "treasurer's check" and "bank check"), bank draft, traveler's check, or money order having a face amount of not more than $10,000—

(A) Received in a designated reporting transaction as defined in paragraph (c)(2) of this section (except as provided in paragraphs (c)(3), (4), and (5) of this section), or

(B) Received in any transaction in which the recipient knows that such instrument is being used in an attempt to avoid the reporting of the transaction under section 5331 and this section.

(2) *Designated reporting transaction.* A designated reporting transaction is a retail sale (or the receipt of funds by a broker or other intermediary in connection with a retail sale) of—

(i) A consumer durable,

(ii) A collectible, or

(iii) A travel or entertainment activity.

(3) *Exception for certain loans.* A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section if the instrument constitutes the proceeds of a loan from a bank. The recipient may rely on a copy of the loan document, a written statement from the bank, or similar documentation (such as a written lien instruction from the issuer of the instrument) to substantiate that the instrument constitutes loan proceeds.

(4) *Exception for certain installment sales.* A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section if the instrument is received in payment on a promissory note or an installment sales contract (including a lease that is considered to be a sale for Federal income tax purposes). However, the preceding sentence applies only if—

(i) Promissory notes or installment sales contracts with the same or substantially similar terms are used in the ordinary course of the recipient's trade or business in connection with sales to ultimate consumers; and

(ii) The total amount of payments with respect to the sale that are received on or before the 60th day after the date of the sale does not exceed 50 percent of the purchase price of the sale.

(5) *Exception for certain down payment plans.* A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section if the instrument is received pursuant to a payment plan requiring one or more down payments and the payment of the balance of the purchase price by a date no later than the date of the sale (in the case of an item of travel or entertainment, a date no later than the earliest date that any item of travel or entertainment pertaining to the same trip or event is furnished). However, the preceding sentence applies only if—

(i) The recipient uses payment plans with the same or substantially similar terms in the ordinary course of its trade or business in connection with sales to ultimate consumers; and

(ii) The instrument is received more than 60 days prior to the date of the sale (in the case of an item of travel or entertainment, the date on which the final payment is due).

(6) *Examples.* The following examples illustrate the definition of "currency" set forth in paragraphs (c)(1) through (c)(5) of this section:

Example 1. D, an individual, purchases gold coins from M, a coin dealer, for $13,200. D tenders to M in payment United States currency in the amount of $6,200 and a cashier's check in the face amount of $7,000 which D had purchased. Because the sale is a designated reporting transaction, the cashier's check is treated as currency for purposes of 31 U.S.C. 5331 and this section. Therefore, because M has received more than $10,000 in currency with respect to the transaction, M must make the report required by 31 U.S.C. 5331 and this section.

Example 2. E, an individual, purchases an automobile from Q, an automobile dealer, for $11,500. E tenders to Q in payment United States currency in the amount of $2,000 and a cashier's check payable to E and Q in the amount of $9,500. The cashier's check constitutes the proceeds of a loan from the bank issuing the check. The origin of the proceeds is evident from provisions inserted by the bank on the check that instruct the dealer to cause a lien to be placed on the vehicle as security for the loan. The sale of the automobile is a designated reporting transaction. However, under paragraph (c)(3) of this section, because E has furnished Q documentary information establishing that the cashier's check constitutes the proceeds of a loan from the bank issuing the check, the cashier's check is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section.

Example 3. F, an individual, purchases an item of jewelry from S, a retail jeweler, for $12,000. F gives S traveler's checks totaling $2,400 and pays the balance with a personal check payable to S in the amount of $9,600. Because the sale is a designated reporting transaction, the traveler's checks are treated as currency for purposes of section 5331 and this section. However, because the personal check is not treated as currency for purposes of section 5331 and this section, S has not received more than $10,000 in currency in the transaction and no report is required to be filed under section 5331 and this section.

Example 4. G, an individual, purchases a boat from T, a boat dealer, for $16,500. G pays T with a cashier's check payable to T in the amount of $16,500. The cashier's check is not treated as currency because the face amount of the check is more than $10,000. Thus, no report is required to be made by T under section 5331 and this section.

Example 5. H, an individual, arranges with W, a travel agent, for the chartering of a passenger aircraft to transport a group of

individuals to a sports event in another city. H also arranges with W for hotel accommodations for the group and for admission tickets to the sports event. In payment, H tenders to W money orders which H had previously purchased. The total amount of the money orders, none of which individually exceeds $10,000 in face amount, exceeds $10,000. Because the transaction is a designated reporting transaction, the money orders are treated as currency for purposes of section 5331 and this section. Therefore, because W has received more than $10,000 in currency with respect to the transaction, W must make the report required by section 5331 and this section.

(7) *Consumer durable.* The term *consumer durable* means an item of tangible personal property of a type that is suitable under ordinary usage for personal consumption or use, that can reasonably be expected to be useful for at least 1 year under ordinary usage, and that has a sales price of more than $10,000. Thus, for example, a $20,000 automobile is a consumer durable (whether or not it is sold for business use), but a $20,000 dump truck or a $20,000 factory machine is not.

(8) *Collectible.* The term *collectible* means an item described in paragraphs (A) through (D) of section 408 (m)(2) of title 26 of the United States Code (determined without regard to section 408 (m)(3) of title 26 of the United States Code).

(9) *Travel or entertainment activity.* The term *travel or entertainment activity* means an item of travel or entertainment (within the meaning of 26 CFR 1.274–2(b)(1)) pertaining to a single trip or event where the aggregate sales price of the item and all other items pertaining to the same trip or event that are sold in the same transaction (or related transactions) exceeds $10,000.

(10) *Retail sale.* The term *retail sale* means any sale (whether for resale or for any other purpose) made in the course of a trade or business if that trade or business principally consists of making sales to ultimate consumers.

(11) *Trade or business.* The term *trade or business* has the same meaning as under section 162 of title 26, United States Code.

(12) *Transaction.* (i) Solely for purposes of 31 U.S.C. 5331 and this section, the term *transaction* means the underlying event precipitating the payer's transfer of currency to the recipient. In this context, transactions include (but are not limited to) a sale of goods or services; a sale of real property; a sale of intangible property; a rental of real or personal property; an exchange of currency for other currency; the establishment or maintenance of or contribution to a custodial, trust, or escrow arrangement; a payment of a preexisting debt; a conversion of currency to a negotiable instrument; a reimbursement for expenses paid; or the making or repayment of a loan. A transaction may not be divided into multiple transactions in order to avoid reporting under this section.

(ii) The term *related transactions* means any transaction conducted between a payer (or its agent) and a recipient of currency in a 24-hour period. Additionally, transactions conducted between a payer (or its agent) and a currency recipient during a period of more than 24 hours are related if the recipient knows or has reason to know that each transaction is one of a series of connected transactions.

(iii) The following examples illustrate the definition of paragraphs (c)(12)(i) and (ii) of this section:

Example 1. A person has a tacit agreement with a gold dealer to purchase $36,000 in gold bullion. The $36,000 purchase represents a single transaction under paragraph (c)(12)(i) of this section and the reporting requirements of this section cannot be avoided by recasting the single sales transaction into 4 separate $9,000 sales transactions.

Example 2. An attorney agrees to represent a client in a criminal case with the attorney's fee to be determined on an hourly basis. In the first month in which the attorney represents the client, the bill for the attorney's services comes to $8,000 which the client pays in currency. In the second month in which the attorney represents the client, the bill for the attorney's services comes to $4,000, which the client again pays in currency. The aggregate amount of currency paid ($12,000) relates to a single transaction as defined in paragraph (c)(12)(i) of this section, the sale of legal services relating to the criminal case, and the receipt of currency must be reported under this section.

Example 3. A person intends to contribute a total of $45,000 to a trust fund, and the trustee of the fund knows or has reason to know of that intention. The $45,000 contribution is a single transaction under paragraph (c)(12)(i) of this section and the reporting requirement of this section cannot be avoided by the grantor's making five separate $9,000 contributions of currency to a single fund or by making five $9,000 contributions of currency to five separate funds administered by a common trustee.

Example 4. K, an individual, attends a one day auction and purchases for currency two items, at a cost of $9,240 and $1,732.50 respectively (tax and buyer's premium included). Because the transactions are related transactions as defined in paragraph (c)(12)(ii) of this section, the auction house is required to report the aggregate amount of currency received from the related sales ($10,972.50), even though the auction house accounts separately on its books for each item sold and presents the purchaser with separate bills for each item purchased.

Example 5. F, a coin dealer, sells for currency $9,000 worth of gold coins to an individual on three successive days. Under paragraph (c)(12)(ii) of this section the three $9,000 transactions are related transactions aggregating $27,000 if F knows, or has reason to know, that each transaction is one of a series of connected transactions.

(13) *Recipient.* (i) The term *recipient* means the person receiving the currency. Except as provided in paragraph (c)(13)(ii) of this section, each store, division, branch, department, headquarters, or office ("branch") (regardless of physical location) comprising a portion of a person's trade or business shall for purposes of this section be deemed a separate recipient.

(ii) A branch that receives currency payments will not be deemed a separate recipient if the branch (or a central unit linking such branch with other branches) would in the ordinary course of business have reason to know the identity of payers making currency payments to other branches of such person.

(iii) *Examples.* The following examples illustrate the application of the rules in paragraphs (c)(13)(i) and (ii) of this section:

Example 1. N, an individual, purchases regulated futures contracts at a cost of $7,500 and $5,000, respectively, through two different branches of Commodities Broker X on the same day. N pays for each purchase with currency. Each branch of Commodities Broker X transmits the sales information regarding each of N's purchases to a central unit of Commodities Broker X (which settles the transactions against N's account). Under paragraph (c)(13)(ii) of this section the separate branches of Commodities Broker X are not deemed to be separate recipients; therefore, Commodities Broker X must report with respect to the two related regulated futures contracts sales in accordance with this section.

Example 2. P, a corporation, owns and operates a racetrack. P's racetrack contains 100 betting windows at which pari-mutuel wagers may be made. R, an individual, places currency wagers of $3,000 each at five separate betting windows. Assuming that in the ordinary course of business each betting window (or a central unit linking windows) does not have reason to know the identity of persons making wagers at other betting windows, each betting window would be deemed to be a separate currency recipient under paragraph (c)(13)(i) of this section. As no individual recipient received currency in excess of $10,000, no report need be made by P under this section.

(d) *Exceptions to the reporting requirements of 31 U.S.C. 5331*—(1) *Receipt is made with respect to a foreign currency transaction*—(i) *In general.* Generally, there is no requirement to report with respect to a currency transaction if the entire transaction occurs outside the United States (the fifty states and the District of Columbia).

An entire transaction consists of both the transaction as defined in paragraph (c)(12)(i) of this section and the receipt of currency by the recipient. If, however, any part of an entire transaction occurs in the Commonwealth of Puerto Rico or a possession or territory of the United States and the recipient of currency in that transaction is subject to the general jurisdiction of the Internal Revenue Service under title 26 of the United States Code, the recipient is required to report the transaction under this section.

(ii) *Example.* The following example illustrates the application of the rules in paragraph (d)(1)(i) of this section:

Example. W, an individual engaged in the trade or business of selling aircraft, reaches an agreement to sell an airplane to a U.S. citizen living in Mexico. The agreement, no portion of which is formulated in the United States, calls for a purchase price of $125,000 and requires delivery of and payment for the airplane to be made in Mexico. Upon delivery of the airplane in Mexico, W receives $125,000 in currency. W is not required to report under 31 U.S.C. 5331 or this section because the exception provided in paragraph (d)(1)(i) of this section ("foreign transaction exception") applies. If, however, any part of the agreement to sell had been formulated in the United States, the foreign transaction exception would not apply and W would be required to report the receipt of currency under 31 U.S.C. 5331 and this section.

(2) *Receipt of currency not in the course of the recipient's trade or business.* The receipt of currency in excess of $10,000 by a person other than in the course of the person's trade or business is not reportable under 31 U.S.C. 5331. Thus, for example, F, an individual in the trade or business of selling real estate, sells a motorboat for $12,000, the purchase price of which is paid in currency. F did not use the motorboat in any trade or business in which F was engaged. F is not required to report under 31 U.S.C. 5331 or this section because the exception provided in this paragraph (d)(2) applies.

(e) *Time, manner, and form of reporting*—(1) *In general.* The reports required by paragraph (a) of this section must be made by filing a Form 8300, as specified in 26 CFR 1.6050I–1(e)(2). The reports must be filed at the time and in the manner specified in 26 CFR 1.6050I–1(e)(1) and (3) respectively.

(2) *Verification.* A person making a report of information under this section must verify the identity of the person from whom the reportable currency is received. Verification of the identity of a person who purports to be an alien must be made by examination of such person's passport, alien identification card, or other official document evidencing nationality or residence. Verification of the identity of any other person may be made by examination of a document normally acceptable as a means of identification when cashing or accepting checks (for example, a driver's license or a credit card). In addition, a report will be considered incomplete if the person required to make a report knows (or has reason to know) that an agent is conducting the transaction for a principal, and the return does not identify both the principal and the agent.

(3) *Retention of reports.* A person required to make a report under this section must keep a copy of each report filed for five years from the date of filing.

§ 1010.340 Reports of transportation of currency or monetary instruments.

(a) Each person who physically transports, mails, or ships, or causes to be physically transported, mailed, or shipped, or attempts to physically transport, mail or ship, or attempts to cause to be physically transported, mailed or shipped, currency or other monetary instruments in an aggregate amount exceeding $10,000 at one time from the United States to any place outside the United States, or into the United States from any place outside the United States, shall make a report thereof. A person is deemed to have caused such transportation, mailing or shipping when he aids, abets, counsels, commands, procures, or requests it to be done by a financial institution or any other person.

(b) Each person who receives in the U.S. currency or other monetary instruments in an aggregate amount exceeding $10,000 at one time which have been transported, mailed, or shipped to such person from any place outside the United States with respect to which a report has not been filed under paragraph (a) of this section, whether or not required to be filed thereunder, shall make a report thereof, stating the amount, the date of receipt, the form of monetary instruments, and the person from whom received.

(c) This section shall not require reports by:

(1) A Federal Reserve;

(2) A bank, a foreign bank, or a broker or dealer in securities, in respect to currency or other monetary instruments mailed or shipped through the postal service or by common carrier;

(3) A commercial bank or trust company organized under the laws of any State or of the United States with respect to overland shipments of currency or monetary instruments shipped to or received from an established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the business, industry or profession of the customer concerned;

(4) A person who is not a citizen or resident of the United States in respect to currency or other monetary instruments mailed or shipped from abroad to a bank or broker or dealer in securities through the postal service or by common carrier;

(5) A common carrier of passengers in respect to currency or other monetary instruments in the possession of its passengers;

(6) A common carrier of goods in respect to shipments of currency or monetary instruments not declared to be such by the shipper;

(7) A travelers' check issuer or its agent in respect to the transportation of travelers' checks prior to their delivery to selling agents for eventual sale to the public;

(8) By a person with respect to a restrictively endorsed traveler's check that is in the collection and reconciliation process after the traveler's check has been negotiated;

(9) Nor by a person engaged as a business in the transportation of currency, monetary instruments and other commercial papers with respect to the transportation of currency or other monetary instruments overland between established offices of banks or brokers or dealers in securities and foreign persons.

(d) A transfer of funds through normal banking procedures which does not involve the physical transportation of currency or monetary instruments is not required to be reported by this section. This section does not require that more than one report be filed covering a particular transportation, mailing or shipping of currency or other monetary instruments with respect to which a complete and truthful report has been filed by a person. However, no person required by paragraph (a) or (b) of this section to file a report shall be excused from liability for failure to do so if, in fact, a complete and truthful report has not been filed.

§ 1010.350 Reports of foreign financial accounts.

Each person subject to the jurisdiction of the United States (except a foreign subsidiary of a U.S. person) having a financial interest in, or signature or other authority over, a bank, securities or other financial account in a foreign

country shall report such relationship to the Commissioner of the Internal Revenue for each year in which such relationship exists, and shall provide such information as shall be specified in a reporting form prescribed by the Secretary to be filed by such persons. Persons having a financial interest in 25 or more foreign financial accounts need only note that fact on the form. Such persons will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.

§ 1010.360 Reports of transactions with foreign financial agencies.

(a) *Promulgation of reporting requirements.* The Secretary, when he deems appropriate, may promulgate regulations requiring specified financial institutions to file reports of certain transactions with designated foreign financial agencies. If any such regulation is issued as a final rule without notice and opportunity for public comment, then a finding of good cause for dispensing with notice and comment in accordance with 5 U.S.C. 553(b) will be included in the regulation. If any such regulation is not published in the **Federal Register**, then any financial institution subject to the regulation will be named and personally served or otherwise given actual notice in accordance with 5 U.S.C. 553(b). If a financial institution is given notice of a reporting requirement under this section by means other than publication in the **Federal Register**, the Secretary may prohibit disclosure of the existence or provisions of that reporting requirement to the designated foreign financial agency or agencies and to any other party.

(b) *Information subject to reporting requirements.* A regulation promulgated pursuant to paragraph (a) of this section shall designate one or more of the following categories of information to be reported:

(1) Checks or drafts, including traveler's checks, received by respondent financial institution for collection or credit to the account of a foreign financial agency, sent by respondent financial institution to a foreign country for collection or payment, drawn by respondent financial institution on a foreign financial agency, drawn by a foreign financial agency on respondent financial institution—including the following information.

(i) Name of maker or drawer;

(ii) Name of drawee or drawee financial institution;

(iii) Name of payee;

(iv) Date and amount of instrument;

(v) Names of all endorsers.

(2) Transmittal orders received by a respondent financial institution from a foreign financial agency or sent by respondent financial institution to a foreign financial agency, including all information maintained by that institution pursuant to §§ 1010.410 and 1020.410.

(3) Loans made by respondent financial institution to or through a foreign financial agency—including the following information:

(i) Name of borrower;

(ii) Name of person acting for borrower;

(iii) Date and amount of loan;

(iv) Terms of repayment;

(v) Name of guarantor;

(vi) Rate of interest;

(vii) Method of disbursing proceeds;

(viii) Collateral for loan.

(4) Commercial paper received or shipped by the respondent financial institution—including the following information:

(i) Name of maker;

(ii) Date and amount of paper;

(iii) Due date;

(iv) Certificate number;

(v) Amount of transaction.

(5) Stocks received or shipped by respondent financial institution—including the following information:

(i) Name of corporation;

(ii) Type of stock;

(iii) Certificate number;

(iv) Number of shares;

(v) Date of certificate;

(vi) Name of registered holder;

(vii) Amount of transaction.

(6) Bonds received or shipped by respondent financial institution—including the following information:

(i) Name of issuer;

(ii) Bond number;

(iii) Type of bond series;

(iv) Date issued;

(v) Due date;

(vi) Rate of interest;

(vii) Amount of transaction;

(viii) Name of registered holder.

(7) Certificates of deposit received or shipped by respondent financial institution—including the following information:

(i) Name and address of issuer;

(ii) Date issued;

(iii) Dollar amount;

(iv) Name of registered holder;

(v) Due date;

(vi) Rate of interest;

(vii) Certificate number;

(viii) Name and address of issuing agent.

(c) *Scope of reports.* In issuing regulations as provided in paragraph (a) of this section, the Secretary will prescribe:

(1) A reasonable classification of financial institutions subject to or exempt from a reporting requirement;

(2) A foreign country to which a reporting requirement applies if the Secretary decides that applying the requirement to all foreign countries is unnecessary or undesirable;

(3) The magnitude of transactions subject to a reporting requirement; and

(4) The kind of transaction subject to or exempt from a reporting requirement.

(d) *Form of reports.* Regulations issued pursuant to paragraph (a) of this section may prescribe the manner in which the information is to be reported. However, the Secretary may authorize a designated financial institution to report in a different manner if the institution demonstrates to the Secretary that the form of the required report is unnecessarily burdensome on the institution as prescribed; that a report in a different form will provide all the information the Secretary deems necessary; and that submission of the information in a different manner will not unduly hinder the effective administration of this chapter.

(e) *Limitations.* (1) In issuing regulations under paragraph (a) of this section, the Secretary shall consider the need to avoid impeding or controlling the export or import of monetary instruments and the need to avoid burdening unreasonably a person making a transaction with a foreign financial agency.

(2) The Secretary shall not issue a regulation under paragraph (a) of this section for the purpose of obtaining individually identifiable account information concerning a customer, as defined by the Right to Financial Privacy Act (12 U.S.C. 3401 *et seq.*), where that customer is already the subject of an ongoing investigation for possible violation of the Currency and Foreign Transactions Reporting Act, or is known by the Secretary to be the subject of an investigation for possible violation of any other Federal law.

(3) The Secretary may issue a regulation pursuant to paragraph (a) of this section requiring a financial institution to report transactions completed prior to the date it received notice of the reporting requirement. However, with respect to completed transactions, a financial institution may be required to provide information only from records required to be maintained pursuant to the requirements of this chapter, or any other provision of state or Federal law, or otherwise maintained in the regular course of business.

§ 1010.370 Reports of certain domestic coin and currency transactions.

(a) If the Secretary of the Treasury finds, upon the Secretary's own initiative or at the request of an

appropriate Federal or State law enforcement official, that reasonable grounds exist for concluding that additional recordkeeping and/or reporting requirements are necessary to carry out the purposes of this chapter and to prevent persons from evading the reporting/recordkeeping requirements of this chapter, the Secretary may issue an order requiring any domestic financial institution or group of domestic financial institutions in a geographic area and any other person participating in the type of transaction to file a report in the manner and to the extent specified in such order. The order shall contain such information as the Secretary may describe concerning any transaction in which such financial institution is involved for the payment, receipt, or transfer of United States coins or currency (or such other monetary instruments as the Secretary may describe in such order) the total amounts or denominations of which are equal to or greater than an amount which the Secretary may prescribe.

(b) An order issued under paragraph (a) of this section shall be directed to the Chief Executive Officer of the financial institution and shall designate one or more of the following categories of information to be reported: Each deposit, withdrawal, exchange of currency or other payment or transfer, by, through or to such financial institution specified in the order, which involves all or any class of transactions in currency and/or monetary instruments equal to or exceeding an amount to be specified in the order.

(c) In issuing an order under paragraph (a) of this section, the Secretary will prescribe:

(1) The dollar amount of transactions subject to the reporting requirement in the order;

(2) The type of transaction or transactions subject to or exempt from a reporting requirement in the order;

(3) The appropriate form for reporting the transactions required in the order;

(4) The address to which reports required in the order are to be sent or from which they will be picked up;

(5) The starting and ending dates by which such transactions specified in the order are to be reported;

(6) The name of a Treasury official to be contacted for any additional information or questions;

(7) The amount of time the reports and records of reports generated in response to the order will have to be retained by the financial institution; and

(8) Any other information deemed necessary to carry out the purposes of the order.

(d)(1) No order issued pursuant to paragraph (a) of this section shall prescribe a reporting period of more than 60 days unless renewed pursuant to the requirements of paragraph (a).

(2) Any revisions to an order issued under this section will not be effective until made in writing by the Secretary.

(3) Unless otherwise specified in the order, a bank receiving an order under this section may continue to use the exemptions granted under § 1020.315 of this chapter prior to the receipt of the order, but may not grant additional exemptions.

(4) For purposes of this section, the term *geographic area* means any area in one or more States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, the territories and possessions of the United States, and/or political subdivision or subdivisions thereof, as specified in an order issued pursuant to paragraph (a) of this section.

Subpart D—Records Required To Be Maintained

§ 1010.400 General.

Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to its Chapter X Part for any additional recordkeeping requirements. Unless otherwise indicated, the recordkeeping requirements contained in this Subpart D apply to all financial institutions.

§ 1010.401 Determination by the Secretary.

The Secretary hereby determines that the records required to be kept by this chapter have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

§ 1010.405 [Reserved]

§ 1010.410 Records to be made and retained by financial institutions.

Each financial institution shall retain either the original or a microfilm or other copy or reproduction of each of the following:

(a) A record of each extension of credit in an amount in excess of $10,000, except an extension of credit secured by an interest in real property, which record shall contain the name and address of the person to whom the extension of credit is made, the amount thereof, the nature or purpose thereof, and the date thereof;

(b) A record of each advice, request, or instruction received or given regarding any transaction resulting (or intended to result and later canceled if such a record is normally made) in the transfer of currency or other monetary instruments, funds, checks, investment securities, or credit, of more than $10,000 to or from any person, account, or place outside the United States.

(c) A record of each advice, request, or instruction given to another financial institution or other person located within or without the United States, regarding a transaction intended to result in the transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than $10,000 to a person, account or place outside the United States.

(d) A record of such information for such period of time as the Secretary may require in an order issued under § 1010.370(a), not to exceed five years.

(e) *Nonbank financial institutions.* Each agent, agency, branch, or office located within the United States of a financial institution other than a bank is subject to the requirements of this paragraph (e) with respect to a transmittal of funds in the amount of $3,000 or more:

(1) *Recordkeeping requirements.* (i) For each transmittal order that it accepts as a transmittor's financial institution, a financial institution shall obtain and retain either the original or a microfilm, other copy, or electronic record of the following information relating to the transmittal order:

(A) The name and address of the transmittor;

(B) The amount of the transmittal order;

(C) The execution date of the transmittal order;

(D) Any payment instructions received from the transmittor with the transmittal order;

(E) The identity of the recipient's financial institution;

(F) As many of the following items as are received with the transmittal order: [1]

(1) The name and address of the recipient;

(2) The account number of the recipient; and

(3) Any other specific identifier of the recipient; and

(G) Any form relating to the transmittal of funds that is completed or signed by the person placing the transmittal order.

[1] For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a domestic broker or dealers in securities, only one of the items is required to be retained, if received with the transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

(ii) For each transmittal order that it accepts as an intermediary financial institution, a financial institution shall retain either the original or a microfilm, other copy, or electronic record of the transmittal order.

(iii) For each transmittal order that it accepts as a recipient's financial institution, a financial institution shall retain either the original or a microfilm, other copy, or electronic record of the transmittal order.

(2) *Transmittors other than established customers.* In the case of a transmittal order from a transmittor that is not an established customer, in addition to obtaining and retaining the information required in paragraph (e)(1)(i) of this section:

(i) If the transmittal order is made in person, prior to acceptance the transmittor's financial institution shall verify the identity of the person placing the transmittal order. If it accepts the transmittal order, the transmittor's financial institution shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (*e.g.,* driver's license), as well as a record of the person's taxpayer identification number (*e.g.,* social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the transmittor's financial institution has knowledge that the person placing the transmittal order is not the transmittor, the transmittor's financial institution shall obtain and retain a record of the transmittor's taxpayer identification number (*e.g.,* social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

(ii) If the transmittal order accepted by the transmittor's financial institution is not made in person, the transmittor's financial institution shall obtain and retain a record of the name and address of the person placing the transmittal order, as well as the person's taxpayer identification number (*e.g.,* social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof, and a copy or record of the method of payment (*e.g.,* check or credit card transaction) for the transmittal of funds. If the transmittor's financial institution has knowledge that the person placing the transmittal order is not the transmittor, the transmittor's financial institution shall obtain and retain a record of the transmittor's taxpayer identification number (*e.g.,* social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

(3) *Recipients other than established customers.* For each transmittal order that it accepts as a recipient's financial institution for a recipient that is not an established customer, in addition to obtaining and retaining the information required in paragraph (e)(1)(iii) of this section:

(i) If the proceeds are delivered in person to the recipient or its representative or agent, the recipient's financial institution shall verify the identity of the person receiving the proceeds and shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (*e.g.,* driver's license), as well as a record of the person's taxpayer identification number (*e.g.,* social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the recipient's financial institution has knowledge that the person receiving the proceeds is not the recipient, the recipient's financial institution shall obtain and retain a record of the recipient's name and address, as well as the recipient's taxpayer identification number (*e.g.,* social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person receiving the proceeds, or a notation in the record of the lack thereof.

(ii) If the proceeds are delivered other than in person, the recipient's financial institution shall retain a copy of the check or other instrument used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent.

(4) *Retrievability.* The information that a transmittor's financial institution must retain under paragraphs (e)(1)(i) and (e)(2) of this section shall be retrievable by the transmittor's financial institution by reference to the name of the transmittor. If the transmittor is an established customer of the transmittor's financial institution and has an account used for transmittals of funds, then the information also shall be retrievable by account number. The information that a recipient's financial institution must retain under paragraphs (e)(1)(iii) and (e)(3) of this section shall be retrievable by the recipient's financial institution by reference to the name of the recipient. If the recipient is an established customer of the recipient's financial institution and has an account used for transmittals of funds, then the information also shall be retrievable by account number. This information need not be retained in any particular manner, so long as the financial institution is able to retrieve the information required by this paragraph, either by accessing transmittal of funds records directly or through reference to some other record maintained by the financial institution.

(5) *Verification.* Where verification is required under paragraphs (e)(2) and (e)(3) of this section, a financial institution shall verify a person's identity by examination of a document (other than a customer signature card), preferably one that contains the person's name, address, and photograph, that is normally acceptable by financial institutions as a means of identification when cashing checks for persons other than established customers. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States may be made by passport, alien identification card, or other official document evidencing nationality or residence (*e.g.,* a foreign driver's license with indication of home address).

(6) *Exceptions.* The following transmittals of funds are not subject to the requirements of this section:

(i) Transmittals of funds where the transmittor and the recipient are any of the following:

(A) A bank;

(B) A wholly-owned domestic subsidiary of a bank chartered in the United States;

(C) A broker or dealer in securities;

(D) A wholly-owned domestic subsidiary of a broker or dealer in securities;

(E) A futures commission merchant or an introducing broker in commodities;

(F) A wholly-owned domestic subsidiary of a futures commission merchant or an introducing broker in commodities;

(G) The United States;

(H) A state or local government; or

(I) A Federal, State or local government agency or instrumentality; or

(J) A mutual fund; and

(ii) Transmittals of funds where both the transmittor and the recipient are the same person and the transmittor's financial institution and the recipient's

financial institution are the same broker or dealer in securities.

(f) Any transmittor's financial institution or intermediary financial institution located within the United States shall include in any transmittal order for a transmittal of funds in the amount of $3,000 or more, information as required in this paragraph (f):

(1) A transmittor's financial institution shall include in a transmittal order, at the time it is sent to a receiving financial institution, the following information:

(i) The name and, if the payment is ordered from an account, the account number of the transmittor;

(ii) The address of the transmittor, except for a transmittal order through Fedwire until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format;

(iii) The amount of the transmittal order;

(iv) The execution date of the transmittal order;

(v) The identity of the recipient's financial institution;

(vi) As many of the following items as are received with the transmittal order: [2]

(A) The name and address of the recipient;

(B) The account number of the recipient;

(C) Any other specific identifier of the recipient; and

(vii) Either the name and address or numerical identifier of the transmittor's financial institution.

(2) A receiving financial institution that acts as an intermediary financial institution, if it accepts a transmittal order, shall include in a corresponding transmittal order at the time it is sent to the next receiving financial institution, the following information, if received from the sender:

(i) The name and the account number of the transmittor;

(ii) The address of the transmittor, except for a transmittal order through Fedwire until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format;

(iii) The amount of the transmittal order;

(iv) The execution date of the transmittal order;

(v) The identity of the recipient's financial institution;

(vi) As many of the following items as are received with the transmittal order: [3]

(A) The name and address of the recipient;

(B) The account number of the recipient;

(C) Any other specific identifier of the recipient; and

(vii) Either the name and address or numerical identifier of the transmittor's financial institution.

(3) *Safe harbor for transmittals of funds prior to conversion to the expanded Fedwire message format.* The following provisions apply to transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system or otherwise by a financial institution before the bank that sends the order to the Federal Reserve Bank or otherwise completes its conversion to the expanded Fedwire message format.

(i) *Transmittor's financial institution.* A transmittor's financial institution will be deemed to be in compliance with the provisions of paragraph (f)(1) of this section if it:

(A) Includes in the transmittal order, at the time it is sent to the receiving financial institution, the information specified in paragraphs (f)(1)(iii) through (v), and the information specified in paragraph (f)(1)(vi) of this section to the extent that such information has been received by the financial institution, and

(B) Provides the information specified in paragraphs (f)(1)(i), (ii) and (vii) of this section to a financial institution that acted as an intermediary financial institution or recipient's financial institution in connection with the transmittal order, within a reasonable time after any such financial institution makes a request therefor in connection with the requesting financial institution's receipt of a lawful request for such information from a Federal, State, or local law enforcement or financial regulatory agency, or in connection with the requesting financial institution's own Bank Secrecy Act compliance program.

(ii) *Intermediary financial institution.* An intermediary financial institution will be deemed to be in compliance with the provisions of paragraph (f)(2) of this section if it:

(A) Includes in the transmittal order, at the time it is sent to the receiving financial institution, the information specified in paragraphs (f)(2)(iii) through (f)(2)(vi) of this section, to the extent that such information has been received by the intermediary financial institution; and

(B) Provides the information specified in paragraphs (f)(2)(i), (ii) and (vii) of this section, to the extent that such information has been received by the intermediary financial institution, to a financial institution that acted as an intermediary financial institution or recipient's financial institution in connection with the transmittal order, within a reasonable time after any such financial institution makes a request therefor in connection with the requesting financial institution's receipt of a lawful request for such information from a Federal, State, or local law enforcement or regulatory agency, or in connection with the requesting financial institution's own Bank Secrecy Act compliance program.

(iii) *Obligation of requesting financial institution.* Any information requested under paragraph (f)(3)(i)(B) or (f)(3)(ii)(B) of this section shall be treated by the requesting institution, once received, as if it had been included in the transmittal order to which such information relates.

(4) *Exceptions.* The requirements of this paragraph (f) shall not apply to transmittals of funds that are listed in paragraph (e)(6) of this section or § 1020.410(a)(6) of this chapter.

§ 1010.415 Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks.

(a) No financial institution may issue or sell a bank check or draft, cashier's check, money order or traveler's check for $3,000 or more in currency unless it maintains records of the following information, which must be obtained for each issuance or sale of one or more of these instruments to any individual purchaser which involves currency in amounts of $3,000–$10,000 inclusive:

(1) If the purchaser has a deposit account with the financial institution:

(i)(A) The name of the purchaser;

(B) The date of purchase;

(C) The type(s) of instrument(s) purchased;

(D) The serial number(s) of each of the instrument(s) purchased; and

(E) The amount in dollars of each of the instrument(s) purchased.

(ii) In addition, the financial institution must verify that the individual is a deposit accountholder or must verify the individual's identity. Verification may be either through a signature card or other file or record at the financial institution provided the

[2] For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a financial institution, only one of the items is required to be included in the transmittal order, if received with the sender's transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

[3] For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a financial institution, only one of the items is required to be included in the transmittal order, if received with the sender's transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

deposit accountholder's name and address were verified previously and that information was recorded on the signature card or other file or record; or by examination of a document which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser. If the deposit accountholder's identity has not been verified previously, the financial institution shall verify the deposit accountholder's identity by examination of a document which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser, and shall record the specific identifying information (*e.g.,* State of issuance and number of driver's license).

(2) If the purchaser does not have a deposit account with the financial institution:

(i)(A) The name and address of the purchaser;

(B) The social security number of the purchaser, or if the purchaser is an alien and does not have a social security number, the alien identification number;

(C) The date of birth of the purchaser;

(D) The date of purchase;

(E) The type(s) of instrument(s) purchased;

(F) The serial number(s) of the instrument(s) purchased; and

(G) The amount in dollars of each of the instrument(s) purchased.

(ii) In addition, the financial institution shall verify the purchaser's name and address by examination of a document which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser, and shall record the specific identifying information (*e.g.,* State of issuance and number of driver's license).

(b) Contemporaneous purchases of the same or different types of instruments totaling $3,000 or more shall be treated as one purchase. Multiple purchases during one business day totaling $3,000 or more shall be treated as one purchase if an individual employee, director, officer, or partner of the financial institution has knowledge that these purchases have occurred.

(c) Records required to be kept shall be retained by the financial institution for a period of five years and shall be made available to the Secretary upon request at any time.

§ 1010.420 Records to be made and retained by persons having financial interests in foreign financial accounts.

Records of accounts required by § 1010.350 to be reported to the Commissioner of Internal Revenue shall be retained by each person having a financial interest in or signature or other authority over any such account. Such records shall contain the name in which each such account is maintained, the number or other designation of such account, the name and address of the foreign bank or other person with whom such account is maintained, the type of such account, and the maximum value of each such account during the reporting period. Such records shall be retained for a period of 5 years and shall be kept at all times available for inspection as authorized by law. In the computation of the period of 5 years, there shall be disregarded any period beginning with a date on which the taxpayer is indicted or information instituted on account of the filing of a false or fraudulent Federal income tax return or failing to file a Federal income tax return, and ending with the date on which final disposition is made of the criminal proceeding.

§ 1010.430 Nature of records and retention period.

(a) Wherever it is required that there be retained either the original or a microfilm or other copy or reproduction of a check, draft, monetary instrument, investment security, or other similar instrument, there shall be retained a copy of both front and back of each such instrument or document, except that no copy need be retained of the back of any instrument or document which is entirely blank or which contains only standardized printed information, a copy of which is on file.

(b) Records required by this chapter to be retained by financial institutions may be those made in the ordinary course of business by a financial institution. If no record is made in the ordinary course of business of any transaction with respect to which records are required to be retained by this chapter, then such a record shall be prepared in writing by the financial institution.

(c) The rules and regulations issued by the Internal Revenue Service under 26 U.S.C. 6109 determine what constitutes a taxpayer identification number and whose number shall be obtained in the case of an account maintained by one or more persons.

(d) All records that are required to be retained by this chapter shall be retained for a period of five years. Records or reports required to be kept pursuant to an order issued under § 1010.370 of this chapter shall be retained for the period of time specified in such order, not to exceed five years. All such records shall be filed or stored in such a way as to be accessible within a reasonable period of time, taking into consideration the nature of the record, and the amount of time expired since the record was made.

§ 1010.440 Person outside the United States.

For the purposes of this chapter, a remittance or transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit to the domestic account of a person whose address is known by the person making the remittance or transfer, to be outside the United States, shall be deemed to be a remittance or transfer to a person outside the United States, except that, unless otherwise directed by the Secretary, this section shall not apply to a transaction on the books of a domestic financial institution involving the account of a customer of such institution whose address is within approximately 50 miles of the location of the institution, or who is known to be temporarily outside the United States.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 1010.500 General.

Sections 1010.505 through 1010.540 of this Subpart E were issued pursuant to the requirements of section 314 of the USA PATRIOT Act. Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to its Chapter X Part for any additional special information sharing procedures.

§ 1010.505 Definitions.

For purposes of this Subpart E, the following definitions apply:

(a) *Account* means a formal banking or business relationship established to provide regular services, dealings, and other financial transactions, and includes, but is not limited to, a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit.

(b) *Money laundering* means an activity criminalized by 18 U.S.C. 1956 or 1957, or an activity that would be criminalized by 18 U.S.C. 1956 or 1957 if it occurred in the United States.

(c) *Terrorist activity* means an act of domestic terrorism or international terrorism as those terms are defined in 18 U.S.C. 2331.

(d) *Transaction.* (1) Except as provided in paragraph (d)(2) of this section, the term "transaction" shall

have the same meaning as provided in § 1010.100(bbb).

(2) For purposes of § 1010.520, a transaction shall not mean any transaction conducted through an account.

§ 1010.520 Information sharing between government agencies and financial institutions.

(a) *Definitions.* For purposes of this section:

(1) *Financial institution* means any financial institution described in 31 U.S.C. 5312(a)(2).

(2) *Law enforcement agency* means a Federal, State, local, or foreign law enforcement agency with criminal investigative authority, provided that in the case of a foreign law enforcement agency, such agency is from a jurisdiction that is a party to a treaty that provides, or in the determination of FinCEN is from a jurisdiction that otherwise allows, law enforcement agencies in the United States reciprocal access to information comparable to that obtained under this section.

(b) *Information requests based on credible evidence concerning terrorist activity or money laundering*—(1) *In general.* A law enforcement agency investigating terrorist activity or money laundering may request that FinCEN solicit, on the investigating agency's behalf, certain information from a financial institution or a group of financial institutions. When submitting such a request to FinCEN, the law enforcement agency shall provide FinCEN with a written certification, in such form and manner as FinCEN may prescribe. At a minimum, such certification must: State that each individual, entity, or organization about which the law enforcement agency is seeking information is engaged in, or is reasonably suspected based on credible evidence of engaging in, terrorist activity or money laundering; include enough specific identifiers, such as date of birth, address, and social security number, that would permit a financial institution to differentiate between common or similar names; and identify one person at the agency who can be contacted with any questions relating to its request. Upon receiving the requisite certification from the requesting law enforcement agency, FinCEN may require any financial institution to search its records to determine whether the financial institution maintains or has maintained accounts for, or has engaged in transactions with, any specified individual, entity, or organization.

(2) *Requests from FinCEN.* FinCEN may solicit, on its own behalf and on behalf of appropriate components of the Department of the Treasury, whether a financial institution or a group of financial institutions maintains or has maintained accounts for, or has engaged in transactions with, any specified individual, entity, or organization. Before an information request under this section is made to a financial institution, FinCEN or the appropriate Treasury component shall certify in writing in the same manner as a requesting law enforcement agency that each individual, entity or organization about which FinCEN or the appropriate Treasury component is seeking information is engaged in, or is reasonably suspected based on credible evidence of engaging in, terrorist activity or money laundering. The certification also must include enough specific identifiers, such as date of birth, address, and social security number, that would permit a financial institution to differentiate between common or similar names, and identify one person at FinCEN or the appropriate Treasury component who can be contacted with any questions relating to its request.

(3) *Obligations of a financial institution receiving an information request*—(i) *Record search.* Upon receiving an information request from FinCEN under this section, a financial institution shall expeditiously search its records to determine whether it maintains or has maintained any account for, or has engaged in any transaction with, each individual, entity, or organization named in FinCEN's request. A financial institution may contact the law enforcement agency, FinCEN or requesting Treasury component representative, or U.S. law enforcement attaché in the case of a request by a foreign law enforcement agency, which has been named in the information request provided to the institution by FinCEN with any questions relating to the scope or terms of the request. Except as otherwise provided in the information request, a financial institution shall only be required to search its records for:

(A) Any current account maintained for a named suspect;

(B) Any account maintained for a named suspect during the preceding twelve months; and

(C) Any transaction, as defined by § 1010.505(d), conducted by or on behalf of a named suspect, or any transmittal of funds conducted in which a named suspect was either the transmittor or the recipient, during the preceding six months that is required under law or regulation to be recorded by the financial institution or is recorded and maintained electronically by the institution.

(ii) *Report to FinCEN.* If a financial institution identifies an account or transaction identified with any individual, entity, or organization named in a request from FinCEN, it shall report to FinCEN, in the manner and in the time frame specified in FinCEN's request, the following information:

(A) The name of such individual, entity, or organization;

(B) The number of each such account, or in the case of a transaction, the date and type of each such transaction; and

(C) Any Social Security number, taxpayer identification number, passport number, date of birth, address, or other similar identifying information provided by the individual, entity, or organization when each such account was opened or each such transaction was conducted.

(iii) *Designation of contact person.* Upon receiving an information request under this section, a financial institution shall designate one person to be the point of contact at the institution regarding the request and to receive similar requests for information from FinCEN in the future. When requested by FinCEN, a financial institution shall provide FinCEN with the name, title, mailing address, e-mail address, telephone number, and facsimile number of such person, in such manner as FinCEN may prescribe. A financial institution that has provided FinCEN with contact information must promptly notify FinCEN of any changes to such information.

(iv) *Use and security of information request.* (A) A financial institution shall not use information provided by FinCEN pursuant to this section for any purpose other than:

(*1*) Reporting to FinCEN as provided in this section;

(*2*) Determining whether to establish or maintain an account, or to engage in a transaction; or

(*3*) Assisting the financial institution in complying with any requirement of this chapter.

(B)(*1*) A financial institution shall not disclose to any person, other than FinCEN or the requesting Treasury component, the law enforcement agency on whose behalf FinCEN is requesting information, or U.S. law enforcement attaché in the case of a request by a foreign law enforcement agency, which has been named in the information request, the fact that FinCEN has requested or has obtained information under this section, except to the extent necessary to comply with such an information request.

(*2*) Notwithstanding paragraph (b)(3)(iv)(B)(*1*) of this section, a financial institution authorized to share information under § 1010.540 may share information concerning an individual, entity, or organization named in a request from FinCEN in accordance with the requirements of such section. However, such sharing shall not disclose the fact that FinCEN has requested information concerning such individual, entity, or organization.

(C) Each financial institution shall maintain adequate procedures to protect the security and confidentiality of requests from FinCEN for information under this section. The requirements of this paragraph (b)(3)(iv)(C) shall be deemed satisfied to the extent that a financial institution applies to such information procedures that the institution has established to satisfy the requirements of section 501 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801), and applicable regulations issued thereunder, with regard to the protection of its customers' nonpublic personal information.

(v) *No other action required.* Nothing in this section shall be construed to require a financial institution to take any action, or to decline to take any action, with respect to an account established for, or a transaction engaged in with, an individual, entity, or organization named in a request from FinCEN, or to decline to establish an account for, or to engage in a transaction with, any such individual, entity, or organization. Except as otherwise provided in an information request under this section, such a request shall not require a financial institution to report on future account opening activity or transactions or to treat a suspect list received under this section as a government list for purposes of section 326 of Public Law 107–56.

(4) *Relation to the Right to Financial Privacy Act and the Gramm-Leach-Bliley Act.* The information that a financial institution is required to report pursuant to paragraph (b)(3)(ii) of this section is information required to be reported in accordance with a Federal statute or rule promulgated thereunder, for purposes of subsection 3413(d) of the Right to Financial Privacy Act (12 U.S.C. 3413(d)) and subsection 502(e)(8) of the Gramm-Leach-Bliley Act (15 U.S.C. 6802(e)(8)).

(5) *No effect on law enforcement or regulatory investigations.* Nothing in this subpart affects the authority of a Federal, State, or local law enforcement agency or officer, or FinCEN or another component of the Department of the Treasury, to obtain information directly from a financial institution.

§ 1010.530 [Reserved]

§ 1010.540 Voluntary information sharing among financial institutions.

(a) *Definitions.* For purposes of this section:

(1) *Financial institution.* (i) Except as provided in paragraph (a)(1)(ii) of this section, the term "financial institution" means any financial institution described in 31 U.S.C. 5312(a)(2) that is required under this chapter to establish and maintain an anti-money laundering program, or is treated under this chapter as having satisfied the requirements of 31 U.S.C. 5318(h)(1).

(ii) For purposes of this section, a financial institution shall not mean any institution included within a class of financial institutions that FinCEN has designated as ineligible to share information under this section.

(2) *Association of financial institutions* means a group or organization the membership of which is comprised entirely of financial institutions as defined in paragraph (a)(1) of this section.

(b) *Voluntary information sharing among financial institutions*—(1) *In general.* Subject to paragraphs (b)(2), (b)(3), and (b)(4) of this section, a financial institution or an association of financial institutions may, under the protection of the safe harbor from liability described in paragraph (b)(5) of this section, transmit, receive, or otherwise share information with any other financial institution or association of financial institutions regarding individuals, entities, organizations, and countries for purposes of identifying and, where appropriate, reporting activities that the financial institution or association suspects may involve possible terrorist activity or money laundering.

(2) *Notice requirement.* A financial institution or association of financial institutions that intends to share information as described in paragraph (b)(1) of this section shall submit to FinCEN a notice described on FinCEN's Internet Web site, *http://www.fincen.gov.* Each notice provided pursuant to this paragraph (b)(2) shall be effective for the one year period beginning on the date of the notice. In order to continue to engage in the sharing of information after the end of the one year period, a financial institution or association of financial institutions must submit a new notice. Completed notices may be submitted to FinCEN by accessing FinCEN's Internet Web site, *http://www.fincen.gov.,* and entering the appropriate information as directed, or, if a financial institution does not have Internet access, by mail to: FinCEN, P.O. Box 39, Vienna, VA 22183.

(3) *Verification requirement.* Prior to sharing information as described in paragraph (b)(1) of this section, a financial institution or an association of financial institutions must take reasonable steps to verify that the other financial institution or association of financial institutions with which it intends to share information has submitted to FinCEN the notice required by paragraph (b)(2) of this section. A financial institution or an association of financial institutions may satisfy this paragraph (b)(3) by confirming that the other financial institution or association of financial institutions appears on a list that FinCEN will periodically make available to financial institutions or associations of financial institutions that have filed a notice with it, or by confirming directly with the other financial institution or association of financial institutions that the requisite notice has been filed.

(4) *Use and security of information.* (i) Information received by a financial institution or an association of financial institutions pursuant to this section shall not be used for any purpose other than:

(A) Identifying and, where appropriate, reporting on money laundering or terrorist activities;

(B) Determining whether to establish or maintain an account, or to engage in a transaction; or

(C) Assisting the financial institution in complying with any requirement of this chapter.

(ii) Each financial institution or association of financial institutions that engages in the sharing of information pursuant to this section shall maintain adequate procedures to protect the security and confidentiality of such information. The requirements of this paragraph (b)(4)(ii) shall be deemed satisfied to the extent that a financial institution applies to such information procedures that the institution has established to satisfy the requirements of section 501 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801), and applicable regulations issued thereunder, with regard to the protection of its customers' nonpublic personal information.

(5) *Safe harbor from certain liability*—(i) *In general.* A financial institution or association of financial institutions that shares information pursuant to paragraph (b) of this section shall be protected from liability for such sharing, or for any failure to provide notice of such sharing, to an individual, entity, or organization that is identified in such

sharing, to the full extent provided in subsection 314(b) of Public Law 107–56.

(ii) *Limitation.* Paragraph (b)(5)(i) of this section shall not apply to a financial institution or association of financial institutions to the extent such institution or association fails to comply with paragraphs (b)(2), (b)(3), or (b)(4) of this section.

(c) *Information sharing between financial institutions and the Federal Government.* If, as a result of information shared pursuant to this section, a financial institution knows, suspects, or has reason to suspect that an individual, entity, or organization is involved in, or may be involved in terrorist activity or money laundering, and such institution is subject to a suspicious activity reporting requirement under this chapter or other applicable regulations, the institution shall file a Suspicious Activity Report in accordance with those regulations. In situations involving violations requiring immediate attention, such as when a reportable violation involves terrorist activity or is ongoing, the financial institution shall immediately notify, by telephone, an appropriate law enforcement authority and financial institution supervisory authorities in addition to filing timely a Suspicious Activity Report. A financial institution that is not subject to a suspicious activity reporting requirement is not required to file a Suspicious Activity Report or otherwise to notify law enforcement of suspicious activity that is detected as a result of information shared pursuant to this section. Such a financial institution is encouraged, however, to voluntarily report such activity to FinCEN.

(d) *No effect on financial institution reporting obligations.* Nothing in this subpart affects the obligation of a financial institution to file a Suspicious Activity Report pursuant to this chapter or any other applicable regulations, or to otherwise contact directly a Federal agency concerning individuals or entities suspected of engaging in terrorist activity or money laundering.

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures

§ 1010.600 General.

Each financial institution (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) should refer to its Chapter X Part for any additional special standards of diligence; prohibitions; and special measures requirements.

Special Due Diligence for Correspondent Accounts and Private Banking Accounts

§ 1010.605 Definitions.

Except as otherwise provided, the following definitions apply for purposes of §§ 1010.610 through 1010.630 and § 1010.670:

(a) *Beneficial owner* of an account means an individual who has a level of control over, or entitlement to, the funds or assets in the account that, as a practical matter, enables the individual, directly or indirectly, to control, manage or direct the account. The ability to fund the account or the entitlement to the funds of the account alone, however, without any corresponding authority to control, manage or direct the account (such as in the case of a minor child beneficiary), does not cause the individual to be a beneficial owner.

(b) *Certification and recertification* mean the certification and recertification forms regarding correspondent accounts for foreign banks located on FinCEN's Internet Web site, *http://www.fincen.gov.*

(c) *Correspondent account.* (1) The term *correspondent account* means:

(i) For purposes of § 1010.610(a), (d) and (e), an account established for a foreign financial institution to receive deposits from, or to make payments or other disbursements on behalf of, the foreign financial institution, or to handle other financial transactions related to such foreign financial institution; and

(ii) For purposes of §§ 1010.610(b) and (c), 1010.630 and 1010.670, an account established for a foreign bank to receive deposits from, or to make payments or other disbursements on behalf of, the foreign bank, or to handle other financial transactions related to such foreign bank.

(2) For purposes of this definition, the term *account:*

(i) As applied to banks (as set forth in paragraphs (e)(1)(i) through (vii) of this section):

(A) Means any formal banking or business relationship established by a bank to provide regular services, dealings, and other financial transactions; and

(B) Includes a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit;

(ii) As applied to brokers or dealers in securities (as set forth in paragraph (e)(1)(viii) of this section) means any formal relationship established with a broker or dealer in securities to provide regular services to effect transactions in securities, including, but not limited to, the purchase or sale of securities and securities loaned and borrowed activity, and to hold securities or other assets for safekeeping or as collateral;

(iii) As applied to futures commission merchants and introducing brokers (as set forth in paragraph (e)(1)(ix) of this section) means any formal relationship established by a futures commission merchant to provide regular services, including, but not limited to, those established to effect transactions in contracts of sale of a commodity for future delivery, options on any contract of sale of a commodity for future delivery, or options on a commodity; and

(iv) As applied to mutual funds (as set forth in paragraph (e)(1)(x) of this section) means any contractual or other business relationship established between a person and a mutual fund to provide regular services to effect transactions in securities issued by the mutual fund, including the purchase or sale of securities.

(d) *Correspondent relationship* has the same meaning as correspondent account for purposes of §§ 1010.630 and 1010.670.

(e) *Covered financial institution* means: (1) For purposes of § 1010.610 and 1010.620:

(i) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(ii) A commercial bank;

(iii) An agency or branch of a foreign bank in the United States;

(iv) A federally insured credit union;

(v) A savings association;

(vi) A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*);

(vii) A trust bank or trust company that is federally regulated and is subject to an anti-money laundering program requirement;

(viii) A broker or dealer in securities registered, or required to be registered, with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934;

(ix) A futures commission merchant or an introducing broker registered, or required to be registered, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to section 4(f)(a)(2) of the Commodity Exchange Act; and

(x) A mutual fund;

(2) For purposes of §§ 1010.630 and 1010.670:

(i) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(ii) A commercial bank or trust company;

(iii) A private banker;

(iv) An agency or branch of a foreign bank in the United States;

(v) A credit union;

(vi) A savings association;

(vii) A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*); and

(viii) A broker or dealer in securities registered, or required to be registered, with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934.

(f) *Foreign financial institution.* (1) The term *foreign financial institution* means:

(i) A foreign bank;

(ii) Any branch or office located outside the United States of any covered financial institution described in paragraphs (e)(1)(viii) through (x) of this section;

(iii) Any other person organized under foreign law (other than a branch or office of such person in the United States) that, if it were located in the United States, would be a covered financial institution described in paragraphs (e)(1)(viii) through (x) of this section; and

(iv) Any person organized under foreign law (other than a branch or office of such person in the United States) that is engaged in the business of, and is readily identifiable as:

(A) A currency dealer or exchanger; or

(B) A money transmitter.

(2) For purposes of paragraph (f)(1)(iv) of this section, a person is not "engaged in the business" of a currency dealer, a currency exchanger or a money transmitter if such transactions are merely incidental to the person's business.

(g) *Foreign shell bank* means a foreign bank without a physical presence in any country.

(h) *Non-United States person or non-U.S. person* means a natural person who is neither a United States citizen nor is accorded the privilege of residing permanently in the United States pursuant to title 8 of the United States Code. For purposes of this paragraph (h), the definition of *person* in § 1010.100(mm) does not apply, notwithstanding paragraph (k) of this section.

(i) *Offshore banking license* means a license to conduct banking activities that prohibits the licensed entity from conducting banking activities with the citizens of, or in the local currency of, the jurisdiction that issued the license.

(j) *Owner.* (1) The term *owner* means any person who, directly or indirectly:

(i) Owns, controls, or has the power to vote 25 percent or more of any class of voting securities or other voting interests of a foreign bank; or

(ii) Controls in any manner the election of a majority of the directors (or individuals exercising similar functions) of a foreign bank.

(2) For purposes of this definition:

(i) Members of the same family shall be considered to be one person.

(ii) The term *same family* means parents, spouses, children, siblings, uncles, aunts, grandparents, grandchildren, first cousins, stepchildren, stepsiblings, parents-in-law, and spouses of any of the foregoing.

(iii) Each member of the same family who has an ownership interest in a foreign bank must be identified if the family is an owner as a result of aggregating the ownership interests of the members of the family. In determining the ownership interests of the same family, any voting interest of any family member shall be taken into account.

(iv) *Voting securities or other voting interests* means securities or other interests that entitle the holder to vote for or to select directors (or individuals exercising similar functions).

(k) *Person* has the meaning provided in § 1010.100(mm).

(l) *Physical presence* means a place of business that:

(1) Is maintained by a foreign bank;

(2) Is located at a fixed address (other than solely an electronic address or a post-office box) in a country in which the foreign bank is authorized to conduct banking activities, at which location the foreign bank:

(i) Employs one or more individuals on a full-time basis; and

(ii) Maintains operating records related to its banking activities; and

(3) Is subject to inspection by the banking authority that licensed the foreign bank to conduct banking activities.

(m) *Private banking account* means an account (or any combination of accounts) maintained at a covered financial institution that:

(1) Requires a minimum aggregate deposit of funds or other assets of not less than $1,000,000;

(2) Is established on behalf of or for the benefit of one or more non-U.S. persons who are direct or beneficial owners of the account; and

(3) Is assigned to, or is administered or managed by, in whole or in part, an officer, employee, or agent of a covered financial institution acting as a liaison between the covered financial institution and the direct or beneficial owner of the account.

(n) *Regulated affiliate.* (1) The term *regulated affiliate* means a foreign shell bank that:

(i) Is an affiliate of a depository institution, credit union, or foreign bank that maintains a physical presence in the United States or a foreign country, as applicable; and

(ii) Is subject to supervision by a banking authority in the country regulating such affiliated depository institution, credit union, or foreign bank.

(2) For purposes of this definition:

(i) *Affiliate* means a foreign bank that is controlled by, or is under common control with, a depository institution, credit union, or foreign bank.

(ii) *Control* means:

(A) Ownership, control, or power to vote 50 percent or more of any class of voting securities or other voting interests of another company; or

(B) Control in any manner the election of a majority of the directors (or individuals exercising similar functions) of another company.

(o) *Secretary* means the Secretary of the Treasury.

(p) *Senior foreign political figure.* (1) The term *senior foreign political figure* means:

(i) A current or former:

(A) Senior official in the executive, legislative, administrative, military, or judicial branches of a foreign government (whether elected or not);

(B) Senior official of a major foreign political party; or

(C) Senior executive of a foreign government-owned commercial enterprise;

(ii) A corporation, business, or other entity that has been formed by, or for the benefit of, any such individual;

(iii) An immediate family member of any such individual; and

(iv) A person who is widely and publicly known (or is actually known by the relevant covered financial institution) to be a close associate of such individual.

(2) For purposes of this definition:

(i) *Senior official or executive* means an individual with substantial authority over policy, operations, or the use of government-owned resources; and

(ii) *Immediate family member* means spouses, parents, siblings, children and a spouse's parents and siblings.

§ 1010.610 Due diligence programs for correspondent accounts for foreign financial institutions.

(a) *In general.* A covered financial institution shall establish a due diligence program that includes appropriate, specific, risk-based, and, where necessary, enhanced policies, procedures, and controls that are reasonably designed to enable the covered financial institution to detect and report, on an ongoing basis, any known or suspected money laundering activity conducted through or involving any correspondent account established, maintained, administered, or managed by such covered financial institution in the United States for a foreign financial institution. The due diligence program required by this section shall be a part of the anti-money laundering program otherwise required by this chapter. Such policies, procedures, and controls shall include:

(1) Determining whether any such correspondent account is subject to paragraph (b) of this section;

(2) Assessing the money laundering risk presented by such correspondent account, based on a consideration of all relevant factors, which shall include, as appropriate:

(i) The nature of the foreign financial institution's business and the markets it serves;

(ii) The type, purpose, and anticipated activity of such correspondent account;

(iii) The nature and duration of the covered financial institution's relationship with the foreign financial institution (and any of its affiliates);

(iv) The anti-money laundering and supervisory regime of the jurisdiction that issued the charter or license to the foreign financial institution, and, to the extent that information regarding such jurisdiction is reasonably available, of the jurisdiction in which any company that is an owner of the foreign financial institution is incorporated or chartered; and

(v) Information known or reasonably available to the covered financial institution about the foreign financial institution's anti-money laundering record; and

(3) Applying risk-based procedures and controls to each such correspondent account reasonably designed to detect and report known or suspected money laundering activity, including a periodic review of the correspondent account activity sufficient to determine consistency with information obtained about the type, purpose, and anticipated activity of the account.

(b) *Enhanced due diligence for certain foreign banks.* In the case of a correspondent account established, maintained, administered, or managed in the United States for a foreign bank described in paragraph (c) of this section, the due diligence program required by paragraph (a) of this section shall include enhanced due diligence procedures designed to ensure that the covered financial institution, at a minimum, takes reasonable steps to:

(1) Conduct enhanced scrutiny of such correspondent account to guard against money laundering and to identify and report any suspicious transactions in accordance with applicable law and regulation. This enhanced scrutiny shall reflect the risk assessment of the account and shall include, as appropriate:

(i) Obtaining and considering information relating to the foreign bank's anti-money laundering program to assess the risk of money laundering presented by the foreign bank's correspondent account;

(ii) Monitoring transactions to, from, or through the correspondent account in a manner reasonably designed to detect money laundering and suspicious activity; and

(iii)(A) Obtaining information from the foreign bank about the identity of any person with authority to direct transactions through any correspondent account that is a payable-through account, and the sources and beneficial owner of funds or other assets in the payable-through account.

(B) For purposes of paragraph (b)(1)(iii)(A) of this section, a *payable-through account* means a correspondent account maintained by a covered financial institution for a foreign bank by means of which the foreign bank permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States.

(2) Determine whether the foreign bank for which the correspondent account is established or maintained in turn maintains correspondent accounts for other foreign banks that use the foreign correspondent account established or maintained by the covered financial institution and, if so, take reasonable steps to obtain information relevant to assess and mitigate money laundering risks associated with the foreign bank's correspondent accounts for other foreign banks, including, as appropriate, the identity of those foreign banks.

(3)(i) Determine, for any correspondent account established or maintained for a foreign bank whose shares are not publicly traded, the identity of each owner of the foreign bank and the nature and extent of each owner's ownership interest.

(ii) For purposes of paragraph (b)(3)(i) of this section:

(A) *Owner* means any person who directly or indirectly owns, controls, or has the power to vote 10 percent or more of any class of securities of a foreign bank. For purposes of this paragraph (b)(3)(ii)(A):

(1) Members of the same family shall be considered to be one person; and

(2) Same family has the meaning provided in § 1010.605(j)(2)(ii).

(B) *Publicly traded* means shares that are traded on an exchange or an organized over-the-counter market that is regulated by a foreign securities authority as defined in section 3(a)(50) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(50)).

(c) *Foreign banks to be accorded enhanced due diligence.* The due diligence procedures described in paragraph (b) of this section are required for any correspondent account maintained for a foreign bank that operates under:

(1) An offshore banking license;

(2) A banking license issued by a foreign country that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the U.S. representative to the group or organization concurs; or

(3) A banking license issued by a foreign country that has been designated by the Secretary as warranting special measures due to money laundering concerns.

(d) *Special procedures when due diligence or enhanced due diligence cannot be performed.* The due diligence program required by paragraphs (a) and (b) of this section shall include procedures to be followed in circumstances in which a covered financial institution cannot perform appropriate due diligence or enhanced due diligence with respect to a correspondent account, including when the covered financial institution should refuse to open the account, suspend transaction activity, file a suspicious activity report, or close the account.

(e) *Applicability rules for general due diligence.* The provisions of paragraph (a) of this section apply to covered financial institutions as follows:

(1) *General rules*—(i) *Correspondent accounts established on or after July 5, 2006.* Effective July 5, 2006, the requirements of paragraph (a) of this section shall apply to each

correspondent account established on or after that date.

(ii) *Correspondent accounts established before July 5, 2006.* Effective October 2, 2006, the requirements of paragraph (a) of this section shall apply to each correspondent account established before July 5, 2006.

(2) *Special rules for certain banks.* Until the requirements of paragraph (a) of this section become applicable as set forth in paragraph (e)(1) of this section, the due diligence requirements of 31 U.S.C. 5318(i)(1) shall continue to apply to any covered financial institution listed in § 1010.605(e)(1)(i) through (vi).

(3) *Special rules for all other covered financial institutions.* The due diligence requirements of 31 U.S.C. 5318(i)(1) shall not apply to a covered financial institution listed in § 1010.605(e)(1)(vii) through (x) until the requirements of paragraph (a) of this section become applicable as set forth in paragraph (e)(1) of this section.

(f) *Applicability rules for enhanced due diligence.* The provisions of paragraph (b) of this section apply to covered financial institutions as follows:

(1) *General rules*—(i) *Correspondent accounts established on or after February 5, 2008.* Effective February 5, 2008, the requirements of paragraph (b) of this section shall apply to each correspondent account established on or after such date.

(ii) *Correspondent accounts established before February 5, 2008.* Effective May 5, 2008, the requirements of paragraph (b) of this section shall apply to each correspondent account established before February 5, 2008.

(2) *Special rules for certain banks.* Until the requirements of paragraph (b) of this section become applicable as set forth in paragraph (f)(1) of this section, the enhanced due diligence requirements of 31 U.S.C. 5318(i)(2) shall continue to apply to any covered financial institutions listed in § 1010.605(e)(1)(i) through (vi).

(3) *Special rules for all other covered financial institutions.* The enhanced due diligence requirements of 31 U.S.C. 5318(i)(2) shall not apply to a covered financial institution listed in § 1010.605(e)(1)(vii) through (x) until the requirements of paragraph (b) of this section become applicable, as set forth in paragraph (f)(1) of this section.

(g) *Exemptions*—(1) *Exempt financial institutions.* Except as provided in this section, a financial institution defined in 31 U.S.C. 5312(a)(2) or (c)(1), or § 1010.100(t) is exempt from the requirements of 31 U.S.C. 5318(i)(1) and (i)(2) pertaining to correspondent accounts.

(2) *Other compliance obligations of financial institutions unaffected.* Nothing in paragraph (g) of this section shall be construed to relieve a financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31, United States Code, and this chapter.

§ 1010.620 Due diligence programs for private banking accounts.

(a) *In general.* A covered financial institution shall maintain a due diligence program that includes policies, procedures, and controls that are reasonably designed to detect and report any known or suspected money laundering or suspicious activity conducted through or involving any private banking account that is established, maintained, administered, or managed in the United States by such financial institution. The due diligence program required by this section shall be a part of the anti-money laundering program otherwise required by this chapter.

(b) *Minimum requirements.* The due diligence program required by paragraph (a) of this section shall be designed to ensure, at a minimum, that the financial institution takes reasonable steps to:

(1) Ascertain the identity of all nominal and beneficial owners of a private banking account;

(2) Ascertain whether any person identified under paragraph (b)(1) of this section is a senior foreign political figure;

(3) Ascertain the source(s) of funds deposited into a private banking account and the purpose and expected use of the account; and

(4) Review the activity of the account to ensure that it is consistent with the information obtained about the client's source of funds, and with the stated purpose and expected use of the account, as needed to guard against money laundering, and to report, in accordance with applicable law and regulation, any known or suspected money laundering or suspicious activity conducted to, from, or through a private banking account.

(c) *Special requirements for senior foreign political figures.* (1) In the case of a private banking account for which a senior foreign political figure is a nominal or beneficial owner, the due diligence program required by paragraph (a) of this section shall include enhanced scrutiny of such account that is reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption.

(2) For purposes of this paragraph (c), the term *proceeds of foreign corruption* means any asset or property that is acquired by, through, or on behalf of a senior foreign political figure through misappropriation, theft, or embezzlement of public funds, the unlawful conversion of property of a foreign government, or through acts of bribery or extortion, and shall include any other property into which any such assets have been transformed or converted.

(d) *Special procedures when due diligence cannot be performed.* The due diligence program required by paragraph (a) of this section shall include procedures to be followed in circumstances in which a covered financial institution cannot perform appropriate due diligence with respect to a private banking account, including when the covered financial institution should refuse to open the account, suspend transaction activity, file a suspicious activity report, or close the account.

(e) *Applicability rules.* The provisions of this section apply to covered financial institutions as follows:

(1) *General rules*—(i) Private banking accounts established on or after July 5, 2006. Effective July 5, 2006, the requirements of this section shall apply to each private banking account established on or after such date.

(ii) Private banking accounts established before July 5, 2006. Effective October 2, 2006, the requirements of this section shall apply to each private banking account established before July 5, 2006.

(2) *Special rules for certain banks and for brokers or dealers in securities, futures commission merchants, and introducing brokers.* Until the requirements of this section become applicable as set forth in paragraph (e)(1) of this section, the requirements of 31 U.S.C. 5318(i)(3) shall continue to apply to a covered financial institution listed in § 1010.605(e)(1)(i) through (vi), (viii), or (ix).

(3) *Special rules for federally regulated trust banks or trust companies, and mutual funds.* Until the requirements of this section become applicable as set forth in paragraph (e)(1) of this section, the requirements of 31 U.S.C. 5318(i)(3) shall not apply to a covered financial institution listed in § 1010.605(e)(1)(vii) or (x).

(4) *Exemptions*—(i) *Exempt financial institutions.* Except as provided in this section, a financial institution defined in 31 U.S.C. 5312(a)(2) or (c)(1) or § 1010.100(t) is exempt from the requirements of 31 U.S.C. 5318(i)(3) pertaining to private banking accounts.

(ii) *Other compliance obligations of financial institutions unaffected.* Nothing in paragraph (e)(4) of this section shall be construed to relieve a financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31, United States Code, and this chapter.

§ 1010.630 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.

(a) *Requirements for covered financial institutions*—(1) *Prohibition on correspondent accounts for foreign shell banks.* (i) A covered financial institution shall not establish, maintain, administer, or manage a correspondent account in the United States for, or on behalf of, a foreign shell bank.

(ii) A covered financial institution shall take reasonable steps to ensure that any correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is not being used by that foreign bank to indirectly provide banking services to a foreign shell bank.

(iii) Nothing in paragraph (a)(1) of this section prohibits a covered financial institution from providing a correspondent account or banking services to a regulated affiliate.

(2) *Records of owners and agents.* (i) Except as provided in paragraph (a)(2)(ii) of this section, a covered financial institution that maintains a correspondent account in the United States for a foreign bank shall maintain records in the United States identifying the owners of each such foreign bank whose shares are not publicly traded and the name and street address of a person who resides in the United States and is authorized, and has agreed to be an agent to accept service of legal process for records regarding each such account.

(ii) A covered financial institution need not maintain records of the owners of any foreign bank that is required to have on file with the Federal Reserve Board a Form FR Y–7 that identifies the current owners of the foreign bank as required by such form.

(iii) For purposes of paragraph (a)(2)(i) of this section, *publicly traded* refers to shares that are traded on an exchange or on an organized over-the-counter market that is regulated by a foreign securities authority as defined in section 3(a)(50) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(50)).

(b) *Safe harbor.* Subject to paragraphs (c) and (d) of this section, a covered financial institution will be deemed to be in compliance with the requirements of paragraph (a) of this section with respect to a foreign bank if the covered financial institution obtains, at least once every three years, a certification or recertification from the foreign bank.

(c) *Interim verification.* If at any time a covered financial institution knows, suspects, or has reason to suspect, that any information contained in a certification or recertification provided by a foreign bank, or otherwise relied upon by the covered financial institution for purposes of this section, is no longer correct, the covered financial institution shall request that the foreign bank verify or correct such information, or shall take other appropriate measures to ascertain the accuracy of the information or to obtain correct information, as appropriate. See paragraph (d)(3) of this section for additional requirements if a foreign bank fails to verify or correct the information or if a covered financial institution cannot ascertain the accuracy of the information or obtain correct information.

(d) *Closure of correspondent accounts*—(1) *Accounts existing on October 28, 2002.* In the case of any correspondent account that was in existence on October 28, 2002, if the covered financial institution has not obtained a certification (or recertification) from the foreign bank, or has not otherwise obtained documentation of the information required by such certification (or recertification), on or before March 31, 2003, and at least once every three years thereafter, the covered financial institution shall close all correspondent accounts with such foreign bank within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transaction through any such account, other than transactions necessary to close the account.

(2) *Accounts established after October 28, 2002.* In the case of any correspondent account established after October 28, 2002, if the covered financial institution has not obtained a certification (or recertification), or has not otherwise obtained documentation of the information required by such certification (or recertification) within 30 calendar days after the date the account is established, and at least once every three years thereafter, the covered financial institution shall close all correspondent accounts with such foreign bank within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transaction through any such account, other than transactions necessary to close the account.

(3) *Verification of previously provided information.* In the case of a foreign bank with respect to which the covered financial institution undertakes to verify information pursuant to paragraph (c) of this section, if the covered financial institution has not obtained, from the foreign bank or otherwise, verification of the information or corrected information within 90 calendar days after the date of undertaking the verification, the covered financial institution shall close all correspondent accounts with such foreign bank within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transaction through any such account, other than transactions necessary to close the account.

(4) *Reestablishment of closed accounts and establishment of new accounts.* A covered financial institution shall not reestablish any account closed pursuant to this paragraph (d), and shall not establish any other correspondent account with the concerned foreign bank, until it obtains from the foreign bank the certification or the recertification, as appropriate.

(5) *Limitation on liability.* A covered financial institution shall not be liable to any person in any court or arbitration proceeding for terminating a correspondent account in accordance with this paragraph (d).

(e) *Recordkeeping requirement.* A covered financial institution shall retain the original of any document provided by a foreign bank, and the original or a copy of any document otherwise relied upon by the covered financial institution, for purposes of this section, for at least 5 years after the date that the covered financial institution no longer maintains any correspondent account for such foreign bank. A covered financial institution shall retain such records with respect to any foreign bank for such longer period as the Secretary may direct.

(f) *Special rules concerning information requested prior to October 28, 2002*—(1) *Definition.* For purposes of this paragraph (f) the term "Interim Guidance" means:

(i) The Interim Guidance of the Department of the Treasury dated November 20, 2001 and published in the **Federal Register** on November 27, 2001; or

(ii) The guidance issued in a document published in the **Federal Register** on December 28, 2001.

(2) *Use of Interim Guidance certification.* In the case of a

correspondent account in existence on October 28, 2002, the term "certification" as used in paragraphs (b), (c), (d)(1), and (d)(3) of this section shall also include the certification appended to the Interim Guidance, provided that such certification was requested prior to October 28, 2002 and obtained by the covered financial institution on or before December 26, 2002.

(3) *Recordkeeping requirement.* Paragraph (e) of this section shall apply to any document provided by a foreign bank, or otherwise relied upon by a covered financial institution, for purposes of the Interim Guidance.

§ 1010.640 [Reserved]

Special Measures Under Section 311 of the USA Patriot Act and Law Enforcement Access to Foreign Bank Records

§ 1010.651 Special measures against Burma.

(a) *Definitions.* For purposes of this section:

(1) *Burmese banking institution* means any foreign bank, as that term is defined in § 1010.100(u), chartered or licensed by Burma, including branches and offices located outside Burma.

(2) *Correspondent account* has the same meaning as provided in § 1010.605(c).

(3) *Covered financial institution* has the same meaning as provided in § 1010.605(e)(2) and also includes the following:

(i) A futures commission merchant or an introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and

(ii) An investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–5)) that is an open-end company (as defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) and that is registered, or required to register, with the Securities and Exchange Commission pursuant to that Act.

(b) *Requirements for covered financial institutions*—(1) *Prohibition on correspondent accounts.* A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, a Burmese banking institution.

(2) *Prohibition on indirect correspondent accounts.* (i) If a covered financial institution has or obtains knowledge that a correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is being used by the foreign bank to provide banking services indirectly to a Burmese banking institution, the covered financial institution shall ensure that the correspondent account is no longer used to provide such services, including, where necessary, terminating the correspondent account; and

(ii) A covered financial institution required to terminate an account pursuant to paragraph (b)(2)(i) of this section:

(A) Shall do so within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transactions through such account, other than those necessary to close the account; and

(B) May reestablish an account closed pursuant to this paragraph if it determines that the account will not be used to provide banking services indirectly to a Burmese banking institution.

(3) *Exception.* The provisions of paragraphs (b)(1) and (2) of this section shall not apply to a correspondent account provided that the operation of such account is not prohibited by Executive Order 13310 and the transactions involving Burmese banking institutions that are conducted through the correspondent account are limited solely to transactions that are exempted from, or otherwise authorized by regulation, order, directive, or license pursuant to, Executive Order 13310.

(4) *Reporting and recordkeeping not required.* Nothing in this section shall require a covered financial institution to maintain any records, obtain any certification, or report any information not otherwise required by law or regulation.

§ 1010.652 Special measures against Myanmar Mayflower Bank and Asia Wealth Bank.

(a) *Definitions.* For purposes of this section:

(1) *Asia Wealth Bank* means all headquarters, branches, and offices of Asia Wealth Bank operating in Burma or in any jurisdiction.

(2) *Correspondent account* has the same meaning as provided in § 1010.605(c).

(3) *Covered financial institution* has the same meaning as provided in § 1010.605(e)(2) and also includes the following:

(i) A futures commission merchant or an introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and

(ii) An investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–5)) that is an open-end company (as defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) and that is registered, or required to register, with the Securities and Exchange Commission pursuant to that Act.

(4) *Myanmar Mayflower Bank* means all headquarters, branches, and offices of Myanmar Mayflower Bank operating in Burma or in any jurisdiction.

(b) *Requirements for covered financial institutions*—(1) *Prohibition on correspondent accounts.* A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, Myanmar Mayflower Bank or Asia Wealth Bank.

(2) *Prohibition on indirect correspondent accounts.* (i) If a covered financial institution has or obtains knowledge that a correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is being used by the foreign bank to provide banking services indirectly to Myanmar Mayflower Bank or Asia Wealth Bank, the covered financial institution shall ensure that the correspondent account is no longer used to provide such services, including, where necessary, terminating the correspondent account; and

(ii) A covered financial institution required to terminate an account pursuant to paragraph (b)(2)(i) of this section:

(A) Shall do so within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transactions through such account, other than those necessary to close the account; and

(B) May reestablish an account closed pursuant to this paragraph if it determines that the account will not be used to provide banking services indirectly to Myanmar Mayflower Bank or Asia Wealth Bank.

(3) *Reporting and recordkeeping not required.* Nothing in this section shall require a covered financial institution to maintain any records, obtain any certification, or to report any information not otherwise required by law or regulation.

§ 1010.653 Special measures against Commercial Bank of Syria.

(a) *Definitions.* For purposes of this section:

(1) *Commercial Bank of Syria* means any branch, office, or subsidiary of Commercial Bank of Syria operating in

Syria or in any other jurisdiction, including Syrian Lebanese Commercial Bank.

(2) *Correspondent account* has the same meaning as provided in § 1010.605(c)(1)(ii).

(3) *Covered financial institution* includes:

(i) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(ii) A commercial bank;

(iii) An agency or branch of a foreign bank in the United States;

(iv) A federally insured credit union;

(v) A savings association;

(vi) A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*);

(vii) A trust bank or trust company that is federally regulated and is subject to an anti-money laundering program requirement;

(viii) A broker or dealer in securities registered, or required to be registered, with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934;

(ix) A futures commission merchant or an introducing broker registered, or required to be registered, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to section 4(f)(a)(2) of the Commodity Exchange Act; and

(x) A mutual fund, which means an investment company (as defined in section 3(a)(1) of the Investment Company Act of 1940 ((“Investment Company Act”) (15 U.S.C. 80a–3(a)(1))) that is an open-end company (as defined in section 5(a)(1) of the Investment Company Act (15 U.S.C. 80a–5(a)(1))) and that is registered, or is required to register with the Securities and Exchange Commission pursuant to the Investment Company Act.

(4) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(b) *Requirements for covered financial institutions*—(1) *Prohibition on direct use of correspondent accounts.* A covered financial institution shall terminate any correspondent account that is open or maintained in the United States for, or on behalf of, Commercial Bank of Syria.

(2) *Due diligence of correspondent accounts to prohibit indirect use.* (i) A covered financial institution shall apply due diligence to its correspondent accounts that is reasonably designed to guard against their indirect use by Commercial Bank of Syria. At a minimum, that due diligence must include:

(A) Notifying correspondent account holders that the correspondent account may not be used to provide Commercial Bank of Syria with access to the covered financial institution; and

(B) Taking reasonable steps to identify any indirect use of its correspondent accounts by Commercial Bank of Syria, to the extent that such indirect use can be determined from transactional records maintained in the covered financial institution’s normal course of business.

(ii) A covered financial institution shall take a risk-based approach when deciding what, if any, additional due diligence measures it should adopt to guard against the indirect use of its correspondent accounts by Commercial Bank of Syria.

(iii) A covered financial institution that obtains knowledge that a correspondent account is being used by the foreign bank to provide indirect access to Commercial Bank of Syria shall take all appropriate steps to prevent such indirect access, including, where necessary, terminating the correspondent account.

(iv) A covered financial institution required to terminate a correspondent account pursuant to paragraph (b)(2)(iii) of this section:

(A) Should do so within a commercially reasonable time, and should not permit the foreign bank to establish any new positions or execute any transaction through such correspondent account, other than those necessary to close the correspondent account; and

(B) May reestablish a correspondent account closed pursuant to this paragraph if it determines that the correspondent account will not be used to provide banking services indirectly to Commercial Bank of Syria.

(3) *Recordkeeping and reporting.* (i) A covered financial institution is required to document its compliance with the notice requirement set forth in paragraph (b)(2)(i)(A) of this section.

(ii) Nothing in this section shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

§ 1010.654 Special measures against VEF Bank.

(a) *Definitions.* For purposes of this section:

(1) *Correspondent account* has the same meaning as provided in § 1010.605(c)(1)(ii).

(2) *Covered financial institution* includes:

(i) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(ii) A commercial bank;

(iii) An agency or branch of a foreign bank in the United States;

(iv) A federally insured credit union;

(v) A savings association;

(vi) A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*);

(vii) A trust bank or trust company that is federally regulated and is subject to an anti-money laundering program requirement;

(viii) A broker or dealer in securities registered, or required to be registered, with the U.S. Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934;

(ix) A futures commission merchant or an introducing broker registered, or required to be registered, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to section 4(f)(a)(2) of the Commodity Exchange Act; and

(x) A mutual fund, which means an investment company (as defined in section 3(a)(1) of the Investment Company Act of 1940 ((“Investment Company Act”) (15 U.S.C. 80a–3(a)(1))) that is an open-end company (as defined in section 5(a)(1) of the Investment Company Act (15 U.S.C. 80a–5(a)(1))) and that is registered, or is required to register with the Securities and Exchange Commission pursuant to the Investment Company Act.

(3) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(4) *VEF Bank* means any branch, office, or subsidiary of joint stock company VEF Banka operating in the Republic of Latvia or in any other jurisdiction. The one known VEF Bank subsidiary, Veiksmes līzings, and any branches or offices, are included in the definition.

(b) *Requirements for covered financial institutions*—(1) *Prohibition on direct use of correspondent accounts.* A covered financial institution shall terminate any correspondent account that is opened or maintained in the United States for, or on behalf of, VEF Bank.

(2) *Due diligence of correspondent accounts to prohibit indirect use.* (i) A covered financial institution shall apply

due diligence to its correspondent accounts that is reasonably designed to guard against their indirect use by VEF Bank. At a minimum, that due diligence must include:

(A) Notifying correspondent accountholders that the correspondent account may not be used to provide VEF Bank with access to the covered financial institution; and

(B) Taking reasonable steps to identify any indirect use of its correspondent accounts by VEF Bank, to the extent that such indirect use can be determined from transactional records maintained in the covered financial institution's normal course of business.

(ii) A covered financial institution shall take a risk-based approach when deciding what, if any, additional due diligence measures it should adopt to guard against the indirect use of its correspondent accounts by VEF Bank.

(iii) A covered financial institution that obtains knowledge that a correspondent account is being used by the foreign bank to provide indirect access to VEF Bank shall take all appropriate steps to prevent such indirect access, including, where necessary, terminating the correspondent account.

(iv) A covered financial institution required to terminate a correspondent account pursuant to paragraph (b)(2)(iii) of this section:

(A) Should do so within a commercially reasonable time, and should not permit the foreign bank to establish any new positions or execute any transaction through such correspondent account, other than those necessary to close the correspondent account; and

(B) May reestablish a correspondent account closed pursuant to this paragraph if it determines that the correspondent account will not be used to provide banking services indirectly to VEF Bank.

(3) *Recordkeeping and reporting.* (i) A covered financial institution is required to document its compliance with the notice requirement set forth in paragraph (b)(2)(i)(A) of this section.

(ii) Nothing in this section shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

§ 1010.655 Special measures against Banco Delta Asia.

(a) *Definitions.* For purposes of this section:

(1) *Banco Delta Asia* means all branches, offices, and subsidiaries of Banco Delta Asia operating in any jurisdiction, including its subsidiaries Delta Asia Credit Limited and Delta Asia Insurance Limited.

(2) *Correspondent account* has the same meaning as provided in § 1010.605(c)(1)(ii).

(3) *Covered financial institution* includes:

(i) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(ii) A commercial bank;

(iii) An agency or branch of a foreign bank in the United States;

(iv) A federally insured credit union;

(v) A savings association;

(vi) A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*);

(vii) A trust bank or trust company that is federally regulated and is subject to an anti-money laundering program requirement;

(viii) A broker or dealer in securities registered, or required to be registered, with the U.S. Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934;

(ix) A futures commission merchant or an introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to section 4(f)(a)(2) of the Commodity Exchange Act; and

(x) A mutual fund, which means an investment company (as defined in section 3(a)(1) of the Investment Company Act of 1940 ((“Investment Company Act”) (15 U.S.C. 80a–3(a)(1))) that is an open-end company (as defined in section 5(a)(1) of the Investment Company Act (15 U.S.C. 80a–5(a)(1))) and that is registered, or is required to register with the Securities and Exchange Commission pursuant to the Investment Company Act.

(4) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(b) *Requirements for covered financial institutions*—(1) *Prohibition on direct use of correspondent accounts.* A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, Banco Delta Asia.

(2) *Due diligence of correspondent accounts to prohibit indirect use.*

(i) A covered financial institution shall apply due diligence to its correspondent accounts that is reasonably designed to guard against their indirect use by Banco Delta Asia. At a minimum, that due diligence must include:

(A) Notifying correspondent accountholders the correspondent account may not be used to provide Banco Delta Asia with access to the covered financial institution; and

(B) Taking reasonable steps to identify any indirect use of its correspondent accounts by Banco Delta Asia, to the extent that such indirect use can be determined from transactional records maintained in the covered financial institution's normal course of business.

(ii) A covered financial institution shall take a risk-based approach when deciding what, if any, additional due diligence measures it should adopt to guard against the indirect use of its correspondent accounts by Banco Delta Asia.

(iii) A covered financial institution that obtains knowledge that a correspondent account is being used by the foreign bank to provide indirect access to Banco Delta Asia shall take all appropriate steps to prevent such indirect access, including, where necessary, terminating the correspondent account.

(iv) A covered financial institution required to terminate a correspondent account pursuant to paragraph (b)(2)(iii) of this section:

(A) Should do so within a commercially reasonable time, and should not permit the foreign bank to establish any new positions or execute any transaction through such correspondent account, other than those necessary to close the correspondent account; and

(B) May reestablish a correspondent account closed pursuant to this paragraph if it determines that the correspondent account will not be used to provide banking services indirectly to Banco Delta Asia.

(3) *Recordkeeping and reporting.* (i) A covered financial institution is required to document its compliance with the notice requirement set forth in paragraph (b)(2)(i)(A) of this section.

(ii) Nothing in this section shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

§ 1010.670 Summons or subpoena of foreign bank records; Termination of correspondent relationship.

(a) *Definitions.* The definitions in § 1010.605 apply to this section.

(b) *Issuance to foreign banks.* The Secretary or the Attorney General may issue a summons or subpoena to any

foreign bank that maintains a correspondent account in the United States and may request records related to such correspondent account, including records maintained outside of the United States relating to the deposit of funds into the foreign bank. The summons or subpoena may be served on the foreign bank in the United States if the foreign bank has a representative in the United States, or in a foreign country pursuant to any mutual legal assistance treaty, multilateral agreement, or other request for international law enforcement assistance.

(c) *Issuance to covered financial institutions.* Upon receipt of a written request from a Federal law enforcement officer for information required to be maintained by a covered financial institution under paragraph (a)(2) of § 1010.630, the covered financial institution shall provide the information to the requesting officer not later than 7 days after receipt of the request.

(d) *Termination upon receipt of notice.* A covered financial institution shall terminate any correspondent relationship with a foreign bank not later than 10 business days after receipt of written notice from the Secretary or the Attorney General (in each case, after consultation with the other) that the foreign bank has failed:

(1) To comply with a summons or subpoena issued under paragraph (b) of this section; or

(2) To initiate proceedings in a United States court contesting such summons or subpoena.

(e) *Limitation on liability.* A covered financial institution shall not be liable to any person in any court or arbitration proceeding for terminating a correspondent relationship in accordance with paragraph (d) of this section.

(f) *Failure to terminate relationship.* Failure to terminate a correspondent relationship in accordance with this section shall render the covered financial institution liable for a civil penalty of up to $10,000 per day until the correspondent relationship is so terminated.

Subpart G—Administrative Rulings

§ 1010.710 Scope.

This subpart provides that the Director, FinCEN, or his designee, either unilaterally or upon request, may issue administrative rulings interpreting the application of this chapter.

§ 1010.711 Submitting requests.

(a) Each request for an administrative ruling must be in writing and contain the following information:

(1) A complete description of the situation for which the ruling is requested,

(2) A complete statement of all material facts related to the subject transaction,

(3) A concise and unambiguous question to be answered,

(4) A statement certifying, to the best of the requestor's knowledge and belief, that the question to be answered is not applicable to any ongoing state or Federal investigation, litigation, grand jury proceeding, or proceeding before any other governmental body involving either the requestor, any other party to the subject transaction, or any other party with whom the requestor has an agency relationship,

(5) A statement identifying any information in the request that the requestor considers to be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, and the reason therefor,

(6) If the subject situation is hypothetical, a statement justifying why the particular situation described warrants the issuance of a ruling,

(7) The signature of the person making the request, or

(8) If an agent makes the request, the signature of the agent and a statement certifying the authority under which the request is made.

(b) A request filed by a corporation shall be signed by a corporate officer and a request filed by a partnership shall be signed by a partner.

(c) A request may advocate a particular proposed interpretation and may set forth the legal and factual basis for that interpretation.

(d) Requests shall be addressed to: Director, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183.

(e) The requester shall advise the Director, FinCEN, immediately in writing of any subsequent change in any material fact or statement submitted with a ruling request in conformity with paragraph (a) of this section.

§ 1010.712 Nonconforming requests.

The Director, FinCEN, or his designee shall notify the requester if the ruling request does not conform with the requirements of § 1010.711. The notice shall be in writing and shall describe the requirements that have not been met. A request that is not brought into conformity with such requirements within 30 days from the date of such notice, unless extended for good cause by FinCEN, shall be treated as though it were withdrawn.

§ 1010.713 Oral communications.

(a) The Director of FinCEN or his designee will not issue administrative rulings in response to oral requests. Oral opinions or advice by Treasury, Customs and Border Protection, the Internal Revenue Service, the Office of the Comptroller of the Currency, or any other bank supervisory agency personnel, regarding the interpretation and application of this chapter, do not bind FinCEN and carry no precedential value.

(b) A person who has made a ruling request in conformity with § 1010.711 may request an opportunity for oral discussion of the issues presented in the request. The request should be made to the Director, FinCEN, and any decision to grant such a conference is wholly within the discretion of the Director. Personal conferences or telephone conferences may be scheduled only for the purpose of affording the requester an opportunity to discuss freely and openly the matters set forth in the administrative ruling request. Accordingly, the conferees will not be bound by any argument or position advocated or agreed to, expressly or impliedly, during the conference. Any new arguments or facts put forth by the requester at the meeting must be reduced to writing by the requester and submitted in conformity with § 1010.711 before they may be considered in connection with the request.

§ 1010.714 Withdrawing requests.

A person may withdraw a request for an administrative ruling at any time before the ruling has been issued.

§ 1010.715 Issuing rulings.

The Director, FinCEN, or his designee may issue a written ruling interpreting the relationship between this chapter and each situation for which such a ruling has been requested in conformity with § 1010.711. A ruling issued under this section shall bind FinCEN only in the event that the request describes a specifically identified actual situation. A ruling issued under this section shall have precedential value, and hence may be relied upon by others similarly situated, only if FinCEN makes it available to the public through publication on the FinCEN Web site under the heading "Administrative rulings" or other appropriate forum. All rulings with precedential value will be available by mail to any person upon written request specifically identifying the ruling sought. FinCEN will make every effort to respond to each requestor within 90 days of receiving a request.

(Approved by the Office of Management and Budget under control number 1506–0009)

§ 1010.716 Modifying or rescinding rulings.

(a) The Director, FinCEN, or his designee may modify or rescind any ruling made pursuant to § 1010.715:

(1) When, in light of changes in the statute or regulations, the ruling no longer sets forth the interpretation of the Director, FinCEN with respect to the described situation,

(2) When any fact or statement submitted in the original ruling request is found to be materially inaccurate or incomplete, or

(3) For other good cause.

(b) Any person may submit to the Director, FinCEN a written request that an administrative ruling be modified or rescinded. The request should conform to the requirements of § 1010.711, explain why rescission or modification is warranted, and refer to any reasons in paragraph (a) of this section that are relevant. The request may advocate an alternative interpretation and may set forth the legal and factual basis for that interpretation.

(c) FinCEN shall modify an existing administrative ruling by issuing a new ruling that rescinds the relevant prior ruling. Once rescinded, an administrative ruling shall no longer have any precedential value.

(d) An administrative ruling may be modified or rescinded retroactively with respect to one or more parties to the original ruling request if the Director, FinCEN, determines that:

(1) A fact or statement in the original ruling request was materially inaccurate or incomplete,

(2) The requestor failed to notify in writing FinCEN of a material change to any fact or statement in the original request, or

(3) A party to the original request acted in bad faith when relying upon the ruling.

§ 1010.717 Disclosing information.

(a) Any part of any administrative ruling, including names, addresses, or information related to the business transactions of private parties, may be disclosed pursuant to a request under the Freedom of Information Act, 5 U.S.C. 552. If the request for an administrative ruling contains information which the requestor wishes to be considered for exemption from disclosure under the Freedom of Information Act, the requestor should clearly identify such portions of the request and the reasons why such information should be exempt from disclosure.

(b) A requestor claiming an exemption from disclosure will be notified, at least 10 days before the administrative ruling is issued, of a decision not to exempt any of such information from disclosure so that the underlying request for an administrative ruling can be withdrawn if the requestor so chooses.

Subpart H—Enforcement; Penalties; and Forfeiture

§ 1010.810 Enforcement.

(a) Overall authority for enforcement and compliance, including coordination and direction of procedures and activities of all other agencies exercising delegated authority under this chapter, is delegated to the Director, FinCEN.

(b) Authority to examine institutions to determine compliance with the requirements of this chapter is delegated as follows:

(1) To the Comptroller of the Currency with respect to those financial institutions regularly examined for safety and soundness by national bank examiners;

(2) To the Board of Governors of the Federal Reserve System with respect to those financial institutions regularly examined for safety and soundness by Federal Reserve bank examiners;

(3) To the Federal Deposit Insurance Corporation with respect to those financial institutions regularly examined for safety and soundness by FDIC bank examiners;

(4) To the Federal Home Loan Bank Board with respect to those financial institutions regularly examined for safety and soundness by FHLBB bank examiners;

(5) To the Chairman of the Board of the National Credit Union Administration with respect to those financial institutions regularly examined for safety and soundness by NCUA examiners.

(6) To the Securities and Exchange Commission with respect to brokers and dealers in securities and investment companies as that term is defined in the Investment Company Act of 1940 (15 U.S.C. 80–1 *et seq.*);

(7) To the Commissioner of Customs and Border Protection with respect to §§ 1010.340 and 1010.830;

(8) To the Commissioner of Internal Revenue with respect to all financial institutions, except brokers or dealers in securities, mutual funds, futures commission merchants, introducing brokers in commodities, and commodity trading advisors, not currently examined by Federal bank supervisory agencies for soundness and safety; and

(9) To the Commodity Futures Trading Commission with respect to futures commission merchants, introducing brokers in commodities, and commodity trading advisors.

(c) Authority for investigating criminal violations of this chapter is delegated as follows:

(1) To the Commissioner of Customs and Border Protection with respect to § 1010.340;

(2) To the Commissioner of Internal Revenue except with respect to § 1010.340.

(d) Authority for the imposition of civil penalties for violations of this chapter lies with the Director of FinCEN.

(e) Periodic reports shall be made to the Director, FinCEN by each agency to which compliance authority has been delegated under paragraph (b) of this section. These reports shall be in such a form and submitted at such intervals as the Director, FinCEN may direct. Evidence of specific violations of any of the requirements of this chapter may be submitted to the Director, FinCEN at any time.

(f) The Director, FinCEN or his delegate, and any agency to which compliance has been delegated under paragraph (b) of this section, may examine any books, papers, records, or other data of domestic financial institutions relevant to the recordkeeping or reporting requirements of this chapter.

(g) The authority to enforce the provisions of 31 U.S.C. 5314 and §§ 1010.350 and 1010.420 of this chapter has been redelegated from FinCEN to the Commissioner of Internal Revenue by means of a Memorandum of Agreement between FinCEN and IRS. Such authority includes, with respect to 31 U.S.C. 5314 and 1010.350 and 1010.420 of this chapter, the authority to: assess and collect civil penalties under 31 U.S.C. 5321 and 31 CFR 1010.820; investigate possible civil violations of these provisions (in addition to the authority already provided at paragraph (c)(2)) of this section); employ the summons power of subpart I of this part 1010; issue administrative rulings under subpart G of this part 1010; and take any other action reasonably necessary for the enforcement of these and related provisions, including pursuit of injunctions.

§ 1010.820 Civil penalty.

(a) For any willful violation, committed on or before October 12, 1984, of any reporting requirement for financial institutions under this chapter or of any recordkeeping requirements of §§ 1010.311, 1010.313, 1020.315, 1021.311 or 1021.313, the Secretary may

assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed $1,000.

(b) For any willful violation committed after October 12, 1984 and before October 28, 1986, of any reporting requirement for financial institutions under this chapter or of the recordkeeping requirements of § 1010.420, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed $10,000.

(c) For any willful violation of any recordkeeping requirement for financial institutions, except violations of § 1010.420, under this chapter, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed $1,000.

(d) For any failure to file a report required under § 1010.340 or for filing such a report containing any material omission or misstatement, the Secretary may assess a civil penalty up to the amount of the currency or monetary instruments transported, mailed or shipped, less any amount forfeited under § 1010.830.

(e) For any willful violation of § 1010.314 committed after January 26, 1987, the Secretary may assess upon any person a civil penalty not to exceed the amount of coins and currency involved in the transaction with respect to which such penalty is imposed. The amount of any civil penalty assessed under this paragraph shall be reduced by the amount of any forfeiture to the United States in connection with the transaction for which the penalty was imposed.

(f) For any willful violation committed after October 27, 1986, of any reporting requirement for financial institutions under this chapter (except § 1010.350, § 1010.360 or § 1010.420), the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed the greater of the amount (not to exceed $100,000) involved in the transaction or $25,000.

(g) For any willful violation committed after October 27, 1986, of any requirement of § 1010.350, § 1010.360 or § 1010.420, the Secretary may assess upon any person, a civil penalty:

(1) In the case of a violation of § 1010.360 involving a transaction, a civil penalty not to exceed the greater of the amount (not to exceed $100,000) of the transaction, or $25,000; and

(2) In the case of a violation of § 1010.350 or § 1010.420 involving a failure to report the existence of an account or any identifying information required to be provided with respect to such account, a civil penalty not to exceed the greater of the amount (not to exceed $100,000) equal to the balance in the account at the time of the violation, or $25,000.

(h) For each negligent violation of any requirement of this chapter, committed after October 27, 1986, the Secretary may assess upon any financial institution a civil penalty not to exceed $500.

§ 1010.830 Forfeiture of currency or monetary instruments.

Any currency or other monetary instruments which are in the process of any transportation with respect to which a report is required under § 1010.340 are subject to seizure and forfeiture to the United States if such report has not been filed as required in § 1010.360, or contains material omissions or misstatements. The Secretary may, in his sole discretion, remit or mitigate any such forfeiture in whole or in part upon such terms and conditions as he deems reasonable.

§ 1010.840 Criminal penalty.

(a) Any person who willfully violates any provision of Title I of Public Law 91–508, or of this chapter authorized thereby may, upon conviction thereof, be fined not more than $1,000 or be imprisoned not more than 1 year, or both. Such person may in addition, if the violation is of any provision authorized by Title I of Public Law 91–508 and if the violation is committed in furtherance of the commission of any violation of Federal law punishable by imprisonment for more than 1 year, be fined not more than $10,000 or be imprisoned not more than 5 years, or both.

(b) Any person who willfully violates any provision of Title II of Public Law 91–508, or of this chapter authorized thereby, may, upon conviction thereof, be fined not more than $250,000 or be imprisoned not more than 5 years, or both.

(c) Any person who willfully violates any provision of Title II of Public Law 91–508, or of this chapter authorized thereby, where the violation is either

(1) Committed while violating another law of the United States, or

(2) Committed as part of a pattern of any illegal activity involving more than $100,000 in any 12-month period, may, upon conviction thereof, be fined not more than $500,000 or be imprisoned not more than 10 years, or both.

(d) Any person who knowingly makes any false, fictitious or fraudulent statement or representation in any report required by this chapter may, upon conviction thereof, be fined not more than $10,000 or be imprisoned not more than 5 years, or both.

§ 1010.850 Enforcement authority with respect to transportation of currency or monetary instruments.

(a) If a customs officer has reasonable cause to believe that there is a monetary instrument being transported without the filing of the report required by §§ 1010.340 and 1010.360 of this chapter, he may stop and search, without a search warrant, a vehicle, vessel, aircraft, or other conveyance, envelope or other container, or person entering or departing from the United States with respect to which or whom the officer reasonably believes is transporting such instrument.

(b) If the Secretary has reason to believe that currency or monetary instruments are in the process of transportation and with respect to which a report required under § 1010.340 has not been filed or contains material omissions or misstatements, he may apply to any court of competent jurisdiction for a search warrant. Upon a showing of probable cause, the court may issue a warrant authorizing the search of any or all of the following:

(1) One or more designated persons.

(2) One or more designated or described places or premises.

(3) One or more designated or described letters, parcels, packages, or other physical objects.

(4) One or more designated or described vehicles. Any application for a search warrant pursuant to this section shall be accompanied by allegations of fact supporting the application.

(c) This section is not in derogation of the authority of the Secretary under any other law or regulation.

Subpart I—Summons

§ 1010.911 General.

For any investigation for the purpose of civil enforcement of violations of the Bank Secrecy Act, or any regulation issued pursuant to the Bank Secrecy Act, the Secretary or delegate of the Secretary may summon a financial institution or an officer or employee of a financial institution (including a

former officer or employee), or any person having possession, custody, or care of any of the records and reports required under the Bank Secrecy Act or this chapter to appear before the Secretary or his delegate, at a time and place named in the summons, and to give testimony, under oath, and be examined, and to produce such books, papers, records, or other data as may be relevant or material to such investigation.

§ 1010.912 Persons who may issue summons.

For purposes of this chapter, the following officials are hereby designated as delegates of the Secretary who are authorized to issue a summons under § 1010.911, solely for the purposes of civil enforcement of this chapter:

(a) *FinCEN.* The Director, FinCEN.

(b) *Internal Revenue Service.* Except with respect to § 1010.340 of this chapter, the Commissioner, the Deputy Commissioner, or a delegate of either official, and, for the purposes of perfecting seizures and forfeitures related to civil enforcement of this chapter, the Chief (Criminal Investigation) or a delegate.

(c) *Customs and Border Protection.* With respect to § 1010.340 of this chapter, the Commissioner, the Deputy Commissioner, the Assistant Commissioner (Enforcement), Regional Commissioners, Assistant Regional Commissioners (Enforcement), and Special Agents in Charge.

§ 1010.913 Contents of summons.

(a) *Summons for testimony.* Any summons issued under § 1010.911 of this chapter to compel the appearance and testimony of a person shall state:

(1) The name, title, address, and telephone number of the person before whom the appearance shall take place (who may be a person other than the persons who are authorized to issue such a summons under § 1010.912 of this chapter);

(2) The address to which the person summoned shall report for the appearance;

(3) The date and time of the appearance; and

(4) The name, title, address, and telephone number of the person who has issued the summons.

(b) *Summons of books, papers, records, or data.* Any summons issued under § 1010.911 of this chapter to require the production of books, papers, records, or other data shall describe the materials to be produced with reasonable specificity, and shall state:

(1) The name, title, address, and telephone number of the person to whom the materials shall be produced (who may be a person other than the persons who are authorized to issue such a summons under § 1010.912 of this chapter);

(2) The address at which the person summoned shall produce the materials, not to exceed 500 miles from any place where the financial institution operates or conducts business in the United States;

(3) The specific manner of production, whether by personal delivery, by mail, or by messenger service;

(4) The date and time for production; and

(5) The name, title, address, and telephone number of the person who has issued the summons.

§ 1010.914 Service of summons.

(a) *Who may serve.* Any delegate of the Secretary authorized under § 1010.912 of this chapter to issue a summons, or any other person authorized by law to serve summonses or other process, is hereby authorized to serve a summons issued under this chapter.

(b) *Manner of service.* Service of a summons may be made—

(1) Upon any person, by registered mail, return receipt requested, directed to the person summoned;

(2) Upon a natural person by personal delivery; or

(3) Upon any other person by delivery to an officer, managing or general agent, or any other agent authorized to receive service of process.

(c) *Certificate of service.* The summons shall contain a certificate of service to be signed by the server of the summons. On the hearing of an application for enforcement of the summons, the certificate of service signed by the person serving the summons shall be evidence of the facts it states.

§ 1010.915 Examination of witnesses and records.

(a) *General.* Any delegate of the Secretary authorized under § 1010.912 of this chapter to issue a summons, or any officer or employee of the Treasury Department or any component thereof who is designated by that person (whether in the summons or otherwise), is hereby authorized to receive evidence and to examine witnesses pursuant to the summons. Any person authorized by law may administer any oaths and affirmations that may be required under this subpart.

(b) *Testimony taken under oath.* Testimony of any person under this chapter may be taken under oath, and shall be taken down in writing by the person examining the person summoned or shall be otherwise transcribed. After the testimony of a witness has been transcribed, a copy of that transcript shall be made available to the witness upon request, unless for good cause the person issuing the summons determines, under 5 U.S.C. 555, that a copy should not be provided. If such a determination has been made, the witness shall be limited to inspection of the official transcript of the testimony.

(c) *Disclosure of summons, testimony, or records.* Unless the Secretary or a delegate of the Secretary listed under § 1010.912(a) of this chapter so authorizes in writing, or it is otherwise required by law, no delegate of the Secretary listed under § 1010.912 (b) or (c) of this chapter or other officer or employee of the Treasury Department or any component thereof shall—

(1) Make public the name of any person to whom a summons has been issued under this chapter, or release any information to the public concerning that person or the issuance of a summons to that person prior to the time and date set for that person's appearance or production of records; or

(2) Disclose any testimony taken (including the name of the witness) or material presented pursuant to the summons, to any person other than an officer or employee of the Treasury Department or of any component thereof. Nothing in the preceding sentence shall preclude a delegate of the Secretary, or other officer or employee of the Treasury Department or any component thereof, from disclosing testimony taken, or material presented pursuant to a summons issued under this chapter, to any person in order to obtain necessary information for investigative purposes relating to the performance of official duties, or to any officer or employee of the Department of Justice in connection with a possible violation of Federal law.

§ 1010.916 Enforcement of summons.

In the case of contumacy by, or refusal to obey a summons issued to, any person under this chapter, the Secretary or any delegate of the Secretary listed under § 1010.912 of this chapter shall refer the matter to the Attorney General or delegate of the Attorney General (including any United States Attorney or Assistant United States Attorney, as appropriate), who may bring an action to compel compliance with the summons in any court of the United States within the jurisdiction of which the investigation which gave rise to the summons being or has been carried on,

the jurisdiction in which the person summoned is a resident, or the jurisdiction in which the person summoned carries on business or may be found. When a referral is made by a delegate of the Secretary other than a delegate named in § 1010.912(a) of this chapter, prompt notification of the referral must be made to the Director, FinCEN. The court may issue an order requiring the person summoned to appear before the Secretary or delegate of the Secretary to produce books, papers, records, or other data, to give testimony as may be necessary in order to explain how such material was compiled and maintained, and to pay the costs of the proceeding. Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any case under this section may be served in any judicial district in which such person may be found.

§ 1010.917 Payment of expenses.

Persons summoned under this chapter shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States. The United States shall not be liable for any other expense incurred in connection with the production of books, papers, records, or other data under this chapter.

Subpart J—Miscellaneous

§ 1010.920 Access to records.

Except as provided in §§ 1020.410(b)(1), 1021.410(a), and 1023.410(a)(1), and except for the purpose of assuring compliance with the recordkeeping and reporting requirements of this chapter, this chapter does not authorize the Secretary or any other person to inspect or review the records required to be maintained by this chapter. Other inspection, review or access to such records is governed by other applicable law.

§ 1010.930 Rewards for informants.

(a) If an individual provides original information which leads to a recovery of a criminal fine, civil penalty, or forfeiture, which exceeds $50,000, for a violation of the provisions of the Bank Secrecy Act or of this chapter, the Secretary may pay a reward to that individual.

(b) The Secretary shall determine the amount of the reward to be paid under this section; however, any reward paid may not be more than 25 percent of the net amount of the fine, penalty or forfeiture collected, or $150,000, whichever is less.

(c) An officer or employee of the United States, a State, or a local government who provides original information described in paragraph (a) in the performance of official duties is not eligible for a reward under this section.

§ 1010.940 Photographic or other reproductions of Government obligations.

Nothing herein contained shall require or authorize the microfilming or other reproduction of:

(a) Currency or other obligation or security of the United States as defined in 18 U.S.C. 8, or

(b) Any obligation or other security of any foreign government, the reproduction of which is prohibited by law.

§ 1010.950 Availability of information.

(a) The Secretary may within his discretion disclose information reported under this chapter for any reason consistent with the purposes of the Bank Secrecy Act, including those set forth in paragraphs (b) through (d) of this section.

(b) The Secretary may make any information set forth in any report received pursuant to this chapter available to another agency of the United States, to an agency of a state or local government or to an agency of a foreign government, upon the request of the head of such department or agency made in writing and stating the particular information desired, the criminal, tax or regulatory purpose for which the information is sought, and the official need for the information.

(c) The Secretary may make any information set forth in any report received pursuant to this chapter available to the Congress, or any committee or subcommittee thereof, upon a written request stating the particular information desired, the criminal, tax or regulatory purpose for which the information is sought, and the official need for the information.

(d) The Secretary may make any information set forth in any report received pursuant to this chapter available to any other department or agency of the United States that is a member of the Intelligence Community, as defined by Executive Order 12333 or any succeeding executive order, upon the request of the head of such department or agency made in writing and stating the particular information desired, the national security matter with which the information is sought and the official need therefor.

(e) Any information made available under this section to other department or agencies of the United States, any state or local government, or any foreign government shall be received by them in confidence, and shall not be disclosed to any person except for official purposes relating to the investigation, proceeding or matter in connection with which the information is sought.

(f) The Secretary may require that a State or local government department or agency requesting information under paragraph (b) of this section pay fees to reimburse the Department of the Treasury for costs incidental to such disclosure. The amount of such fees will be set in accordance with the statute on fees for government services, 31 U.S.C. 9701.

§ 1010.960 Disclosure.

All reports required under this chapter and all records of such reports are specifically exempted from disclosure under section 552 of Title 5, United States Code.

§ 1010.970 Exceptions, exemptions, and reports.

(a) The Secretary, in his sole discretion, may by written order or authorization make exceptions to or grant exemptions from the requirements of this chapter. Such exceptions or exemptions may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to particular transactions or classes of transactions. They shall, however, be applicable only as expressly Stated in the order of authorization, and they shall be revocable in the sole discretion of the Secretary.

(b) The Secretary shall have authority to further define all terms used herein.

(c)(1) The Secretary may, as an alternative to the reporting and recordkeeping requirements for casinos in §§ 1010.306(a), 1021.311, and 1021.410, grant exemptions to the casinos in any State whose regulatory system substantially meets the reporting and recordkeeping requirements of this chapter.

(2) In order for a State regulatory system to qualify for an exemption on behalf of its casinos, the State must provide:

(i) That the Treasury Department be allowed to evaluate the effectiveness of the State's regulatory system by periodic oversight review of that system;

(ii) That the reports required under the State's regulatory system be submitted to the Treasury Department within 15 days of receipt by the State;

(iii) That any records required to be maintained by the casinos relevant to any matter under this chapter and to which the State has access or maintains under its regulatory system be made available to the Treasury Department within 30 days of request;

(iv) That the Treasury Department be provided with periodic status reports on the State's compliance efforts and findings;

(v) That all but minor violations of the State requirements be reported to Treasury within 15 days of discovery; and

(vi) That the State will initiate compliance examinations of specific institutions at the request of Treasury within a reasonable time, not to exceed 90 days where appropriate, and will provide reports of these examinations to Treasury within 15 days of completion or periodically during the course of the examination upon the request of the Secretary. If for any reason the State were not able to conduct an investigation within a reasonable time, the State will permit Treasury to conduct the investigation.

(3) Revocation of any exemption under this subsection shall be in the sole discretion of the Secretary.

§ 1010.980 Dollars as including foreign currency.

Wherever in this chapter an amount is Stated in dollars, it shall be deemed to mean also the equivalent amount in any foreign currency.

PARTS 1011–1019 [RESERVED]

Part 1020—RULE FOR BANKS

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Subpart A—Definitions

§ 1020.100 Definitions.

Refer to § 1010.100 of this Chapter for general definitions not noted herein. To the extent there is a differing definition in § 1010.100 of this Chapter, the definition in this Section is what applies to Part 1020. Unless otherwise indicated, for purposes of this Part:

(a) *Account.* For purposes of § 1020.220:

(1) *Account* means a formal banking relationship established to provide or engage in services, dealings, or other financial transactions including a deposit account, a transaction or asset account, a credit account, or other extension of credit. *Account* also includes a relationship established to provide a safety deposit box or other safekeeping services, or cash management, custodian, and trust services.

(2) *Account* does not include:

(i) A product or service where a formal banking relationship is not established with a person, such as check-cashing, wire transfer, or sale of a check or money order;

(ii) An account that the bank acquires through an acquisition, merger, purchase of assets, or assumption of liabilities; or

(iii) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(b) *Bank.* For the purposes of § 1020.220, means:

(1) A bank, as that term is defined in § 1010.100(d), that is subject to regulation by a Federal functional regulator; and

(2) A credit union, private bank, and trust company, as set forth in § 1010.100(d) of this Chapter, that does not have a Federal functional regulator.

(c) *Customer.* For the purposes of § 1020.220:

(1) *Customer* means:

(i) A person that opens a new account; and

(ii) An individual who opens a new account for:

(A) An individual who lacks legal capacity, such as a minor; or

(B) An entity that is not a legal person, such as a civic club.

(2) *Customer* does not include:

(i) A financial institution regulated by a Federal functional regulator or a bank regulated by a State bank regulator;

(ii) A person described in § 1020.315(b)(2) through (b)(4); or

(iii) A person that has an existing account with the bank, provided that the bank has a reasonable belief that it knows the true identity of the person.

(d) *Financial institution* means:

(1) For the purposes of § 1020.210, a financial institution defined in 31 U.S.C. 5312(a)(2) or (c)(1) that is subject to regulation by a Federal functional regulator or a self-regulatory organization.

(2) For the purposes of § 1020.220, financial institution is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

Subpart B—Programs

§ 1020.200 General.

Banks are subject to the program requirements set forth and cross referenced in this subpart. Banks should also refer to Subpart B of Part 1010 of this Chapter for program requirements contained in that subpart which apply to banks.

§ 1020.210 Anti-money laundering program requirements for financial institutions regulated only by a Federal functional regulator, including banks, savings associations, and credit unions.

A financial institution regulated by a Federal functional regulator that is not subject to the regulations of a self regulatory organization shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if it implements and maintains an anti-money laundering program that complies with the requirements of §§ 1010.610 and 1010.620 and the regulation of its Federal functional regulator governing such programs.

§ 1020.220 Customer Identification Programs for banks, savings associations, credit unions, and certain non-Federally regulated banks.

(a) *Customer Identification Program: minimum requirements*—(1) *In general.* A bank must implement a written Customer Identification Program (CIP) appropriate for its size and type of business that, at a minimum, includes each of the requirements of paragraphs (a)(1) through (5) of this section. If a bank is required to have an anti-money laundering compliance program under the regulations implementing 31 U.S.C. 5318(h), 12 U.S.C. 1818(s), or 12 U.S.C. 1786(q)(1), then the CIP must be a part of the anti-money laundering compliance program. Until such time as credit unions, private banks, and trust companies without a Federal functional regulator are subject to such a program, their CIPs must be approved by their boards of directors.

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the bank to form a reasonable belief that it knows the true identity of each customer. These procedures must be based on the bank's assessment of the relevant risks, including those presented by the various types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, the various types of identifying information available, and the bank's size, location, and customer base. At a minimum, these procedures must contain the elements described in this paragraph (a)(2).

(i) *Customer information required*—(A) *In general.* The CIP must contain procedures for opening an account that specify the identifying information that will be obtained from each customer. Except as permitted by paragraphs (a)(2)(i)(B) and (C) of this section, the bank must obtain, at a minimum, the following information from the customer prior to opening an account:

(1) Name;

(2) Date of birth, for an individual;

(3) Address, which shall be:

(i) For an individual, a residential or business street address;

(ii) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of next of kin or of another contact individual; or

(iii) For a person other than an individual (such as a corporation, partnership, or trust), a principal place of business, local office, or other physical location; and

(4) Identification number, which shall be:

(i) For a U.S. person, a taxpayer identification number; or

(ii) For a non-U.S. person, one or more of the following: A taxpayer identification number; passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Note to Paragraph(a)(2)(i)(A)(*4*)(*ii*): When opening an account for a foreign business or enterprise that does not have an identification number, the bank must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening the account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(C) *Credit card accounts.* In connection with a customer who opens a credit card account, a bank may obtain the identifying information about a customer required under paragraph (a)(2)(i)(A) by acquiring it from a third-party source prior to extending credit to the customer.

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of the customer, using information obtained in accordance with paragraph (a)(2)(i) of this section, within a reasonable time after the account is opened. The procedures must describe when the bank will use documents, non-documentary methods, or a combination of both methods as described in this paragraph (a)(2)(ii).

(A) *Verification through documents.* For a bank relying on documents, the CIP must contain procedures that set forth the documents that the bank will use. These documents may include:

(1) For an individual, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(2) For a person other than an individual (such as a corporation, partnership, or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or trust instrument.

(B) *Verification through non-documentary methods.* For a bank relying on non-documentary methods, the CIP must contain procedures that describe the non-documentary methods the bank will use.

(1) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement.

(2) The bank's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the bank is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the bank; and where the bank is otherwise presented with circumstances that increase the risk that the bank will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the bank's risk assessment of a new account opened by a customer that is not an individual, the bank will obtain information about individuals with authority or control over such account, including signatories, in order to verify the customer's identity. This verification method applies only when the bank cannot verify the customer's true identity using the verification methods described in paragraphs (a)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When the bank should not open an account;

(B) The terms under which a customer may use an account while the bank attempts to verify the customer's identity;

(C) When the bank should close an account, after attempts to verify a customer's identity have failed; and

(D) When the bank should file a Suspicious Activity Report in accordance with applicable law and regulation.

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under the procedures implementing paragraph (a) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (a)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (a)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance and, if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of the customer under paragraph (a)(2)(ii)(B) or (C) of this section; and

(D) A description of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* The bank must retain the information in paragraph (a)(3)(i)(A) of this section for five years after the date the account is closed or, in the case of credit card accounts, five years after the account is closed or becomes dormant. The bank must retain the information in paragraphs (a)(3)(i)(B), (C), and (D) of this section for five years after the record is made.

(4) *Comparison with government lists.* The CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the bank to make such a determination within a reasonable period of time after the account is opened, or earlier, if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures must also require the bank to follow all Federal directives issued in connection with such lists.

(5)(i) *Customer notice.* The CIP must include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the bank generally describes the identification requirements of this section and provides the notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, a bank may post a notice in the lobby or on its Web site, include the notice on its account applications, or use any other form of written or oral notice.

(iii) *Sample notice.* If appropriate, a bank may use the following sample language to provide notice to its customers:

Important Information About Procedures for Opening a New Account

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on another financial institution.* The CIP may include procedures specifying when a bank will rely on the performance by another financial institution (including an affiliate) of any procedures of the bank's CIP, with respect to any customer of the bank that is opening, or has opened, an account or has established a similar formal banking or business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h) and is regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the bank that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) the specified requirements of the bank's CIP.

(b) *Exemptions.* The appropriate Federal functional regulator, with the concurrence of the Secretary, may, by order or regulation, exempt any bank or type of account from the requirements of this section. The Federal functional regulator and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act and with safe and sound banking, and may consider other appropriate factors. The Secretary will make these determinations for any bank or type of account that is not subject to the authority of a Federal functional regulator.

(c) *Other requirements unaffected.* Nothing in this section relieves a bank of its obligation to comply with any other provision in this chapter, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

Subpart C—Reports Required To Be Made By Banks

§ 1020.300 General.

Banks are subject to the reporting requirements set forth and cross referenced in this subpart. Banks should also refer to Subpart C of Part 1010 of this Chapter for reporting requirements contained in that subpart which apply to banks.

§ 1020.310 Reports of transactions in currency.

The reports of transactions in currency requirements for banks are located in subpart C of Part 1010 of this Chapter and this subpart.

§ 1020.311 Filing obligations.

Refer to § 1010.311 of this Chapter for reports of transactions in currency filing obligations for banks.

§ 1020.312 Identification required.

Refer to § 1010.312 of this Chapter for identification requirements for reports of transactions in currency filed by banks.

§ 1020.313 Aggregation.

Refer to § 1010.313 of this Chapter for reports of transactions in currency aggregation requirements for banks.

§ 1020.314 Structured transactions.

Refer to § 1010.314 of this Chapter for rules regarding structured transactions for banks.

§ 1020.315 Transactions of exempt persons.

(a) *General.* No bank is required to file a report otherwise required by § 1010.311 with respect to any transaction in currency between an exempt person and such bank, or, to the extent provided in paragraph (e)(6) of this section, between such exempt person and other banks affiliated with such bank. (A limitation on the exemption described in this paragraph (a) is set forth in paragraph (f) of this section.)

(b) *Exempt person.* For purposes of this section, an exempt person is:

(1) A bank, to the extent of such bank's domestic operations;

(2) A department or agency of the United States, of any State, or of any political subdivision of any State;

(3) Any entity established under the laws of the United States, of any State, or of any political subdivision of any State, or under an interstate compact between two or more States, that exercises governmental authority on behalf of the United States or any such State or political subdivision;

(4) Any entity, other than a bank, whose common stock or analogous equity interests are listed on the New York Stock Exchange or the American Stock Exchange or whose common stock or analogous equity interests have been designated as a NASDAQ National Market Security listed on the NASDAQ Stock Market (except stock or interests listed under the separate "NASDAQ Capital Markets Companies" heading), provided that, for purposes of this paragraph (b)(4), a person that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;

(5) Any subsidiary, other than a bank, of any entity described in paragraph (b)(4) of this section (a "listed entity") that is organized under the laws of the United States or of any State and at least 51 percent of whose common stock or analogous equity interest is owned by the listed entity, provided that, for purposes of this paragraph (b)(5), a person that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;

(6) To the extent of its domestic operations and only with respect to transactions conducted through its exemptible accounts, any other commercial enterprise (for purposes of this section, a "non-listed business"), other than an enterprise specified in paragraph (e)(8) of this section, that:

(i) Maintains a transaction account, as defined in paragraph (e)(9) of this section, at the bank for at least two months, except as provided in paragraph (c)(2)(ii) of this section;

(ii) Frequently engages in transactions in currency with the bank in excess of $10,000; and

(iii) Is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business within the United States or a State; or

(7) With respect solely to withdrawals for payroll purposes from existing exemptible accounts, any other person (for purposes of this section, a "payroll customer") that:

(i) Maintains a transaction account, as defined in paragraph (e)(9) of this section, at the bank for at least two months, except as provided in paragraph (c)(2)(ii) of this section;

(ii) Operates a firm that regularly withdraws more than $10,000 in order to pay its United States employees in currency; and

(iii) Is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business within the United States or a State.

(c) *Designation of certain exempt persons*—(1) *General.* Except as provided in paragraph (c)(2) of this section, a bank must designate an exempt person by filing FinCEN Form 110. Such designation must occur by the close of the 30-calendar day period beginning after the day of the first reportable transaction in currency with that person sought to be exempted from reporting under the terms of this section. The designation must be made separately by each bank that treats the customer as an exempt person, except as provided in paragraph (e)(6) of this section.

(2) *Special rules.*

(i) A bank is not required to file a FinCEN Form 110 with respect to the transfer of currency to or from:

(A) Any of the twelve Federal Reserve Banks; or

(B) Any exempt person as described in paragraphs (b)(1) to (3) of this section.

(ii) Notwithstanding subparagraphs (b)(6)(i) and (b)(7)(i) of this section, and if the requirements under this section are otherwise satisfied, a bank may designate a non-listed business or a payroll customer, as described in paragraphs (b)(6) and (7) of this section, as an exempt person before the customer has maintained a transaction account at the bank for at least two months if the bank conducts and documents a risk-based assessment of the customer and forms a reasonable belief that the customer has a legitimate business purpose for conducting frequent transactions in currency.

(d) *Annual review.* At least once each year, a bank must review the eligibility of an exempt person described in paragraphs (b)(4) to (7) of this section to determine whether such person remains eligible for an exemption. As part of its annual review, a bank must review the application of the monitoring system required to be maintained by paragraph (h)(2) of this section to each existing account of an exempt person described in paragraphs (b)(6) or (b)(7) of this section.

(e) *Operating rules*—(1) *General rule.* Subject to the specific rules of this section, a bank must take such steps to assure itself that a person is an exempt person (within the meaning of the applicable provision of paragraph (b) of this section), to document the basis for its conclusions, and document its compliance, with the terms of this section, that a reasonable and prudent bank would take and document to protect itself from loan or other fraud or loss based on misidentification of a person's status, and in the case of the monitoring system requirement set forth in paragraph (h)(2) of this section, such steps that a reasonable and prudent bank would take and document to identify suspicious transactions as required by paragraph (h)(2) of this section.

(2) *Governmental departments and agencies.* A bank may treat a person as a governmental department, agency, or entity if the name of such person reasonably indicates that it is described in paragraph (b)(2) or (b)(3) of this section, or if such person is known generally in the community to be a State, the District of Columbia, a tribal government, a Territory or Insular Possession of the United States, or a political subdivision or a wholly-owned agency or instrumentality of any of the foregoing. An entity generally exercises governmental authority on behalf of the United States, a State, or a political subdivision, for purposes of paragraph (b)(3) of this section, only if its authorities include one or more of the powers to tax, to exercise the authority of eminent domain, or to exercise police powers with respect to matters within its jurisdiction. Examples of entities that exercise governmental authority include, but are not limited to, the New Jersey Turnpike Authority and the Port Authority of New York and New Jersey.

(3) *Stock exchange listings.* In determining whether a person is described in paragraph (b)(4) of this section, a bank may rely on any New York, American, or NASDAQ Stock Market listing published in a newspaper of general circulation, on any commonly accepted or published stock symbol guide, on any information contained in the Securities and Exchange Commission "EDGAR" System, or on any information contained on an Internet site or sites maintained by the New York Stock Exchange, the American Stock Exchange, or the NASDAQ.

(4) *Listed company subsidiaries.* In determining whether a person is described in paragraph (b)(5) of this section, a bank may rely upon:

(i) Any reasonably authenticated corporate officer's certificate;

(ii) Any reasonably authenticated photocopy of Internal Revenue Service Form 851 (Affiliation Schedule) or the equivalent thereof for the appropriate tax year; or

(iii) A person's Annual Report or Form 10–K, as filed in each case with the Securities and Exchange Commission.

(5) *Aggregated accounts.* In determining the qualification of a customer as a non-listed business or a payroll customer, a bank may treat all exemptible accounts of the customer as a single account. If a bank elects to treat all exemptible accounts of a customer as a single account, the bank must continue to treat such accounts consistently as a single account for purposes of determining the qualification of the customer as a non-listed business or payroll customer.

(6) *Affiliated banks.* The designation required by paragraph (c) of this section may be made by a parent bank holding company or one of its bank subsidiaries on behalf of all bank subsidiaries of the holding company, so long as the designation lists each bank subsidiary to which the designation shall apply.

(7) *Sole proprietorships.* A sole proprietorship may be treated as a non-listed business if it otherwise meets the requirements of paragraph (b)(6) of this section, as applicable. In addition, a sole proprietorship may be treated as a payroll customer if it otherwise meets the requirements of paragraph (b)(7) of this section, as applicable.

(8) *Ineligible businesses.* A business engaged primarily in one or more of the following activities may not be treated as a non-listed business for purposes of this section: Serving as financial institutions or agents of financial institutions of any type; purchase or sale to customers of motor vehicles of any kind, vessels, aircraft, farm equipment or mobile homes; the practice of law, accountancy, or medicine; auctioning of goods; chartering or operation of ships, buses, or aircraft; gaming of any kind (other than licensed parimutuel betting at race tracks); investment advisory services or investment banking services; real estate brokerage; pawn brokerage; title insurance and real estate closing; trade union activities; and any other activities that may be specified by FinCEN. A business that engages in multiple business activities may be treated as a non-listed business so long as no more than 50% of its gross revenues are derived from one or more of the ineligible business activities listed in this paragraph (e)(8).

(9) *Exemptible accounts of a non-listed business or payroll customer.* The exemptible accounts of a non-listed business or payroll customer include transaction accounts and money market deposit accounts. However, money market deposit accounts maintained other than in connection with a commercial enterprise are not exemptible accounts. A transaction account, for purposes of this section, is any account described in section 19(b)(1)(C) of the Federal Reserve Act, 12 U.S.C. 461(b)(1)(C), and its implementing regulations (12 CFR part 204). A money market deposit account, for purposes of this section, is any interest-bearing account that is described as a money market deposit account in 12 CFR 204.2(d)(2).

(10) *Documentation.* The records maintained by a bank to document its compliance with and administration of the rules of this section shall be maintained in accordance with the provisions of § 1010.430.

(f) *Limitation on exemption.* A transaction carried out by an exempt person as an agent for another person who is the beneficial owner of the funds that are the subject of a transaction in currency is not subject to the exemption from reporting contained in paragraph (a) of this section.

(g) *Limitation on liability.* (1) No bank shall be subject to penalty under this chapter for failure to file a report required by § 1010.311 with respect to a transaction in currency by an exempt person with respect to which the requirements of this section have been satisfied, unless the bank:

(i) Knowingly files false or incomplete information with respect to the transaction or the customer engaging in the transaction; or

(ii) Has reason to believe that the customer does not meet the criteria established by this section for treatment of the transactor as an exempt person or that the transaction is not a transaction of the exempt person.

(2) Subject to the specific terms of this section, and absent any specific knowledge of information indicating that a customer no longer meets the requirements of an exempt person, a bank satisfies the requirements of this section to the extent it continues to treat that customer as an exempt person until the completion of that customer's next required periodic review, which as required by paragraph (d) of this section for an exempt person described in paragraph (b)(4) to (7) of this section, shall occur no less than once each year.

(3) A bank that files a report with respect to a currency transaction by an exempt person rather than treating such person as exempt shall remain subject, with respect to each such report, to the rules for filing reports, and the penalties for filing false or incomplete reports that are applicable to reporting of transactions in currency by persons other than exempt persons.

(h) *Obligations to file suspicious activity reports and maintain system for monitoring transactions in currency.* (1) Nothing in this section relieves a bank of the obligation, or reduces in any way such bank's obligation, to file a report required by § 1020.320 with respect to any transaction, including any transaction in currency that a bank knows, suspects, or has reason to suspect is a transaction or attempted transaction that is described in § 1020.320(a)(2)(i), (ii), or (iii), or relieves a bank of any reporting or recordkeeping obligation imposed by this chapter (except the obligation to report transactions in currency pursuant to this chapter to the extent provided in this section). Thus, for example, a sharp increase from one year to the next in the gross total of currency transactions made by an exempt customer, or similarly anomalous transactions trends or patterns, may trigger the obligation of a bank under § 1020.320.

(2) Consistent with its annual review obligations under paragraph (d) of this section, a bank shall establish and maintain a monitoring system that is reasonably designed to detect, for each account of a non-listed business or payroll customer, those transactions in currency involving such account that would require a bank to file a suspicious transaction report. The statement in the preceding sentence with respect to accounts of non-listed business and payroll customers does not limit the obligation of banks generally to take the steps necessary to satisfy the terms of paragraph (h)(1) of this section and § 1020.320 with respect to all exempt persons.

(i) *Revocation.* Without any action on the part of the Department of the Treasury and subject to the limitation on liability contained in paragraph (g)(2) of this section:

(1) The status of an entity as an exempt person under paragraph (b)(4) of this section ceases once such entity ceases to be listed on the applicable stock exchange; and

(2) The status of a subsidiary as an exempt person under paragraph (b)(5) of this section ceases once such subsidiary ceases to have at least 51 per cent of its common stock or analogous equity interest owned by a listed entity.

(Approved by the Office of Management and Budget under control number 1506–0012)

§ 1020.320 Reports by banks of suspicious transactions.

(a) *General.* (1) Every bank shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A bank may also file with the Treasury Department by using the Suspicious Activity Report specified in paragraph (b)(1) of this section or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through the bank, it involves or aggregates at least $5,000 in funds or other assets, and the bank knows, suspects, or has reason to suspect that:

(i) The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) The transaction is designed to evade any requirements of this chapter or of any other regulations promulgated under the Bank Secrecy Act; or

(iii) The transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report ("SAR"), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SAR shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR.

(3) *When to file.* A bank is required to file a SAR no later than 30 calendar days after the date of initial detection by the bank of facts that may constitute a basis for filing a SAR. If no suspect was identified on the date of the detection of the incident requiring the filing, a bank may delay filing a SAR for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction. In situations involving violations that require immediate attention, such as, for example, ongoing money laundering schemes, the bank shall immediately notify, by telephone, an appropriate law enforcement authority in addition to filing timely a SAR.

(c) *Exceptions.* A bank is not required to file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities, or for lost, missing, counterfeit, or stolen securities with respect to which the bank files a report pursuant to the reporting requirements of 17 CFR 240.17f–1.

(d) *Retention of records.* A bank shall maintain a copy of any SAR filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR. Supporting documentation shall be identified, and maintained by the bank as such, and shall be deemed to have been filed with the SAR. A bank shall make all supporting documentation available to FinCEN and any appropriate law enforcement agencies or bank supervisory agencies upon request.

(e) *Confidentiality of reports; limitation of liability.* No bank or other financial institution, and no director, officer, employee, or agent of any bank or other financial institution, who reports a suspicious transaction under this chapter, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SAR or the information contained in a SAR, except where such disclosure is requested by FinCEN or an appropriate law enforcement or bank supervisory agency, shall decline to produce the SAR or to provide any information that would disclose that a SAR has been prepared or filed, citing this paragraph (e) and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto. A bank, and any director, officer, employee, or agent of such bank, that makes a report pursuant to this section (whether such report is required by this section or is made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of such report, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(f) *Compliance.* Compliance with this section shall be audited by the Department of the Treasury, through FinCEN or its delegees under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may be a violation of the reporting rules of the Bank Secrecy Act and of this chapter. Such failure may also violate provisions of Title 12 of the Code of Federal Regulations.

Subpart D—Records Required To Be Maintained By Banks

§ 1020.400 General.

Banks are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Banks should also refer to Subpart D of Part 1010 of this Chapter for recordkeeping requirements contained in that subpart which apply to banks.

§ 1020.410 Records to be made and retained by banks.

(a) Each agent, agency, branch, or office located within the United States of a bank is subject to the requirements of this paragraph (a) with respect to a funds transfer in the amount of $3,000 or more, and is required to retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) *Recordkeeping requirements.* (i) For each payment order that it accepts as an originator's bank, a bank shall obtain and retain either the original or a microfilm, other copy, or electronic record of the following information relating to the payment order:

(A) The name and address of the originator;

(B) The amount of the payment order;

(C) The execution date of the payment order;

(D) Any payment instructions received from the originator with the payment order;

(E) The identity of the beneficiary's bank; and

(F) As many of the following items as are received with the payment order: [1]

(1) The name and address of the beneficiary;

(2) The account number of the beneficiary; and

(3) Any other specific identifier of the beneficiary.

(ii) For each payment order that it accepts as an intermediary bank, a bank shall retain either the original or a microfilm, other copy, or electronic record of the payment order.

(iii) For each payment order that it accepts as a beneficiary's bank, a bank shall retain either the original or a

[1] For funds transfers effected through the Federal Reserve's Fedwire funds transfer system, only one of the items is required to be retained, if received with the payment order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

microfilm, other copy, or electronic record of the payment order.

(2) *Originators other than established customers.* In the case of a payment order from an originator that is not an established customer, in addition to obtaining and retaining the information required in paragraph (a)(1)(i) of this section:

(i) If the payment order is made in person, prior to acceptance the originator's bank shall verify the identity of the person placing the payment order. If it accepts the payment order, the originator's bank shall obtain and retain a record of the name and address, the type of identification reviewed, the number of the identification document (*e.g.,* driver's license), as well as a record of the person's taxpayer identification number (*e.g.,* social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the originator's bank has knowledge that the person placing the payment order is not the originator, the originator's bank shall obtain and retain a record of the originator's taxpayer identification number (*e.g.,* social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

(ii) If the payment order accepted by the originator's bank is not made in person, the originator's bank shall obtain and retain a record of name and address of the person placing the payment order, as well as the person's taxpayer identification number (*e.g.,* social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof, and a copy or record of the method of payment (*e.g.,* check or credit card transaction) for the funds transfer. If the originator's bank has knowledge that the person placing the payment order is not the originator, the originator's bank shall obtain and retain a record of the originator's taxpayer identification number (*e.g.,* social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

(3) *Beneficiaries other than established customers.* For each payment order that it accepts as a beneficiary's bank for a beneficiary that is not an established customer, in addition to obtaining and retaining the information required in paragraph (a)(1)(iii) of this section:

(i) If the proceeds are delivered in person to the beneficiary or its representative or agent, the beneficiary's bank shall verify the identity of the person receiving the proceeds and shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (*e.g.,* driver's license), as well as a record of the person's taxpayer identification number (*e.g.,* social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the beneficiary's bank has knowledge that the person receiving the proceeds is not the beneficiary, the beneficiary's bank shall obtain and retain a record of the beneficiary's name and address, as well as the beneficiary's taxpayer identification number (*e.g.,* social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person receiving the proceeds, or a notation in the record of the lack thereof.

(ii) If the proceeds are delivered other than in person, the beneficiary's bank shall retain a copy of the check or other instrument used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent.

(4) *Retrievability.* The information that an originator's bank must retain under paragraphs (a)(1)(i) and (a)(2) of this section shall be retrievable by the originator's bank by reference to the name of the originator. If the originator is an established customer of the originator's bank and has an account used for funds transfers, then the information also shall be retrievable by account number. The information that a beneficiary's bank must retain under paragraphs (a)(1)(iii) and (a)(3) of this section shall be retrievable by the beneficiary's bank by reference to the name of the beneficiary. If the beneficiary is an established customer of the beneficiary's bank and has an account used for funds transfers, then the information also shall be retrievable by account number. This information need not be retained in any particular manner, so long as the bank is able to retrieve the information required by this paragraph, either by accessing funds transfer records directly or through reference to some other record maintained by the bank.

(5) *Verification.* Where verification is required under paragraphs (a)(2) and (a)(3) of this section, a bank shall verify a person's identity by examination of a document (other than a bank signature card), preferably one that contains the person's name, address, and photograph, that is normally acceptable by financial institutions as a means of identification when cashing checks for persons other than established customers. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States may be made by passport, alien identification card, or other official document evidencing nationality or residence (*e.g.,* a foreign driver's license with indication of home address).

(6) *Exceptions.* The following funds transfers are not subject to the requirements of this section:

(i) Funds transfers where the originator and beneficiary are any of the following:

(A) A bank;

(B) A wholly owned domestic subsidiary of a bank chartered in the United States;

(C) A broker or dealer in securities;

(D) A wholly owned domestic subsidiary of a broker or dealer in securities;

(E) A futures commission merchant or an introducing broker in commodities;

(F) A wholly owned domestic subsidiary of a futures commission merchant or an introducing broker in commodities;

(G) The United States;

(H) A state or local government;

(I) A Federal, State or local government agency or instrumentality; or

(J) A mutual fund; and

(ii) Funds transfers where both the originator and the beneficiary are the same person and the originator's bank and the beneficiary's bank are the same bank.

(b)(1) With respect to each certificate of deposit sold or redeemed after May 31, 1978, and before October 1, 2003, or each deposit or share account opened with a bank after June 30, 1972, and before October 1, 2003, a bank shall, within 30 days from the date such a transaction occurs or an account is opened, secure and maintain a record of the taxpayer identification number of the customer involved; or where the account or certificate is in the names of two or more persons, the bank shall secure the taxpayer identification number of a person having a financial interest in the certificate or account. In the event that a bank has been unable to secure, within the 30-day period

specified, the required identification, it shall nevertheless not be deemed to be in violation of this section if it has made a reasonable effort to secure such identification, and it maintains a list containing the names, addresses, and account numbers of those persons from whom it has been unable to secure such identification, and makes the names, addresses, and account numbers of those persons available to the Secretary as directed by him. A bank acting as an agent for another person in the purchase or redemption of a certificate of deposit issued by another bank is responsible for obtaining and recording the required taxpayer identification, as well as for maintaining the records referred to in paragraphs (c)(11) and (12) of this section. The issuing bank can satisfy the recordkeeping requirement by recording the name and address of the agent together with a description of the instrument and the date of the transaction. Where a person is a non-resident alien, the bank shall also record the person's passport number or a description of some other government document used to verify his identity.

(2) The 30-day period provided for in paragraph (b)(1) of this section shall be extended where the person opening the account has applied for a taxpayer identification or social security number on Form SS–4 or SS–5, until such time as the person maintaining the account has had a reasonable opportunity to secure such number and furnish it to the bank.

(3) A taxpayer identification number required under paragraph (b)(1) of this section need not be secured for accounts or transactions with the following:

(i) Agencies and instrumentalities of Federal, State, local or foreign governments;

(ii) Judges, public officials, or clerks of courts of record as custodians of funds in controversy or under the control of the court;

(iii) Aliens who are ambassadors, ministers, career diplomatic or consular officers, or naval, military or other attachés of foreign embassies and legations, and for the members of their immediate families;

(iv) Aliens who are accredited representatives of international organizations which are entitled to enjoy privileges, exemptions and immunities as an international organization under the International Organization Immunities Act of December 29, 1945 (22 U.S.C. 288), and the members of their immediate families;

(v) Aliens temporarily residing in the United States for a period not to exceed 180 days;

(vi) Aliens not engaged in a trade or business in the United States who are attending a recognized college or university or any training program, supervised or conducted by any agency of the Federal Government;

(vii) Unincorporated subordinate units of a tax exempt central organization which are covered by a group exemption letter,

(viii) A person under 18 years of age with respect to an account opened as a part of a school thrift savings program, provided the annual interest is less than $10;

(ix) A person opening a Christmas club, vacation club and similar installment savings programs, provided the annual interest is less than $10; and

(x) Non-resident aliens who are not engaged in a trade or business in the United States.

(4) In instances described in paragraphs (b)(3)(viii) and (ix) of this section, the bank shall, within 15 days following the end of any calendar year in which the interest accrued in that year is $10 or more use its best effort to secure and maintain the appropriate taxpayer identification number or application form therefor.

(5) The rules and regulations issued by the Internal Revenue Service under section 6109 of the Internal Revenue Code of 1954 shall determine what constitutes a taxpayer identification number and whose number shall be obtained in the case of an account maintained by one or more persons.

(c) Each bank shall, in addition, retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) Each document granting signature authority over each deposit or share account, including any notations, if such are normally made, of specific identifying information verifying the identity of the signer (such as a driver's license number or credit card number);

(2) Each statement, ledger card or other record on each deposit or share account, showing each transaction in, or with respect to, that account;

(3) Each check, clean draft, or money order drawn on the bank or issued and payable by it, except those drawn for $100 or less or those drawn on accounts which can be expected to have drawn on them an average of at least 100 checks per month over the calendar year or on each occasion on which such checks are issued, and which are:

(i) Dividend checks,

(ii) Payroll checks,

(iii) Employee benefit checks,

(iv) Insurance claim checks,

(v) Medical benefit checks,

(vi) Checks drawn on government agency accounts,

(vii) Checks drawn by brokers or dealers in securities,

(viii) Checks drawn on fiduciary accounts,

(ix) Checks drawn on other financial institutions, or

(x) Pension or annuity checks;

(4) Each item in excess of $100 (other than bank charges or periodic charges made pursuant to agreement with the customer), comprising a debit to a customer's deposit or share account, not required to be kept, and not specifically exempted, under paragraph (c)(3) of this section;

(5) Each item, including checks, drafts, or transfers of credit, of more than $10,000 remitted or transferred to a person, account or place outside the United States;

(6) A record of each remittance or transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than $10,000 to a person, account or place outside the United States;

(7) Each check or draft in an amount in excess of $10,000 drawn on or issued by a foreign bank which the domestic bank has paid or presented to a nonbank drawee for payment;

(8) Each item, including checks, drafts or transfers of credit, of more than $10,000 received directly and not through a domestic financial institution, by letter, cable or any other means, from a bank, broker or dealer in foreign exchange outside the United States;

(9) A record of each receipt of currency, other monetary instruments, investment securities or checks, and of each transfer of funds or credit, of more than $10,000 received on any one occasion directly and not through a domestic financial institution, from a bank, broker or dealer in foreign exchange outside the United States; and

(10) Records prepared or received by a bank in the ordinary course of business, which would be needed to reconstruct a transaction account and to trace a check in excess of $100 deposited in such account through its domestic processing system or to supply a description of a deposited check in excess of $100. This subparagraph shall be applicable only with respect to demand deposits.

(11) A record containing the name, address, and taxpayer identification number as determined under section 6109 of the Internal Revenue Code of 1986, if available, of the purchaser of each certificate of deposit, as well as a description of the instrument, a notation of the method of payment, and the date of the transaction.

(12) A record containing the name, address and taxpayer identification

number as determined under section 6109 of the Internal Revenue Code of 1986, if available, of any person presenting a certificate of deposit for payment, as well as a description of the instrument and the date of the transaction.

(13) Each deposit slip or credit ticket reflecting a transaction in excess of $100 or the equivalent record for direct deposit or other wire transfer deposit transactions. The slip or ticket shall record the amount of any currency involved.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 1020.500 General.

Banks are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Banks should also refer to Subpart E of Part 1010 of this Chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to banks.

§ 1020.520 Special information sharing procedures to deter money laundering and terrorist activity for banks.

(a) Refer to § 1010.520 of this Chapter.

(b) [Reserved]

§ 1020.530 [Reserved]

§ 1020.540 Voluntary information sharing among financial institutions.

(a) Refer to § 1010.540 of this Chapter.

(b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures

§ 1020.600 General.

Banks are subject to the special standards of diligence; prohibitions; and special measures requirements set forth and cross referenced in this subpart. Banks should also refer to Subpart F of Part 1010 of this Chapter for special standards of diligence; prohibitions; and special measures contained in that subpart which apply to banks.

§ 1020.610 Due diligence programs for correspondent accounts for foreign financial institutions.

(a) Refer to § 1010.610 of this Chapter.

(b) [Reserved]

§ 1020.620 Due diligence programs for private banking accounts.

(a) Refer to § 1010.620 of this Chapter.

(b) [Reserved]

§ 1020.630 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.

(a) Refer to § 1010.630 of this Chapter.

(b) [Reserved]

§ 1020.640 [Reserved]

§ 1020.670 Summons or subpoena of foreign bank records; Termination of correspondent relationship.

(a) Refer to § 1010.670 of this Chapter.

(b) [Reserved]

PART 1021—RULES FOR CASINOS AND CARD CLUBS

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1021.670 Summons or subpoena of foreign bank records; Termination of correspondent relationship.

Subpart A—Definitions

§ 1021.100 Definitions.

Refer to § 1010.100 of this Chapter for general definitions not noted herein. To the extent there is a differing definition in § 1010.100 of this Chapter, the definition in this Section is what applies to Part 1021. Unless otherwise indicated, for purposes of this Part:

(a) *Business year* means the annual accounting period, such as a calendar or fiscal year, by which a casino maintains its books and records for purposes of subtitle A of title 26 of the United States Code.

(b) *Casino account number* means any and all numbers by which a casino identifies a customer.

(c) *Customer* includes every person which is involved in a transaction to which this chapter applies with a casino, whether or not that person participates, or intends to participate, in the gaming activities offered by that casino.

(d) *Gaming day* means the normal business day of a casino. For a casino that offers 24 hour gaming, the term means that 24 hour period by which the casino keeps its books and records for business, accounting, and tax purposes. For purposes of the regulations contained in this chapter, each casino may have only one gaming day, common to all of its divisions.

(e) *Machine-readable* means capable of being read by an automated data processing system.

Subpart B—Programs

§ 1021.200 General.

Casinos and card clubs are subject to the program requirements set forth and cross referenced in this subpart. Casinos and card clubs should also refer to Subpart B of Part 1010 of this Chapter for program requirements contained in that subpart which apply to casinos and card clubs.

§ 1021.210 Anti-money laundering program requirements for casinos.

(a) *Requirements for casinos.* A casino shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if it implements and maintains a compliance program described in paragraph (b) of this section.

(b) *Compliance programs.* (1) Each casino shall develop and implement a written program reasonably designed to assure and monitor compliance with the requirements set forth in 31 U.S.C.

chapter 53, subchapter II and the regulations contained in this chapter.

(2) At a minimum, each compliance program shall provide for:

(i) A system of internal controls to assure ongoing compliance;

(ii) Internal and/or external independent testing for compliance. The scope and frequency of the testing shall be commensurate with the money laundering and terrorist financing risks posed by the products and services provided by the casino;

(iii) Training of casino personnel, including training in the identification of unusual or suspicious transactions, to the extent that the reporting of such transactions is required by this chapter, by other applicable law or regulation, or by the casino's own administrative and compliance policies;

(iv) An individual or individuals to assure day-to-day compliance;

(v) Procedures for using all available information to determine:

(A) When required by this chapter, the name, address, social security number, and other information, and verification of the same, of a person;

(B) The occurrence of any transactions or patterns of transactions required to be reported pursuant to § 1021.320;

(C) Whether any record as described in subpart D of Part 1010 of this Chapter or subpart D of this Part 1021 must be made and retained; and

(vi) For casinos that have automated data processing systems, the use of automated programs to aid in assuring compliance.

Subpart C—Reports Required To Be Made By Casinos and Card Clubs

§ 1021.300 General.

Casinos and card clubs are subject to the reporting requirements set forth and cross referenced in this subpart. Casinos and card clubs should also refer to Subpart C of Part 1010 of this Chapter for reporting requirements contained in that subpart which apply to casinos and card clubs.

§ 1021.310 Reports of transactions in currency.

The reports of transactions in currency requirements for casinos are located in subpart C of Part 1010 of this Chapter and this subpart.

§ 1021.311 Filing obligations.

Each casino shall file a report of each transaction in currency, involving either cash in or cash out, of more than $10,000.

(a) Transactions in currency involving cash in include, but are not limited to:

(1) Purchases of chips, tokens, and other gaming instruments;

(2) Front money deposits;

(3) Safekeeping deposits;

(4) Payments on any form of credit, including markers and counter checks;

(5) Bets of currency, including money plays;

(6) Currency received by a casino for transmittal of funds through wire transfer for a customer;

(7) Purchases of a casino's check;

(8) Exchanges of currency for currency, including foreign currency; and

(9) Bills inserted into electronic gaming devices.

(b) Transactions in currency involving cash out include, but are not limited to:

(1) Redemptions of chips, tokens, tickets, and other gaming instruments;

(2) Front money withdrawals;

(3) Safekeeping withdrawals;

(4) Advances on any form of credit, including markers and counter checks;

(5) Payments on bets;

(6) Payments by a casino to a customer based on receipt of funds through wire transfers;

(7) Cashing of checks or other negotiable instruments;

(8) Exchanges of currency for currency, including foreign currency;

(9) Travel and complimentary expenses and gaming incentives; and

(10) Payment for tournament, contests, and other promotions.

(c) Other provisions of this chapter notwithstanding, casinos are exempted from the reporting obligations found in this section and § 1021.313 for the following transactions in currency or currency transactions:

(1) Transactions between a casino and a currency dealer or exchanger, or between a casino and a check casher, as those terms are defined in § 1010.100(ff) of this Chapter, so long as such transactions are conducted pursuant to a contractual or other arrangement with a casino covering the financial services in paragraphs (a)(8), (b)(7), and (b)(8) of this section;

(2) Cash out transactions to the extent the currency is won in a money play and is the same currency the customer wagered in the money play, or cash in transactions to the extent the currency is the same currency the customer previously wagered in a money play on the same table game without leaving the table;

(3) Bills inserted into electronic gaming devices in multiple transactions (unless a casino has knowledge pursuant to § 1021.313 in which case this exemption would not apply); and

(4) Jackpots from slot machines or video lottery terminals.

§ 1021.312 Identification required.

Refer to § 1010.312 of this Chapter for identification requirements for reports of transaction in currency filed by casinos and card clubs.

§ 1021.313 Aggregation.

In the case of a casino, multiple currency transactions shall be treated as a single transaction if the casino has knowledge that they are by or on behalf of any person and result in either cash in or cash out totaling more than $10,000 during any gaming day. For purposes of this section, a casino shall be deemed to have the knowledge described in the preceding sentence, if: Any sole proprietor, partner, officer, director, or employee of the casino, acting within the scope of his or her employment, has knowledge that such multiple currency transactions have occurred, including knowledge from examining the books, records, logs, information retained on magnetic disk, tape or other machine-readable media, or in any manual system, and similar documents and information, which the casino maintains pursuant to any law or regulation or within the ordinary course of its business, and which contain information that such multiple currency transactions have occurred.

§ 1021.314 Structured transactions.

Refer to § 1010.314 of this Chapter for rules regarding structured transactions for casinos.

§ 1021.315 Exemptions.

Refer to § 1010.315 of this Chapter for exemptions from the obligation to file reports of transactions in currency for casinos.

§ 1021.320 Reports by casinos of suspicious transactions.

(a) *General.* (1) Every casino shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A casino may also file with FinCEN, by using the form specified in paragraph (b)(1) of this section, or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a casino, and involves or aggregates at least $5,000 in funds or other assets, and the casino knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this chapter or of any other regulations promulgated under the Bank Secrecy Act;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the casino knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the casino to facilitate criminal activity.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report by Casinos ("SARC"), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SARC shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SARC.

(3) *When to file.* A SARC shall be filed no later than 30 calendar days after the date of the initial detection by the casino of facts that may constitute a basis for filing a SARC under this section. If no suspect is identified on the date of such initial detection, a casino may delay filing a SARC for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the casino shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SARC. Casinos wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SARC if required by this section.

(c) *Exceptions.* A casino is not required to file a SARC for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

(d) *Retention of records.* A casino shall maintain a copy of any SARC filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SARC. Supporting documentation shall be identified as such and maintained by the casino, and shall be deemed to have been filed with the SARC. A casino shall make all supporting documentation available to FinCEN, any other appropriate law enforcement agencies or Federal, State, local, or tribal gaming regulators upon request.

(e) *Confidentiality of reports; limitation of liability.* No casino, and no director, officer, employee, or agent of any casino, who reports a suspicious transaction under this chapter, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SARC or the information contained in a SARC, except where such disclosure is requested by FinCEN or another appropriate law enforcement or regulatory agency, shall decline to produce the SARC or to provide any information that would disclose that a SARC has been prepared or filed, citing this paragraph (e) and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto. A casino, and any director, officer, employee, or agent of such casino, that makes a report pursuant to this section (whether such report is required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided by 31 U.S.C. 5318(g)(3).

(f) *Compliance.* Compliance with this section shall be audited by the Department of the Treasury, through FinCEN or its delegees, under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this chapter.

(g) *Applicability date.* This section applies to transactions occurring after March 25, 2003.

§ 1021.330 Exceptions to the reporting requirements of 31 U.S.C. 5331.

(a) *Receipt of currency by certain casinos having gross annual gaming revenue in excess of $1,000,000—In general.* If a casino receives currency in excess of $10,000 and is required to report the receipt of such currency directly to the Treasury Department under § 1010.306, § 1021.311, or § 1021.313 and is subject to the recordkeeping requirements of § 1021.410, then the casino is not required to make a report with respect to the receipt of such currency under 31 U.S.C. 5331 and this section.

(b) *Casinos exempt under § 1010.970(c).* Pursuant to § 1010.970, the Secretary may exempt from the reporting and recordkeeping requirements under § 1010.306, § 1021.311, § 1021.313 or § 1021.410 casinos in any state whose regulatory system substantially meets the reporting and recordkeeping requirements of this chapter. Such casinos shall not be required to report receipt of currency under 31 U.S.C. 5331 and this section.

(c) *Reporting of currency received in a non-gaming business.* Non-gaming businesses (such as shops, restaurants, entertainment, and hotels) at casino hotels and resorts are separate trades or businesses in which the receipt of currency in excess of $10,000 is reportable under section 5331 and these regulations. Thus, a casino exempt under paragraph (a) or (b) of this section must report with respect to currency in excess of $10,000 received in its non-gaming businesses.

(d) *Example.* The following example illustrates the application of the rules in paragraphs (a) and (c) of this section:

Example. A and B are casinos having gross annual gaming revenue in excess of $1,000,000. C is a casino with gross annual gaming revenue of less than $1,000,000. Casino A receives $15,000 in currency from a customer with respect to a gaming transaction which the casino reports to the Treasury Department under §§ 1010.306, 1021.311, and 1021.313. Casino B receives $15,000 in currency from a customer in payment for accommodations provided to that customer at Casino B's hotel. Casino C receives $15,000 in currency from a customer with respect to a gaming transaction. Casino A is not required to report the transaction under 31 U.S.C. 5331 or this section because the exception for certain casinos provided in paragraph (a) of this section ("the casino exception") applies. Casino B is required to report under 31 U.S.C. 5331 and this section because the casino exception does not apply to the receipt of currency from a nongaming activity. Casino C is required to report under 31 U.S.C. 5331 and this section because the casino exception does not apply to casinos having gross annual gaming revenue of $1,000,000 or less which do not have to report to the Treasury Department under §§ 1010.306, 1021.311, and 1021.313.

Subpart D—Records Required To Be Maintained By Casinos and Card Clubs

§ 1021.400 General.

Casinos and card clubs are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Casinos and card clubs should also refer to Subpart D of Part 1010 of this Chapter

for recordkeeping requirements contained in that subpart which apply to casinos and card clubs.

§ 1021.410 Additional records to be made and retained by casinos.

(a) With respect to each deposit of funds, account opened or line of credit extended after the effective date of these regulations, a casino shall, at the time the funds are deposited, the account is opened or credit is extended, secure and maintain a record of the name, permanent address, and social security number of the person involved. Where the deposit, account or credit is in the names of two or more persons, the casino shall secure the name, permanent address, and social security number of each person having a financial interest in the deposit, account or line of credit. The name and address of such person shall be verified by the casino at the time the deposit is made, account opened, or credit extended. The verification shall be made by examination of a document of the type described in § 1010.312 of this Chapter, and the specific identifying information shall be recorded in the manner described in § 1010.312 of this Chapter. In the event that a casino has been unable to secure the required social security number, it shall not be deemed to be in violation of this section if it has made a reasonable effort to secure such number and it maintains a list containing the names and permanent addresses of those persons from who it has been unable to obtain social security numbers and makes the names and addresses of those persons available to the Secretary upon request. Where a person is a nonresident alien, the casino shall also record the person's passport number or a description of some other government document used to verify his identity.

(b) In addition, each casino shall retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) A record of each receipt (including but not limited to funds for safekeeping or front money) of funds by the casino for the account (credit or deposit) of any person. The record shall include the name, permanent address and social security number of the person from whom the funds were received, as well as the date and amount of the funds received. If the person from whom the funds were received is a non-resident alien, the person's passport number or a description of some other government document used to verify the person's identity shall be obtained and recorded;

(2) A record of each bookkeeping entry comprising a debit or credit to a customer's deposit account or credit account with the casino;

(3) Each statement, ledger card or other record of each deposit account or credit account with the casino, showing each transaction (including deposits, receipts, withdrawals, disbursements or transfers) in or with respect to, a customer's deposit account or credit account with the casino;

(4) A record of each extension of credit in excess of $2,500, the terms and conditions of such extension of credit, and repayments. The record shall include the customer's name, permanent address, social security number, and the date and amount of the transaction (including repayments). If the customer or person for whom the credit extended is a non-resident alien, his passport number or description of some other government document used to verify his identity shall be obtained and recorded;

(5) A record of each advice, request or instruction received or given by the casino for itself or another person with respect to a transaction involving a person, account or place outside the United States (including but not limited to communications by wire, letter, or telephone). If the transfer outside the United States is on behalf of a third party, the record shall include the third party's name, permanent address, social security number, signature, and the date and amount of the transaction. If the transfer is received from outside the United States on behalf of a third party, the record shall include the third party's name, permanent address, social security number, signature, and the date and amount of the transaction. If the person for whom the transaction is being made is a non-resident alien the record shall also include the person's name, his passport number or a description of some other government document used to verify his identity;

(6) Records prepared or received by the casino in the ordinary course of business which would be needed to reconstruct a person's deposit account or credit account with the casino or to trace a check deposited with the casino through the casino's records to the bank of deposit;

(7) All records, documents or manuals required to be maintained by a casino under state and local laws or regulations, regulations of any governing Indian tribe or tribal government, or terms of (or any regulations issued under) any Tribal-State compacts entered into pursuant to the Indian Gaming Regulatory Act, with respect to the casino in question.

(8) All records which are prepared or used by a casino to monitor a customer's gaming activity.

(9)(i) A separate record containing a list of each transaction between the casino and its customers involving the following types of instruments having a face value of $3,000 or more:

(A) Personal checks (excluding instruments which evidence credit granted by a casino strictly for gaming, such as markers);

(B) Business checks (including casino checks);

(C) Official bank checks;

(D) Cashier's checks;

(E) Third-party checks;

(F) Promissory notes;

(G) Traveler's checks; and

(H) Money orders.

(ii) The list will contain the time, date, and amount of the transaction; the name and permanent address of the customer; the type of instrument; the name of the drawee or issuer of the instrument; all reference numbers (*e.g.,* casino account number, personal check number, *etc.*); and the name or casino license number of the casino employee who conducted the transaction. Applicable transactions will be placed on the list in the chronological order in which they occur.

(10) A copy of the compliance program described in § 1021.210(b).

(11) In the case of card clubs only, records of all currency transactions by customers, including without limitation, records in the form of currency transaction logs and multiple currency transaction logs, and records of all activity at cages or similar facilities, including, without limitation, cage control logs.

(c)(1) Casinos which input, store, or retain, in whole or in part, for any period of time, any record required to be maintained by § 1010.410 of this Chapter or this section on computer disk, tape, or other machine-readable media shall retain the same on computer disk, tape, or machine-readable media.

(2) All indexes, books, programs, record layouts, manuals, formats, instructions, file descriptions, and similar materials which would enable a person readily to access and review the records that are described in § 1010.410 of this Chapter and this section and that are input, stored, or retained on computer disk, tape, or other machine-readable media shall be retained for the period of time such records are required to be retained.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity for Casinos and Card Clubs

§ 1021.500 General.

Casinos and card clubs are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Casinos and card clubs should also refer to Subpart E of Part 1010 of this Chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to casinos and card clubs.

§ 1021.520 Special information sharing procedures to deter money laundering and terrorist activity for casinos and card clubs.

(a) Refer to § 1010.520 of this Chapter.
(b) [Reserved]

§ 1021.530 [Reserved]

§ 1021.540 Voluntary information sharing among financial institutions.

(a) Refer to § 1010.540 of this Chapter.
(b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Casinos and Card Clubs

§ 1021.600 General.

Casinos and card clubs are subject to the special standards of diligence; prohibitions; and special measures requirements set forth and cross referenced in this subpart. Casinos and card clubs should also refer to Subpart F of Part 1010 of this Chapter for special standards of diligence; prohibitions; and special measures contained in that subpart which apply to casinos and card clubs.

§ 1021.610 Due diligence programs for correspondent accounts for foreign financial institutions.

(a) Refer to § 1010.610 of this Chapter.
(b) [Reserved]

§ 1021.620 Due diligence programs for private banking accounts.

(a) Refer to § 1010.620 of this Chapter.
(b) [Reserved]

§ 1021.630 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.

(a) Refer to § 1010.630 of this Chapter.
(b) [Reserved]

§ 1021.640 [Reserved]

§ 1021.670 Summons or subpoena of foreign bank records; Termination of correspondent relationship.

(a) Refer to § 1010.670 of this Chapter.
(b) [Reserved]

PART 1022—RULES FOR MONEY SERVICES BUSINESSES

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Subpart A—Definitions

§ 1022.100 Definitions.

Refer to § 1010.100 of this Chapter for general definitions not noted herein.

Subpart B—Programs

§ 1022.200 General.

Money services businesses are subject to the program requirements set forth and cross referenced in this subpart. Money services businesses should also refer to Subpart B of Part 1010 of this Chapter for program requirements contained in that subpart which apply to money services businesses.

§ 1022.210 Anti-money laundering programs for money services businesses.

(a) Each money services business, as defined by § 1010.100(ff) of this Chapter, shall develop, implement, and maintain an effective anti-money laundering program. An effective anti-money laundering program is one that is reasonably designed to prevent the money services business from being used to facilitate money laundering and the financing of terrorist activities.

(b) The program shall be commensurate with the risks posed by the location and size of, and the nature and volume of the financial services provided by, the money services business.

(c) The program shall be in writing, and a money services business shall make copies of the anti-money laundering program available for inspection to the Department of the Treasury upon request.

(d) At a minimum, the program shall:

(1) Incorporate policies, procedures, and internal controls reasonably designed to assure compliance with this chapter.

(i) Policies, procedures, and internal controls developed and implemented under this section shall include provisions for complying with the requirements of this chapter including, to the extent applicable to the money services business, requirements for:

(A) Verifying customer identification;

(B) Filing reports;

(C) Creating and retaining records; and

(D) Responding to law enforcement requests.

(ii) Money services businesses that have automated data processing systems should integrate their compliance procedures with such systems.

(iii) A person that is a money services business solely because it is an agent for another money services business as set forth in § 1022.380(a)(2), and the money services business for which it serves as agent, may by agreement allocate between them responsibility for development of policies, procedures, and internal controls required by this paragraph (d)(1). Each money services business shall remain solely responsible for implementation of the requirements set forth in this section, and nothing in this paragraph (d)(1) relieves any money services business from its obligation to establish and maintain an effective anti-money laundering program.

(2) Designate a person to assure day to day compliance with the program and this chapter. The responsibilities of such person shall include assuring that:

(i) The money services business properly files reports, and creates and

retains records, in accordance with applicable requirements of this chapter;

(ii) The compliance program is updated as necessary to reflect current requirements of this chapter, and related guidance issued by the Department of the Treasury; and

(iii) The money services business provides appropriate training and education in accordance with paragraph (d)(3) of this section.

(3) Provide education and/or training of appropriate personnel concerning their responsibilities under the program, including training in the detection of suspicious transactions to the extent that the money services business is required to report such transactions under this chapter.

(4) Provide for independent review to monitor and maintain an adequate program. The scope and frequency of the review shall be commensurate with the risk of the financial services provided by the money services business. Such review may be conducted by an officer or employee of the money services business so long as the reviewer is not the person designated in paragraph (d)(2) of this section.

(e) *Compliance date.* A money services business must develop and implement an anti-money laundering program that complies with the requirements of this section on or before the later of July 24, 2002, and the end of the 90-day period beginning on the day following the date the business is established.

Subpart C—Reports Required To Be Made By Money Services Businesses

§ 1022.300 General.

Money services businesses are subject to the reporting requirements set forth and cross referenced in this subpart. Money services businesses should also refer to Subpart C of Part 1010 of this Chapter for reporting requirements contained in that subpart which apply to money services businesses.

§ 1022.310 Reports of transactions in currency.

The reports of transactions in currency requirements for money services businesses are located in subpart C of Part 1010 of this Chapter and this subpart.

§ 1022.311 Filing obligations.

Refer to § 1010.311 of this Chapter for reports of transactions in currency filing obligations for money services businesses.

§ 1022.312 Identification required.

Refer to § 1010.312 of this Chapter for identification requirements for reports of transactions in currency filed by money services businesses.

§ 1022.313 Aggregation.

Refer to § 1010.313 of this Chapter for reports of transactions in currency aggregation requirements for money services businesses.

§ 1022.314 Structured transactions.

Refer to § 1010.314 of this Chapter for rules regarding structured transactions for money services businesses.

§ 1022.315 Exemptions.

Refer to § 1010.315 of this Chapter for exemptions from the obligation to file reports of transactions in currency for money services businesses.

§ 1022.320 Reports by money services businesses of suspicious transactions.

(a) *General.* (1) Every money services business, described in § 1010.100(ff) (1), (3), (4), (5), or (6) of this Chapter, shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. Any money services business may also file with the Treasury Department, by using the form specified in paragraph (b)(1) of this section, or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a money services business, involves or aggregates funds or other assets of at least $2,000 (except as provided in paragraph (a)(3) of this section), and the money services business knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this chapter or of any other regulations promulgated under the Bank Secrecy Act; or

(iii) Serves no business or apparent lawful purpose, and the reporting money services business knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(iv) Involves use of the money services business to facilitate criminal activity.

(3) To the extent that the identification of transactions required to be reported is derived from a review of clearance records or other similar records of money orders or traveler's checks that have been sold or processed, an issuer of money orders or traveler's checks shall only be required to report a transaction or pattern of transactions that involves or aggregates funds or other assets of at least $5,000.

(4) The obligation to identify and properly and timely to report a suspicious transaction rests with each money services business involved in the transaction, provided that no more than one report is required to be filed by the money services businesses involved in a particular transaction (so long as the report filed contains all relevant facts). Whether, in addition to any liability on its own for failure to report, a money services business that issues the instrument or provides the funds transfer service involved in the transaction may be liable for the failure of another money services business involved in the transaction to report that transaction depends upon the nature of the contractual or other relationship between the businesses, and the legal effect of the facts and circumstances of the relationship and transaction involved, under general principles of the law of agency.

(5) Notwithstanding the provisions of this section, a transaction that involves solely the issuance, or facilitation of the transfer of stored value, or the issuance, sale, or redemption of stored value, shall not be subject to reporting under this paragraph (a), until the promulgation of rules specifically relating to such reporting.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report-MSB ("SAR–MSB"), and collecting and maintaining supporting documentation as required by paragraph (c) of this section.

(2) *Where to file.* The SAR–MSB shall be filed in a central location to be determined by FinCEN, as indicated in the instructions to the SAR–MSB.

(3) *When to file.* A money services business subject to this section is required to file each SAR–MSB no later than 30 calendar days after the date of

the initial detection by the money services business of facts that may constitute a basis for filing a SAR–MSB under this section. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the money services business shall immediately notify by telephone an appropriate law enforcement authority in addition to filing a SAR–MSB. Money services businesses wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR–MSB if required by this section.

(c) *Retention of records.* A money services business shall maintain a copy of any SAR–MSB filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR–MSB. Supporting documentation shall be identified as such and maintained by the money services business, and shall be deemed to have been filed with the SAR–MSB. A money services business shall make all supporting documentation available to FinCEN and any other appropriate law enforcement agencies or supervisory agencies upon request.

(d) *Confidentiality of reports; limitation of liability.* No financial institution, and no director, officer, employee, or agent of any financial institution, who reports a suspicious transaction under this chapter, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SAR–MSB or the information contained in a SAR–MSB, except where such disclosure is requested by FinCEN or an appropriate law enforcement or supervisory agency, shall decline to produce the SAR–MSB or to provide any information that would disclose that a SAR–MSB has been prepared or filed, citing this paragraph (d) and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto. A reporting money services business, and any director, officer, employee, or agent of such reporting money services business, that makes a report pursuant to this section (whether such report is required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided by 31 U.S.C. 5318(g)(3).

(e) *Compliance.* Compliance with this section shall be audited by the Department of the Treasury, through FinCEN or its delegees under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this chapter.

(f) *Applicability date.* This section applies to transactions occurring after December 31, 2001.

§ 1022.380 Registration of money services businesses.

(a) *Registration requirement*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, relating to agents, each money services business (whether or not licensed as a money services business by any State) must register with the Department of the Treasury and, as part of that registration, maintain a list of its agents as required by 31 U.S.C. 5330 and this section. This section does not apply to the U.S. Postal Service, to agencies of the United States, of any State, or of any political subdivision of a State, or to a person to the extent that the person is an issuer, seller, or redeemer of stored value.

(2) *Agents.* A person that is a money services business solely because that person serves as an agent of another money services business, see § 1010.100(ff) of this Chapter, is not required to register under this section, but a money services business that engages in activities described in § 1010.100(ff) of this Chapter both on its own behalf and as an agent for others must register under this section. For example, a supermarket corporation that acts as an agent for an issuer of money orders and performs no other services of a nature and value that would cause the corporation to be a money services business, is not required to register; the answer would be the same if the supermarket corporation served as an agent both of a money order issuer and of a money transmitter. However, registration would be required if the supermarket corporation, in addition to acting as an agent of an issuer of money orders, cashed checks or exchanged currencies (other than as an agent for another business) in an amount greater than $1,000 in currency or monetary or other instruments for any person on any day, in one or more transactions.

(3) *Agency status.* The determination whether a person is an agent depends on all the facts and circumstances.

(b) *Registration procedures*—(1) *In general.* (i) A money services business must be registered by filing such form as FinCEN may specify with the Enterprise Computing Center in Detroit of the Internal Revenue Service (or such other location as the form may specify). The information required by 31 U.S.C. 5330(b) and any other information required by the form must be reported in the manner and to the extent required by the form.

(ii) A branch office of a money services business is not required to file its own registration form. A money services business must, however, report information about its branch locations or offices as provided by the instructions to the registration form.

(iii) A money services business must retain a copy of any registration form filed under this section and any registration number that may be assigned to the business at a location in the United States and for the period specified in § 1010.430(d) of this Chapter.

(2) *Registration period.* A money services business must be registered for the initial registration period and each renewal period. The initial registration period is the two-calendar-year period beginning with the calendar year in which the money services business is first required to be registered. However, the initial registration period for a money services business required to register by December 31, 2001 (see paragraph (b)(3) of this section) is the two-calendar year period beginning 2002. Each two-calendar-year period following the initial registration period is a renewal period.

(3) *Due date.* The registration form for the initial registration period must be filed on or before the later of December 31, 2001, and the end of the 180-day period beginning on the day following the date the business is established. The registration form for a renewal period must be filed on or before the last day of the calendar year preceding the renewal period.

(4) *Events requiring re-registration.* If a money services business registered as such under the laws of any State experiences a change in ownership or control that requires the business to be re-registered under State law, the money services business must also be re-registered under this section. In addition, if there is a transfer of more than 10 percent of the voting power or equity interests of a money services business (other than a money services business that must report such transfer to the Securities and Exchange Commission), the money services business must be re-registered under this section. Finally, if a money services business experiences a more than 50-per cent increase in the number of its agents during any registration period, the money services business must be re-registered under this section. The registration form must be filed not later than 180 days after such change in

ownership, transfer of voting power or equity interests, or increase in agents. The calendar year in which the change, transfer, or increase occurs is treated as the first year of a new two-year registration period.

(c) *Persons required to file the registration form.* Under 31 U.S.C. 5330(a), any person who owns or controls a money services business is responsible for registering the business; however, only one registration form is required to be filed for each registration period. A person is treated as owning or controlling a money services business for purposes of filing the registration form only to the extent provided by the form. If more than one person owns or controls a money services business, the owning or controlling persons may enter into an agreement designating one of them to register the business. The failure of the designated person to register the money services business does not, however, relieve any of the other persons who own or control the business of liability for the failure to register the business. See paragraph (e) of this section, relating to consequences of the failure to comply with 31 U.S.C. 5330 or this section.

(d) *List of agents*—(1) *In general.* A money services business must prepare and maintain a list of its agents. The initial list of agents must be prepared by January 1, 2002, and must be revised each January 1, for the immediately preceding 12 month period; for money services businesses established after December 31, 2001, the initial agent list must be prepared by the due date of the initial registration form and must be revised each January 1 for the immediately preceding 12-month period. The list is not filed with the registration form but must be maintained at the location in the United States reported on the registration form under paragraph (b)(1) of this section. Upon request, a money services business must make its list of agents available to FinCEN and any other appropriate law enforcement agency (including, without limitation, the examination function of the Internal Revenue Service in its capacity as delegee of Bank Secrecy Act examination authority). Requests for information made pursuant to the preceding sentence shall be coordinated through FinCEN in the manner and to the extent determined by FinCEN. The original list of agents and any revised list must be retained for the period specified in § 1010.430(d) of this Chapter.

(2) *Information included on the list of agents*—(i) *In general.* Except as provided in paragraph (d)(2)(ii) of this section, a money services business must include the following information with respect to each agent on the list (including any revised list) of its agents—

(A) The name of the agent, including any trade names or doing-business-as names;

(B) The address of the agent, including street address, city, state, and ZIP code;

(C) The telephone number of the agent;

(D) The type of service or services (money orders, traveler's checks, check sales, check cashing, currency exchange, and money transmitting) the agent provides;

(E) A listing of the months in the 12 months immediately preceding the date of the most recent agent list in which the gross transaction amount of the agent with respect to financial products or services issued by the money services business maintaining the agent list exceeded $100,000. For this purpose, the money services gross transaction amount is the agent's gross amount (excluding fees and commissions) received from transactions of one or more businesses described in § 1010.100(ff) of this Chapter;

(F) The name and address of any depository institution at which the agent maintains a transaction account (as defined in 12 U.S.C. 461(b)(1)(C)) for all or part of the funds received in or for the financial products or services issued by the money services business maintaining the list, whether in the agent's or the business principal's name;

(G) The year in which the agent first became an agent of the money services business; and

(H) The number of branches or subagents the agent has.

(ii) *Special rules.* Information about agent volume must be current within 45 days of the due date of the agent list. The information described by paragraphs (d)(2)(i)(G) and (d)(2)(i)(H) of this section is not required to be included in an agent list with respect to any person that is an agent of the money services business maintaining the list before the first day of the month beginning after February 16, 2000 so long as the information described by paragraphs (d)(2)(i)(G) and (d)(2)(i)(H) of this section is made available upon the request of FinCEN and any other appropriate law enforcement agency (including, without limitation, the examination function of the Internal Revenue Service in its capacity as delegee of Bank Secrecy Act examination authority).

(e) *Consequences of failing to comply with 31 U.S.C. 5330 or the regulations thereunder.* It is unlawful to do business without complying with 31 U.S.C. 5330 and this section. A failure to comply with the requirements of 31 U.S.C. 5330 or this section includes the filing of false or materially incomplete information in connection with the registration of a money services business. Any person who fails to comply with any requirement of 31 U.S.C. 5330 or this section shall be liable for a civil penalty of $5,000 for each violation. Each day a violation of 31 U.S.C. 5330 or this section continues constitutes a separate violation. In addition, under 31 U.S.C. 5320, the Secretary of the Treasury may bring a civil action to enjoin the violation. See 18 U.S.C. 1960 for a criminal penalty for failure to comply with the registration requirements of 31 U.S.C. 5330 or this section.

(f) *Applicability date.* This section is applicable as of September 20, 1999. Registration of money services businesses under this section will not be required prior to December 31, 2001.

Subpart D—Records Required To Be Maintained By Money Services Businesses

§ 1022.400 General.

Money services businesses are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Money services businesses should also refer to Subpart D of Part 1010 of this Chapter for recordkeeping requirements contained in that subpart which apply to money services businesses.

§ 1022.410 Additional records to be made and retained by currency dealers or exchangers.

(a)(1) After July 7, 1987, each currency dealer or exchanger shall secure and maintain a record of the taxpayer identification number of each person for whom a transaction account is opened or a line of credit is extended within 30 days after such account is opened or credit line extended. Where a person is a non-resident alien, the currency dealer or exchanger shall also record the person's passport number or a description of some other government document used to verify his identity. Where the account or credit line is in the names of two or more persons, the currency dealer or exchanger shall secure the taxpayer identification number of a person having a financial interest in the account or credit line. In the event that a currency dealer or exchanger has been unable to secure the identification required within the 30-day period specified, it shall

nevertheless not be deemed to be in violation of this section if:

(i) It has made a reasonable effort to secure such identification, and

(ii) It maintains a list containing the names, addresses, and account or credit line numbers of those persons from whom it has been unable to secure such identification, and makes the names, addresses, and account or credit line numbers of those persons available to the Secretary as directed by him.

(2) The 30-day period provided for in paragraph (a)(1) of this section shall be extended where the person opening the account or credit line has applied for a taxpayer identification or social security number on Form SS–4 or SS–5, until such time as the person maintaining the account or credit line has had a reasonable opportunity to secure such number and furnish it to the currency dealer or exchanger.

(3) A taxpayer identification number for an account or credit line required under paragraph (a)(1) of this section need not be secured in the following instances:

(i) Accounts for public funds opened by agencies and instrumentalities of Federal, state, local or foreign governments,

(ii) Accounts for aliens who are—

(A) Ambassadors, ministers, career diplomatic or consular officers, or

(B) Naval, military or other attaches of foreign embassies, and legations, and for members of their immediate families,

(iii) Accounts for aliens who are accredited representatives to international organizations which are entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act of December 29, 1945 (22 U.S.C. 288), and for the members of their immediate families,

(iv) Aliens temporarily residing in the United States for a period not to exceed 180 days,

(v) Aliens not engaged in a trade or business in the United States who are attending a recognized college or any training program, supervised or conducted by any agency of the Federal Government, and

(vi) Unincorporated subordinate units of a tax exempt central organization which are covered by a group exemption letter.

(b) Each currency dealer or exchanger shall retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) Statements of accounts from banks, including paid checks, charges or other debit entry memoranda, deposit slips and other credit memoranda representing the entries reflected on such statements;

(2) Daily work records, including purchase and sales slips or other memoranda needed to identify and reconstruct currency transactions with customers and foreign banks;

(3) A record of each exchange of currency involving transactions in excess of $1000, including the name and address of the customer (and passport number or taxpayer identification number unless received by mail or common carrier) date and amount of the transaction and currency name, country, and total amount of each foreign currency;

(4) Signature cards or other documents evidencing signature authority over each deposit or security account, containing the name of the depositor, street address, taxpayer identification number (TIN) or employer identification number (EIN) and the signature of the depositor or of a person authorized to sign on the account (if customer accounts are maintained in a code name, a record of the actual owner of the account);

(5) Each item, including checks, drafts, or transfers of credit, of more than $10,000 remitted or transferred to a person, account or place outside the United States;

(6) A record of each receipt of currency, other monetary instruments, investment securities and checks, and of each transfer of funds or credit, or more than $10,000 received on any one occasion directly and not through a domestic financial institution, from any person, account or place outside the United States;

(7) Records prepared or received by a dealer in the ordinary course of business, that would be needed to reconstruct an account and trace a check in excess of $100 deposited in such account through its internal recordkeeping system to its depository institution, or to supply a description of a deposited check in excess of $100;

(8) A record maintaining the name, address and taxpayer identification number, if available, of any person presenting a certificate of deposit for payment, as well as a description of the instrument and date of transaction;

(9) A system of books and records that will enable the currency dealer or exchanger to prepare an accurate balance sheet and income statement.

(c) This section does not apply to banks that offer services in dealing or changing currency to their customers as an adjunct to their regular service.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 1022.500 General.

Money services businesses are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Money services businesses should also refer to Subpart E of Part 1010 of this Chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to money services businesses.

§ 1022.520 Special information sharing procedures to deter money laundering and terrorist activity for money services businesses.

(a) Refer to § 1010.520 of this Chapter.

(b) [Reserved]

§ 1022.530 [Reserved]

§ 1022.540 Voluntary information sharing among financial institutions.

(a) Refer to § 1010.540 of this Chapter.

(b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Money Services Businesses

§ 1022.600 General.

Money services businesses are subject to the special standards of diligence; prohibitions; and special measures requirements set forth and cross referenced in this subpart. Money services businesses should also refer to Subpart F of Part 1010 of this Chapter for special standards of diligence; prohibitions; and special measures contained in that subpart which apply to money services businesses.

§ 1022.610 [Reserved]

§ 1022.620 [Reserved]

§ 1022.630 [Reserved]

§ 1022.640 [Reserved]

§ 1022.670 [Reserved]

PART 1023—RULES FOR BROKERS OR DEALERS IN SECURITIES

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Subpart A—Definitions

§ 1023.100 Definitions.

Refer to § 1010.100 of this Chapter for general definitions not noted herein. To the extent there is a differing definition in § 1010.100 of this Chapter, the definition in this Section is what applies to Part 1023. Unless otherwise indicated, for purposes of this Part:

(a) *Account.* For purposes of § 1023.220:

(1) Account means a formal relationship with a broker-dealer established to effect transactions in securities, including, but not limited to, the purchase or sale of securities and securities loaned and borrowed activity, and to hold securities or other assets for safekeeping or as collateral.

(2) *Account* does not include:

(i) An account that the broker-dealer acquires through any acquisition, merger, purchase of assets, or assumption of liabilities; or

(ii) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(b) *Broker-dealer* means a person registered or required to be registered as a broker or dealer with the Commission under the Securities Exchange Act of 1934 (15 U.S.C. 77a *et seq.*), except persons who register pursuant to 15 U.S.C. 78o(b)(11).

(c) *Commission* means, for the purposes of § 1023.220, the United States Securities and Exchange Commission.

(d) *Customer.* For purposes of § 1023.220:

(1) *Customer* means:

(i) A person that opens a new account; and

(ii) An individual who opens a new account for:

(A) An individual who lacks legal capacity; or

(B) An entity that is not a legal person.

(2) *Customer* does not include:

(i) A financial institution regulated by a Federal functional regulator or a bank regulated by a state bank regulator;

(ii) A person described in § 1020.315(b)(2) through (4) of this Chapter; or

(iii) A person that has an existing account with the broker-dealer, provided the broker-dealer has a reasonable belief that it knows the true identity of the person.

(e) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

Subpart B—Programs

§ 1023.200 General.

Brokers or dealers in securities are subject to the program requirements set forth and cross referenced in this subpart. Brokers or dealers in securities should also refer to Subpart B of Part 1010 of this Chapter for program requirements contained in that subpart which apply to brokers or dealers in securities.

§ 1023.210 Anti-money laundering program requirements for brokers or dealers in securities.

A financial institution regulated by a self-regulatory organization shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if:

(a) The financial institution complies with the requirements of §§ 1010.610 of this Chapter and 1010.620 and any applicable regulation of its Federal functional regulator governing the establishment and implementation of anti-money laundering programs; and

(b)(1) The financial institution implements and maintains an anti-money laundering program that complies with the rules, regulations, or requirements of its self-regulatory organization governing such programs; and

(2) The rules, regulations, or requirements of the self-regulatory organization have been approved, if required, by the appropriate Federal functional regulator.

§ 1023.220 Customer identification programs for broker-dealers.

(a) *Customer identification program: minimum requirements*—(1) *In general.* A broker-dealer must establish, document, and maintain a written Customer Identification Program ("CIP") appropriate for its size and business that, at a minimum, includes each of the requirements of paragraphs (a)(1) through (a)(5) of this section. The CIP must be a part of the broker-dealer's anti-money laundering compliance program required under 31 U.S.C. 5318(h).

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the broker-dealer to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on the broker-dealer's assessment of the relevant risks, including those presented by the various types of accounts maintained by the broker-dealer, the various methods of opening accounts provided by the broker-dealer, the various types of identifying information available and the broker-dealer's size, location and customer base. At a minimum, these procedures must contain the elements described in this paragraph (a)(2).

(i)(A) *Customer information required.* The CIP must contain procedures for opening an account that specify identifying information that will be obtained from each customer. Except as permitted by paragraph (a)(2)(i)(B) of this section, the broker-dealer must obtain, at a minimum, the following information prior to opening an account:

(1) Name;

(2) Date of birth, for an individual;

(3) Address, which shall be:

(i) For an individual, a residential or business street address;

(ii) for an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or

the residential or business street address of a next of kin or another contact individual; or

(iii) for a person other than an individual (such as a corporation, partnership or trust), a principal place of business, local office or other physical location; and

(4) Identification number, which shall be:

(i) For a U.S. person, a taxpayer identification number; or

(ii) for a non-U.S. person, one or more of the following: A taxpayer identification number, a passport number and country of issuance, an alien identification card number, or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Note to Paragraph (a)(2)(i)(A)*(4)(ii):* When opening an account for a foreign business or enterprise that does not have an identification number, the broker-dealer must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of each customer, using information obtained in accordance with paragraph (a)(2)(i) of this section, within a reasonable time before or after the customer's account is opened. The procedures must describe when the broker-dealer will use documents, non-documentary methods, or a combination of both methods, as described in this paragraph (a)(2)(ii).

(A) *Verification through documents.* For a broker-dealer relying on documents, the CIP must contain procedures that set forth the documents the broker-dealer will use. These documents may include:

(1) For an individual, an unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(2) For a person other than an individual (such as a corporation, partnership or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

(B) *Verification through non-documentary methods.* For a broker-dealer relying on non-documentary methods, the CIP must contain procedures that set forth the non-documentary methods the broker-dealer will use.

(1) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; or obtaining a financial statement.

(2) The broker-dealer's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the broker-dealer is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the broker-dealer; and where the broker-dealer is otherwise presented with circumstances that increase the risk that the broker-dealer will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the broker-dealer's risk assessment of a new account opened by a customer that is not an individual, the broker-dealer will obtain information about individuals with authority or control over such account. This verification method applies only when the broker-dealer cannot verify the customer's true identity using the verification methods described in paragraphs (a)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the broker-dealer cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When the broker-dealer should not open an account;

(B) The terms under which a customer may conduct transactions while the broker-dealer attempts to verify the customer's identity;

(C) When the broker-dealer should close an account after attempts to verify a customer's identity fail; and

(D) When the broker-dealer should file a Suspicious Activity Report in accordance with applicable law and regulation.

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under procedures implementing paragraph (a) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (a)(2)(i) of this section,

(B) A description of any document that was relied on under paragraph (a)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of a customer under paragraphs (a)(2)(ii)(B) and (C) of this section; and

(D) A description of the resolution of each substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* The broker-dealer must retain the records made under paragraph (a)(3)(i)(A) of this section for five years after the account is closed and the records made under paragraphs (a)(3)(i)(B), (C) and (D) of this section for five years after the record is made. In all other respects, the records must be maintained pursuant to the provisions of 17 CFR 240.17a–4.

(4) *Comparison with government lists.* The CIP must include procedures for determining whether a customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the broker-dealer to make such a determination within a reasonable period of time after the account is opened, or earlier if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures also must require the broker-dealer to follow all Federal directives issued in connection with such lists.

(5)(i) *Customer notice.* The CIP must include procedures for providing customers with adequate notice that the broker-dealer is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the broker-dealer generally describes the identification requirements of this section and provides such notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, a broker-dealer may post a notice in the lobby or on its Web site, include the notice on its account applications or use any other form of oral or written notice.

(iii) *Sample notice.* If appropriate, a broker-dealer may use the following sample language to provide notice to its customers:

Important Information About Procedures for Opening a New Account

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on another financial institution.* The CIP may include procedures specifying when the broker-dealer will rely on the performance by another financial institution (including an affiliate) of any procedures of the broker-dealer's CIP, with respect to any customer of the broker-dealer that is opening an account or has established an account or similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h), and regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the broker-dealer that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) specified requirements of the broker-dealer's CIP.

(b) *Exemptions.* The Commission, with the concurrence of the Secretary, may by order or regulation exempt any broker-dealer that registers with the Commission pursuant to 15 U.S.C. 78o or 15 U.S.C. 78o–4 or any type of account from the requirements of this section. The Secretary, with the concurrence of the Commission, may exempt any broker-dealer that registers with the Commission pursuant to 15 U.S.C. 78o–5. In issuing such exemptions, the Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, and in the public interest, and may consider other necessary and appropriate factors.

(c) *Other requirements unaffected.* Nothing in this section relieves a broker-dealer of its obligation to comply with any other provision of this chapter, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

Subpart C—Reports Required To Be Made By Brokers or Dealers in Securities

§ 1023.300 General.

Brokers or dealers in securities are subject to the reporting requirements set forth and cross referenced in this subpart. Brokers or dealers in securities should also refer to Subpart C of Part 1010 of this Chapter for reporting requirements contained in that subpart which apply to brokers or dealers in securities.

§ 1023.310 Reports of transactions in currency.

The reports of transactions in currency requirements for brokers or dealers in securities are located in subpart C of Part 1010 of this Chapter and this subpart.

§ 1023.311 Filing obligations.

Refer to § 1010.311 of this Chapter for reports of transactions in currency filing obligations for brokers or dealers in securities.

§ 1023.312 Identification required.

Refer to § 1010.312 of this Chapter for identification requirements for reports of transactions in currency filed by brokers or dealers in securities.

§ 1023.313 Aggregation.

Refer to § 1010.313 of this Chapter for reports of transactions in currency aggregation requirements for brokers or dealers in securities.

§ 1023.314 Structured transactions.

Refer to § 1010.314 of this Chapter for rules regarding structured transactions for brokers or dealers in securities.

§ 1023.315 Exemptions.

Refer to § 1010.315 of this Chapter for exemptions from the obligation to file reports of transactions in currency for brokers or dealers in securities.

§ 1023.320 Reports by brokers or dealers in securities of suspicious transactions.

(a) *General.* (1) Every broker or dealer in securities within the United States (for purposes of this section, a "broker-dealer") shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A broker-dealer may also file with FinCEN a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section. Filing a report of a suspicious transaction does not relieve a broker-dealer from the responsibility of complying with any other reporting requirements imposed by the Securities and Exchange Commission or a self-regulatory organization ("SRO") (as defined in section 3(a)(26) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(26)).

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a broker-dealer, it involves or aggregates funds or other assets of at least $5,000, and the broker-dealer knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this chapter or of any other regulations promulgated under the Bank Secrecy Act;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the broker-dealer to facilitate criminal activity.

(3) The obligation to identify and properly and timely to report a suspicious transaction rests with each broker-dealer involved in the transaction, provided that no more than one report is required to be filed by the broker-dealers involved in a particular

transaction (so long as the report filed contains all relevant facts).

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report by the Securities and Futures Industry ("SAR–SF"), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SAR–SF shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR–SF.

(3) *When to file.* A SAR–SF shall be filed no later than 30 calendar days after the date of the initial detection by the reporting broker-dealer of facts that may constitute a basis for filing a SAR–SF under this section. If no suspect is identified on the date of such initial detection, a broker-dealer may delay filing a SAR–SF for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as terrorist financing or ongoing money laundering schemes, the broker-dealer shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR–SF. Broker-dealers wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR–SF if required by this section. The broker-dealer may also, but is not required to, contact the Securities and Exchange Commission to report in such situations.

(c) *Exceptions.* (1) A broker-dealer is not required to file a SAR–SF to report:

(i) A robbery or burglary committed or attempted of the broker-dealer that is reported to appropriate law enforcement authorities, or for lost, missing, counterfeit, or stolen securities with respect to which the broker-dealer files a report pursuant to the reporting requirements of 17 CFR 240.17f–1;

(ii) A violation otherwise required to be reported under this section of any of the Federal securities laws or rules of an SRO by the broker-dealer or any of its officers, directors, employees, or other registered representatives, other than a violation of 17 CFR 240.17a–8 or 17 CFR 405.4, so long as such violation is appropriately reported to the SEC or an SRO.

(2) A broker-dealer may be required to demonstrate that it has relied on an exception in paragraph (c)(1) of this section, and must maintain records of its determinations to do so for the period specified in paragraph (d) of this section. To the extent that a Form RE–3, Form U–4, or Form U–5 concerning the transaction is filed consistent with the SRO rules, a copy of that form will be a sufficient record for purposes of this paragraph (c)(2).

(3) For the purposes of this paragraph (c) the term "Federal securities laws" means the "securities laws," as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47), and the rules and regulations promulgated by the Securities and Exchange Commission under such laws.

(d) *Retention of records.* A broker-dealer shall maintain a copy of any SAR–SF filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR–SF. Supporting documentation shall be identified as such and maintained by the broker-dealer, and shall be deemed to have been filed with the SAR–SF. A broker-dealer shall make all supporting documentation available to FinCEN, any other appropriate law enforcement agencies or Federal or State securities regulators, and for purposes of paragraph (g) of this section, to an SRO registered with the Securities and Exchange Commission, upon request.

(e) *Confidentiality of reports.* No financial institution, and no director, officer, employee, or agent of any financial institution, who reports a suspicious transaction under this chapter, may notify any person involved in the transaction that the transaction has been reported, except to the extent permitted by paragraph (a)(3) of this section. Thus, any person subpoenaed or otherwise requested to disclose a SAR–SF or the information contained in a SAR–SF, except where such disclosure is requested by FinCEN, the Securities and Exchange Commission, or another appropriate law enforcement or regulatory agency, or for purposes of paragraph (g) of this section, an SRO registered with the Securities and Exchange Commission, shall decline to produce the SAR–SF or to provide any information that would disclose that a SAR–SF has been prepared or filed, citing this paragraph (e) and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto.

(f) *Limitation of liability.* A broker-dealer, and any director, officer, employee, or agent of such broker-dealer, that makes a report of any possible violation of law or regulation pursuant to this section or any other authority (or voluntarily) shall not be liable to any person under any law or regulation of the United States (or otherwise to the extent also provided in 31 U.S.C. 5318(g)(3), including in any arbitration proceeding) for any disclosure contained in, or for failure to disclose the fact of, such report.

(g) *Examination and enforcement.* Compliance with this section shall be examined by the Department of the Treasury, through FinCEN or its delegees, under the terms of the Bank Secrecy Act. Reports filed under this section shall be made available to an SRO registered with the Securities and Exchange Commission examining a broker-dealer for compliance with the requirements of this section. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this chapter.

(h) *Applicability date.* This section applies to transactions occurring after December 30, 2002.

Subpart D—Records Required To Be Maintained by Brokers or Dealers in Securities

§ 1023.400 General.

Brokers or dealers in securities are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Brokers or dealers in securities should also refer to Subpart D of Part 1010 of this Chapter for recordkeeping requirements contained in that subpart which apply to brokers or dealers in securities.

§ 1023.410 Additional records to be made and retained by brokers or dealers in securities.

(a)(1) With respect to each brokerage account opened with a broker or dealer in securities after June 30, 1972, and before October 1, 2003, by a person residing or doing business in the United States or a citizen of the United States, such broker or dealer shall within 30 days from the date such account is opened, secure and maintain a record of the taxpayer identification number of the person maintaining the account; or in the case of an account of one or more individuals, such broker or dealer shall secure and maintain a record of the social security number of an individual having a financial interest in that account. In the event that a broker or dealer has been unable to secure the identification required within the 30-day period specified, it shall nevertheless not be deemed to be in violation of this section if: It has made a reasonable effort to secure such identification, and it maintains a list containing the names, addresses, and

account numbers of those persons from whom it has been unable to secure such identification, and makes the names, addresses, and account numbers of those persons available to the Secretary as directed by him. Where a person is a non-resident alien, the broker or dealer in securities shall also record the person's passport number or a description of some other government document used to verify his identity.

(2) The 30-day period provided for in paragraph (a)(1) of this section shall be extended where the person opening the account has applied for a taxpayer identification or social security number on Form SS–4 or SS–5, until such time as the person maintaining the account has had a reasonable opportunity to secure such number and furnish it to the broker or dealer.

(3) A taxpayer identification number for a deposit or share account required under paragraph (a)(1) of this section need not be secured in the following instances:

(i) Accounts for public funds opened by agencies and instrumentalities of Federal, state, local, or foreign governments,

(ii) Accounts for aliens who are ambassadors, ministers, career diplomatic or consular officers, or naval, military or other attaches of foreign embassies, and legations, and for the members of their immediate families,

(iii) Accounts for aliens who are accredited representatives to international organizations which are entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act of December 29, 1945 (22 U.S.C. 288), and for the members of their immediate families,

(iv) Aliens temporarily residing in the United States for a period not to exceed 180 days,

(v) Aliens not engaged in a trade or business in the United States who are attending a recognized college or university or any training program, supervised or conducted by any agency of the Federal Government, and

(vi) Unincorporated subordinate units of a tax exempt central organization which are covered by a group exemption letter.

(b) Every broker or dealer in securities shall, in addition, retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) Each document granting signature or trading authority over each customer's account;

(2) Each record described in 17 CFR 240.17a–3(a)(1), (2), (3), (5), (6), (7), (8), and (9);

(3) A record of each remittance or transfer of funds, or of currency, checks, other monetary instruments, investment securities, or credit, of more than $10,000 to a person, account, or place, outside the United States;

(4) A record of each receipt of currency, other monetary instruments, checks, or investment securities and of each transfer of funds or credit, of more than $10,000 received on any one occasion directly and not through a domestic financial institution, from any person, account or place outside the United States.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 1023.500 General.

Brokers or dealers in securities are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Brokers or dealers in securities should also refer to Subpart E of Part 1010 of this Chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to brokers or dealers in securities.

§ 1023.520 Special information sharing procedures to deter money laundering and terrorist activity for brokers or dealers in securities.

(a) Refer to § 1010.520 of this Chapter.
(b) [Reserved]

§ 1023.530 [Reserved]

§ 1023.540 Voluntary information sharing among financial institutions.

(a) Refer to § 1010.540 of this Chapter.
(b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Brokers or Dealers in Securities

§ 1023.600 General.

Brokers or dealers in securities are subject to the special standards of diligence; prohibitions; and special measures requirements set forth and cross referenced in this subpart. Brokers or dealers in securities should also refer to Subpart F of Part 1010 of this Chapter for special standards of diligence; prohibitions; and special measures contained in that subpart which apply to brokers or dealers in securities.

§ 1023.610 Due diligence programs for correspondent accounts for foreign financial institutions.

(a) Refer to § 1010.610 of this Chapter.
(b) [Reserved]

§ 1023.620 Due diligence programs for private banking accounts.

(a) Refer to § 1010.620 of this Chapter.
(b) [Reserved]

§ 1023.630 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.

(a) Refer to § 1010.630 of this Chapter.
(b) [Reserved]

§ 1023.640 [Reserved]

§ 1023.670 Summons or subpoena of foreign bank records; termination of correspondent relationship.

(a) Refer to § 1010.670 of this Chapter.
(b) [Reserved]

PART 1024—RULES FOR MUTUAL FUNDS

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Subpart A—Definitions

§ 1024.100 Definitions.

Refer to § 1010.100 of this Chapter for general definitions not noted herein. To the extent there is a differing definition in § 1010.100 of this Chapter, the definition in this Section is what applies to Part 1024. Unless otherwise indicated, for purposes of this Part:

(a) *Account.* For purposes of § 1024.220:

(1) *Account* means any contractual or other business relationship between a person and a mutual fund established to effect transactions in securities issued by the mutual fund, including the purchase or sale of securities.

(2) *Account* does not include:

(i) An account that a mutual fund acquires through any acquisition, merger, purchase of assets, or assumption of liabilities; or

(ii) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(b) *Commission* means the United States Securities and Exchange Commission.

(c) *Customer.* For purposes of § 1024.220:

(1) *Customer* means:

(i) A person that opens a new account; and

(ii) An individual who opens a new account for:

(A) An individual who lacks legal capacity, such as a minor; or

(B) An entity that is not a legal person, such as a civic club.

(2) *Customer* does not include:

(i) A financial institution regulated by a Federal functional regulator or a bank regulated by a State bank regulator;

(ii) A person described in § 1020.315(b)(2) through (4) of this Chapter; or

(iii) A person that has an existing account with the mutual fund, provided that the mutual fund has a reasonable belief that it knows the true identity of the person.

(d) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

Subpart B—Programs

§ 1024.200 General.

Mutual funds are subject to the program requirements set forth and cross referenced in this subpart. Mutual funds should also refer to Subpart B of Part 1010 of this Chapter for program requirements contained in that subpart which apply to mutual funds.

§ 1024.210 Anti-money laundering programs for mutual funds.

(a) Effective July 24, 2002, each mutual fund shall develop and implement a written anti-money laundering program reasonably designed to prevent the mutual fund from being used for money laundering or the financing of terrorist activities and to achieve and monitor compliance with the applicable requirements of the Bank Secrecy Act (31 U.S.C. 5311, *et seq.*), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each mutual fund's anti-money laundering program must be approved in writing by its board of directors or trustees. A mutual fund shall make its anti-money laundering program available for inspection by the Commission.

(b) The anti-money laundering program shall at a minimum:

(1) Establish and implement policies, procedures, and internal controls reasonably designed to prevent the mutual fund from being used for money laundering or the financing of terrorist activities and to achieve compliance with the applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder;

(2) Provide for independent testing for compliance to be conducted by the mutual fund's personnel or by a qualified outside party;

(3) Designate a person or persons responsible for implementing and monitoring the operations and internal controls of the program; and

(4) Provide ongoing training for appropriate persons.

§ 1024.220 Customer identification programs for mutual funds.

(a) *Customer identification program: minimum requirements*—(1) *In general.* A mutual fund must implement a written Customer Identification Program ("CIP") appropriate for its size and type of business that, at a minimum, includes each of the requirements of paragraphs (a)(1) through (5) of this section. The CIP must be a part of the mutual fund's anti-money laundering program required under the regulations implementing 31 U.S.C. 5318(h).

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the mutual fund to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on the mutual fund's assessment of the relevant risks, including those presented by the manner in which accounts are opened, fund shares are distributed, and purchases, sales and exchanges are effected, the various types of accounts maintained by the mutual fund, the various types of identifying information available, and the mutual fund's customer base. At a minimum, these procedures must contain the elements described in this paragraph (a)(2).

(i) *Customer information required*—(A) *In general.* The CIP must contain procedures for opening an account that specify the identifying information that will be obtained with respect to each customer. Except as permitted by paragraph (a)(2)(i)(B) of this section, a mutual fund must obtain, at a minimum, the following information prior to opening an account:

(1) Name;

(2) Date of birth, for an individual;

(3) Address, which shall be:

(i) For an individual, a residential or business street address;

(ii) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of next of kin or of another contact individual; or

(iii) For a person other than an individual (such as a corporation, partnership, or trust), a principal place of business, local office or other physical location; and

(4) Identification number, which shall be:

(i) For a U.S. person, a taxpayer identification number; or

(ii) For a non-U.S. person, one or more of the following: a taxpayer identification number; passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Note to Paragraph (a)(2)(i)(A)*(4)(ii):* When opening an account for a foreign business or enterprise that does not have an identification number, the mutual fund must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a person that has applied for, but has not received, a taxpayer

identification number. In this case, the CIP must include procedures to confirm that the application was filed before the person opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of the customer, using the information obtained in accordance with paragraph (a)(2)(i) of this section, within a reasonable time after the account is opened. The procedures must describe when the mutual fund will use documents, non-documentary methods, or a combination of both methods as described in this paragraph (a)(2)(ii).

(A) *Verification through documents.* For a mutual fund relying on documents, the CIP must contain procedures that set forth the documents that the mutual fund will use. These documents may include:

(1) For an individual, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(2) For a person other than an individual (such as a corporation, partnership, or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or trust instrument.

(B) *Verification through non-documentary methods.* For a mutual fund relying on non-documentary methods, the CIP must contain procedures that describe the non-documentary methods the mutual fund will use.

(1) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement.

(2) The mutual fund's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the mutual fund is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person; and where the mutual fund is otherwise presented with circumstances that increase the risk that the mutual fund will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the mutual fund's risk assessment of a new account opened by a customer that is not an individual, the mutual fund will obtain information about individuals with authority or control over such account, including persons authorized to effect transactions in the shareholder of record's account, in order to verify the customer's identity. This verification method applies only when the mutual fund cannot verify the customer's true identity using the verification methods described in paragraphs (a)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the mutual fund cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When the mutual fund should not open an account;

(B) The terms under which a customer may use an account while the mutual fund attempts to verify the customer's identity;

(C) When the mutual fund should file a Suspicious Activity Report in accordance with applicable law and regulation; and

(D) When the mutual fund should close an account, after attempts to verify a customer's identity have failed.

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under paragraph (a) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (a)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (a)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of the customer under paragraph (a)(2)(ii)(B) or (C) of this section; and

(D) A description of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* The mutual fund must retain the information in paragraph (a)(3)(i)(A) of this section for five years after the date the account is closed. The mutual fund must retain the information in paragraphs (a)(3)(i)(B), (C), and (D) of this section for five years after the record is made.

(4) *Comparison with government lists.* The CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by the Department of the Treasury in consultation with the Federal functional regulators. The procedures must require the mutual fund to make such a determination within a reasonable period of time after the account is opened, or earlier, if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures must also require the mutual fund to follow all Federal directives issued in connection with such lists.

(5)(i) *Customer notice.* The CIP must include procedures for providing mutual fund customers with adequate notice that the mutual fund is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the mutual fund generally describes the identification requirements of this section and provides the notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending on the manner in which the account is opened, a mutual fund may post a notice on its Web site, include the notice on its account applications, or use any other form of written or oral notice.

(iii) *Sample notice.* If appropriate, a mutual fund may use the following sample language to provide notice to its customers:

Important Information About Procedures for Opening a New Account

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on other financial institutions.* The CIP may include procedures specifying when a mutual fund will rely on the performance by another financial institution (including an affiliate) of any procedures of the mutual fund's CIP, with respect to any customer of the mutual fund that is

opening, or has opened, an account or has established a similar formal business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h) and is regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the mutual fund that it has implemented its anti-money laundering program, and that it (or its agent) will perform the specific requirements of the mutual fund's CIP.

(b) *Exemptions.* The Commission, with the concurrence of the Secretary, may, by order or regulation, exempt any mutual fund or type of account from the requirements of this section. The Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act and is in the public interest, and may consider other appropriate factors.

(c) *Other requirements unaffected.* Nothing in this section relieves a mutual fund of its obligation to comply with any other provision in this chapter, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

Subpart C—Reports Required To Be Made By Mutual Funds

§ 1024.300 General.

Mutual funds are subject to the reporting requirements set forth and cross referenced in this subpart. Mutual funds should also refer to Subpart C of Part 1010 of this Chapter for reporting requirements contained in that subpart which apply to mutual funds.

§ 1024.310 Reports of transactions in currency.

The reports of transactions in currency requirements for mutual funds are located in subpart C of Part 1010 of this Chapter and this subpart.

§ 1024.311 Filing obligations.

Refer to § 1010.311 of this Chapter for reports of transactions in currency filing obligations for mutual funds.

§ 1024.312 Identification required.

Refer to § 1010.312 of this Chapter for identification requirements for reports of transactions in currency filed by mutual funds.

§ 1024.313 Aggregation.

Refer to § 1010.313 of this Chapter for reports of transactions in currency aggregation requirements for mutual funds.

§ 1024.314 Structured transactions.

Refer to § 1010.314 of this Chapter for rules regarding structured transactions for mutual funds.

§ 1024.315 Exemptions.

Refer to § 1010.315 of this Chapter for exemptions from the obligation to file reports of transactions in currency for mutual funds.

§ 1024.320 Reports by mutual funds of suspicious transactions.

(a) *General.* (1) Every investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3) ("Investment Company Act") that is an open-end company (as defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) and that is registered, or is required to register, with the Securities and Exchange Commission pursuant to that Act (for purposes of this section, a "mutual fund"), shall file with the Financial Crimes Enforcement Network, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A mutual fund may also file with the Financial Crimes Enforcement Network a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation, but whose reporting is not required by this section. Filing a report of a suspicious transaction does not relieve a mutual fund from the responsibility of complying with any other reporting requirements imposed by the Securities and Exchange Commission.

(2) A transaction requires reporting under this section if it is conducted or attempted by, at, or through a mutual fund, it involves or aggregates funds or other assets of at least $5,000, and the mutual fund knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this chapter or any other regulations promulgated under the Bank Secrecy Act;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the mutual fund knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the mutual fund to facilitate criminal activity.

(3) More than one mutual fund may have an obligation to report the same transaction under this section, and other financial institutions may have separate obligations to report suspicious activity with respect to the same transaction pursuant to other provisions of this chapter. In those instances, no more than one report is required to be filed by the mutual fund(s) and other financial institution(s) involved in the transaction, provided that the report filed contains all relevant facts, including the name of each financial institution and the words "joint filing" in the narrative section, and each institution maintains a copy of the report filed, along with any supporting documentation.

(b) *Filing and notification procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report by Securities and Futures Industries ("SAR–SF"), and collecting and maintaining supporting documentation as required by paragraph (c) of this section.

(2) *Where to file.* Form SAR–SF shall be filed with the Financial Crimes Enforcement Network in accordance with the instructions to the Form SAR–SF.

(3) *When to file.* A Form SAR–SF shall be filed no later than 30 calendar days after the date of the initial detection by the reporting mutual fund of facts that may constitute a basis for filing a Form SAR–SF under this section. If no suspect is identified on the date of such initial detection, a mutual fund may delay filing a Form SAR–SF for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection.

(4) *Mandatory notification to law enforcement.* In situations involving violations that require immediate attention, such as suspected terrorist financing or ongoing money laundering schemes, a mutual fund shall

immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a Form SAR–SF.

(5) *Voluntary notification to the Financial Crimes Enforcement Network or the Securities and Exchange Commission.* Mutual funds wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call the Financial Crimes Enforcement Network's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a Form SAR–SF if required by this section. The mutual fund may also, but is not required to, contact the Securities and Exchange Commission to report in such situations.

(c) *Retention of records.* A mutual fund shall maintain a copy of any Form SAR–SF filed by the fund or on its behalf (including joint reports), and the original (or business record equivalent) of any supporting documentation concerning any Form SAR–SF that it files (or is filed on its behalf), for a period of five years from the date of filing the Form SAR–SF. Supporting documentation shall be identified as such and maintained by the mutual fund, and shall be deemed to have been filed with the Form SAR–SF. The mutual fund shall make all supporting documentation available to the Financial Crimes Enforcement Network, any other appropriate law enforcement agencies or Federal or state securities regulators, and for purposes of an examination of a broker-dealer pursuant to § 1023.320(g) of this chapter regarding a joint report, to a self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(26)) registered with the Securities and Exchange Commission, upon request.

(d) *Confidentiality of reports.* No mutual fund, and no director, officer, employee, or agent of any mutual fund, who reports a suspicious transaction under this chapter (whether such a report is required by this section or made voluntarily), may notify any person involved in the transaction that the transaction has been reported, except to the extent permitted by paragraph (a)(3) of this section. Any person subpoenaed or otherwise required to disclose a Form SAR–SF or the information contained in a Form SAR–SF, including a Form SAR–SF filed jointly with another financial institution involved in the same transaction (except where such disclosure is requested by the Financial Crimes Enforcement Network, the Securities and Exchange Commission, another appropriate law enforcement or regulatory agency, or, in the case of a joint report involving a broker-dealer, a self-regulatory organization registered with the Securities and Exchange Commission conducting an examination of such broker-dealer pursuant to § 1023.320(g) of this chapter), shall decline to produce Form SAR–SF or to provide any information that would disclose that a Form SAR–SF has been prepared or filed, citing this paragraph (d) and 31 U.S.C. 5318(g)(2), and shall notify the Financial Crimes Enforcement Network of any such request and its response thereto.

(e) *Limitation of liability.* A mutual fund, and any director, officer, employee, or agent of such mutual fund, that makes a report of any possible violation of law or regulation pursuant to this section, including a joint report (whether such report is required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided in 31 U.S.C. 5318(g)(3).

(f) *Examinations and enforcement.* Compliance with this section shall be examined by the Department of the Treasury, through the Financial Crimes Enforcement Network or its delegees, under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this chapter.

(g) *Applicability date.* This section applies to transactions occurring after October 31, 2006.

Subpart D—Records Required To Be Maintained By Mutual Funds

§ 1024.400 General.

Mutual funds are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Mutual funds should also refer to Subpart D of Part 1010 of this Chapter for recordkeeping requirements contained in that subpart which apply to mutual funds.

§ 1024.410 Recordkeeping.

Refer to § 1010.410 of this Chapter.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 1024.500 General.

Mutual funds are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Mutual funds should also refer to Subpart E of Part 1010 of this Chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to mutual funds.

§ 1024.520 Special information sharing procedures to deter money laundering and terrorist activity for mutual funds.

(a) Refer to § 1010.520 of this Chapter.
(b) [Reserved]

§ 1024.530 [Reserved]

§ 1024.540 Voluntary information sharing among financial institutions.

(a) Refer to § 1010.540 of this Chapter.
(b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Mutual Funds

§ 1024.600 General.

Mutual funds are subject to the special standards of diligence; prohibitions; and special measures requirements set forth and cross referenced in this subpart. Mutual funds should also refer to Subpart F of Part 1010 of this Chapter for special standards of diligence; prohibitions; and special measures contained in that subpart which apply to mutual funds.

§ 1024.610 Due diligence programs for correspondent accounts for foreign financial institutions.

(a) Refer to § 1010.610 of this Chapter.
(b) [Reserved]

§ 1024.620 Due diligence programs for private banking accounts.

(a) Refer to § 1010.620 of this Chapter.
(b) [Reserved]

§ 1024.630 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.

(a) Refer to § 1010.630 of this Chapter.
(b) [Reserved]

§ 1024.640 [Reserved]

§ 1024.670 [Reserved]

PART 1025—RULES FOR INSURANCE COMPANIES

Subpart A—Definitions

Sec.
1025.100 Definitions.

Subpart B—Programs

1025.200 General.
1025.210 Anti-money laundering programs for insurance companies.

Subpart C—Reports Required To Be Made By Insurance Companies

1025.300 General.
1025.310 [Reserved]
1025.315 [Reserved]

1025.320 Reports by insurance companies of suspicious transactions.
1025.330 Reports relating to currency in excess of $10,000 received in a trade or business.

Subpart D—Records Required To Be Maintained By Insurance Companies

1025.400 General.
1025.410 Recordkeeping.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

1025.500 General.
1025.520 Special information sharing procedures to deter money laundering and terrorist activity for insurance companies.
1025.530 [Reserved]
1025.540 Voluntary information sharing among financial institutions.

Subpart F—Special Standards of Diligence; Prohibitions, and Special Measures for Insurance Companies

1025.600 [Reserved]
1025.610 [Reserved]
1025.620 [Reserved]
1025.630 [Reserved]
1025.640 [Reserved]
1025.670 [Reserved]

Subpart A—Definitions

§ 1025.100 Definitions.

Refer to § 1010.100 of this Chapter for general definitions not noted herein. To the extent there is a differing definition in § 1010.100 of this Chapter, the definition in this Section is what applies to Part 1025. Unless otherwise indicated, for purposes of this Part:

(a) *Annuity contract* means any agreement between the insurer and the contract owner whereby the insurer promises to pay out a fixed or variable income stream for a period of time.

(b) *Covered product* means:

(1) A permanent life insurance policy, other than a group life insurance policy;

(2) An annuity contract, other than a group annuity contract; or

(3) Any other insurance product with features of cash value or investment.

(c) *Group annuity contract* means a master contract providing annuities to a group of persons under a single contract.

(d) *Group life insurance policy* means any life insurance policy under which a number of persons and their dependents, if appropriate, are insured under a single policy.

(e) *Insurance agent* means a sales and/or service representative of an insurance company. The term "insurance agent" encompasses any person that sells, markets, distributes, or services an insurance company's covered products, including, but not limited to, a person who represents only one insurance company, a person who represents more than one insurance company, and a bank or broker-dealer in securities that sells any covered product of an insurance company.

(f) *Insurance broker* means a person who, by acting as the customer's representative, arranges and/or services covered products on behalf of the customer.

(g) *Insurance company or insurer.* (1) Except as provided in paragraph (g)(2) of this section, the term "insurance company" or "insurer" means any person engaged within the United States as a business in the issuing or underwriting of any covered product.

(2) The term "insurance company" or "insurer" does not include an insurance agent or insurance broker.

(h) *Permanent life insurance policy* means an agreement that contains a cash value or investment element and that obligates the insurer to indemnify or to confer a benefit upon the insured or beneficiary to the agreement contingent upon the death of the insured.

Subpart B—Programs

§ 1025.200 General.

Insurance companies are subject to the program requirements set forth and cross referenced in this subpart. Insurance companies should also refer to Subpart B of Part 1010 of this Chapter for program requirements contained in that subpart which apply to insurance companies.

§ 1025.210 Anti-money laundering programs for insurance companies.

(a) *In general.* Not later than May 2, 2006, each insurance company shall develop and implement a written anti-money laundering program applicable to its covered products that is reasonably designed to prevent the insurance company from being used to facilitate money laundering or the financing of terrorist activities. The program must be approved by senior management. An insurance company shall make a copy of its anti-money laundering program available to the Department of the Treasury, the Financial Crimes Enforcement Network, or their designee upon request.

(b) *Minimum requirements.* At a minimum, the program required by paragraph (a) of this section shall:

(1) Incorporate policies, procedures, and internal controls based upon the insurance company's assessment of the money laundering and terrorist financing risks associated with its covered products. Policies, procedures, and internal controls developed and implemented by an insurance company under this section shall include provisions for complying with the applicable requirements of subchapter II of chapter 53 of title 31, United States Code and this chapter, integrating the company's insurance agents and insurance brokers into its anti-money laundering program, and obtaining all relevant customer-related information necessary for an effective anti-money laundering program.

(2) Designate a compliance officer who will be responsible for ensuring that:

(i) The anti-money laundering program is implemented effectively, including monitoring compliance by the company's insurance agents and insurance brokers with their obligations under the program;

(ii) The anti-money laundering program is updated as necessary; and

(iii) Appropriate persons are educated and trained in accordance with paragraph (b)(3) of this section.

(3) Provide for on-going training of appropriate persons concerning their responsibilities under the program. An insurance company may satisfy this requirement with respect to its employees, insurance agents, and insurance brokers by directly training such persons or verifying that persons have received training by another insurance company or by a competent third party with respect to the covered products offered by the insurance company.

(4) Provide for independent testing to monitor and maintain an adequate program, including testing to determine compliance of the company's insurance agents and insurance brokers with their obligations under the program. The scope and frequency of the testing shall be commensurate with the risks posed by the insurance company's covered products. Such testing may be conducted by a third party or by any officer or employee of the insurance company, other than the person designated in paragraph (b)(2) of this section.

(c) *Anti-money laundering program requirements for insurance companies registered or required to register with the Securities and Exchange Commission as broker-dealers in securities.* An insurance company that is registered or required to register with the Securities and Exchange Commission as a broker-dealer in securities shall be deemed to have satisfied the requirements of this section for its broker-dealer activities to the extent that the company is required to establish and has established an anti-money laundering program pursuant to § 1023.210 of this Chapter and complies with such program.

(d) *Compliance.* Compliance with this section shall be examined by the Department of the Treasury, through the Financial Crimes Enforcement Network or its delegees, under the terms of the Bank Secrecy Act. Failure to comply with the requirements of this section may constitute a violation of the Bank Secrecy Act and of this chapter.

Subpart C—Reports Required To Be Made By Insurance Companies

§ 1025.300 General.

Insurance companies are subject to the reporting requirements set forth and cross referenced in this subpart. Insurance companies should also refer to Subpart C of Part 1010 of this Chapter for reporting requirements contained in that subpart which apply to insurance companies.

§ 1025.310 [Reserved]

§ 1025.315 [Reserved]

§ 1025.320 Reports by insurance companies of suspicious transactions.

(a) *General.* (1) Each insurance company shall file with the Financial Crimes Enforcement Network, to the extent and in the manner required by this section, a report of any suspicious transaction involving a covered product that is relevant to a possible violation of law or regulation. An insurance company may also file with the Financial Crimes Enforcement Network by using the form specified in paragraph (b)(1) of this section or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but the reporting of which is not required by this section.

(2) A transaction requires reporting under this section if it is conducted or attempted by, at, or through an insurance company, and involves or aggregates at least $5,000 in funds or other assets, and the insurance company knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this chapter or of any other regulations promulgated under the Bank Secrecy Act;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the insurance company knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the insurance company to facilitate criminal activity.

(3)(i) An insurance company is responsible for reporting suspicious transactions conducted through its insurance agents and insurance brokers. Accordingly, an insurance company shall establish and implement policies and procedures reasonably designed to obtain customer-related information necessary to detect suspicious activity from all relevant sources, including from its insurance agents and insurance brokers, and shall report suspicious activity based on such information.

(ii) Certain insurance agents may have a separate obligation to report suspicious activity pursuant to other provisions of this chapter. In those instances, no more than one report is required to be filed by the financial institutions involved in the transaction, as long as the report filed contains all relevant facts, including the names of both institutions and the words "joint filing" in the narrative section, and both institutions maintain a copy of the report filed, along with any supporting documentation.

(iii) An insurance company that issues variable insurance products funded by separate accounts that meet the definition of a mutual fund in § 1024.320(a)(1) of this Chapter shall file reports of suspicious transactions pursuant to § 1024.320 of this Chapter.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report by Insurance Companies (SAR–IC), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SAR–IC shall be filed with the Financial Crimes Enforcement Network as indicated in the instructions to the SAR–IC.

(3) *When to file.* A SAR–IC shall be filed no later than 30 calendar days after the date of the initial detection by the insurance company of facts that may constitute a basis for filing a SAR–IC under this section. If no suspect is identified on the date of such initial detection, an insurance company may delay filing a SAR–IC for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations that require immediate attention, such as terrorist financing or ongoing money laundering schemes, the insurance company shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR–IC. Insurance companies wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call the Financial Crimes Enforcement Network's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR–IC if required by this section.

(c) *Exception.* An insurance company is not required to file a SAR–IC to report the submission to it of false or fraudulent information to obtain a policy or make a claim, unless the company has reason to believe that the false or fraudulent submission relates to money laundering or terrorist financing.

(d) *Retention of records.* An insurance company shall maintain a copy of any SAR–IC filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR–IC. Supporting documentation shall be identified as such and maintained by the insurance company and shall be deemed to have been filed with the SAR–IC. When an insurance company has filed or is identified as a filer in a joint Suspicious Activity Report, the insurance company shall maintain a copy of such joint report (together with copies of any supporting documentation) for a period of five years from the date of filing. An insurance company shall make all supporting documentation available to the Financial Crimes Enforcement Network and any other appropriate law enforcement agencies or supervisory agencies upon request.

(e) *Confidentiality of reports; limitation of liability.* No insurance company, and no director, officer, employee, agent, or broker of any insurance company, who reports a suspicious transaction under this chapter (whether such a report is required by this section or made voluntarily), may notify any person involved in the transaction that the transaction has been reported, except to the extent permitted by paragraph (a)(3) of this section. Thus, any insurance company subpoenaed or otherwise requested to disclose a SAR–IC or the information contained in a SAR–IC (or a copy of a joint Suspicious Activity Report filed with another financial institution involved in the same

transaction, including an insurance agent), except where such disclosure is requested by the Financial Crimes Enforcement Network or another appropriate law enforcement or supervisory agency, shall decline to produce the Suspicious Activity Report or to provide any information that would disclose that a Suspicious Activity Report has been prepared or filed, citing as authority 31 CFR 1025.320 and 31 U.S.C. 5318(g)(2), and shall notify the Financial Crimes Enforcement Network of any such request and its response thereto. An insurance company, and any director, officer, employee, agent, or broker of such insurance company, that makes a report pursuant to this section, including a joint report (whether such report is required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided by 31 U.S.C. 5318(g)(3).

(f) *Compliance.* Compliance with this section shall be examined by the Department of the Treasury, through the Financial Crimes Enforcement Network or its delegees, under the terms of the Bank Secrecy Act. Failure to comply with the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this chapter.

(g) *Suspicious transaction reporting requirements for insurance companies registered or required to register with the Securities and Exchange Commission as broker-dealers in securities.* An insurance company that is registered or required to register with the Securities and Exchange Commission as a broker-dealer in securities shall be deemed to have satisfied the requirements of this section for its broker-dealer activities to the extent that the company complies with the reporting requirements applicable to such activities pursuant to § 1023.320 of this Chapter.

(h) *Applicability date.* This section applies to transactions occurring after May 2, 2006.

§ 1025.330 Reports relating to currency in excess of $10,000 received in a trade or business.

Refer to § 1010.330 of this Chapter for rules regarding the filing of reports relating to currency in excess of $10,000 received by insurance companies.

Subpart D—Records Required To Be Maintained By Insurance Companies

§ 1025.400 General.

Insurance companies are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Insurance companies should also refer to Subpart D of Part 1010 of this Chapter for recordkeeping requirements contained in that subpart which apply to insurance companies.

§ 1025.410 Recordkeeping.

Refer to § 1010.410.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 1025.500 General.

Insurance companies are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Insurance companies should also refer to Subpart E of Part 1010 of this Chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to insurance companies.

§ 1025.520 Special information sharing procedures to deter money laundering and terrorist activity for insurance companies.

(a) Refer to § 1010.520 of this Chapter.
(b) [Reserved]

§ 1025.530 [Reserved]

§ 1025.540 Voluntary information sharing among financial institutions.

(a) Refer to § 1010.540 of this Chapter.
(b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Insurance Companies

§ 1025.600 [Reserved]

§ 1025.610 [Reserved]

§ 1025.620 [Reserved]

§ 1025.630 [Reserved]

§ 1025.640 [Reserved]

§ 1025.670 [Reserved]

PART 1026—RULES FOR FUTURES COMMISSION MERCHANTS AND INTRODUCING BROKERS IN COMMODITIES

Subpart A—Definitions

Sec.
1026.100 Definitions.

Subpart B—Programs

1026.200 General.
1026.210 Anti-money laundering program requirements for futures commission merchants and introducing brokers in commodities.
1026.220 Customer identification program requirements for futures commission merchants and introducing brokers.

Subpart C—Reports Required To Be Made By Futures Commission Merchants and Introducing Brokers in Commodities

1026.300 General.
1026.310 Reports of transactions in currency.
1026.315 Exemptions.
1026.320 Reports by futures commission merchants and introducing brokers in commodities of suspicious transactions.

Subpart D—Records Required To Be Maintained By Futures Commission Merchants and Introducing Brokers in Commodities

1026.400 General.
1026.410 Recordkeeping.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

1026.500 General.
1026.520 Special information sharing procedures to deter money laundering and terrorist activity for futures commission merchants and introducing brokers in commodities.
1026.530 [Reserved]
1026.540 Voluntary information sharing among financial institutions.

Subpart F—Special Standards of Diligence; Prohibitions, and Special Measures for Futures Commission Merchants and Introducing Brokers in Commodities

1026.600 General.
1026.610 Due diligence programs for correspondent accounts for foreign financial institutions.
1026.620 Due diligence programs for private banking accounts.
1026.630 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.
1026.640 [Reserved]
1026.670 Summons or subpoena of foreign bank records; Termination of correspondent relationship.

Subpart A—Definitions

§ 1026.100 Definitions.

Refer to § 1010.100 of this Chapter for general definitions not noted herein. To the extent there is a differing definition in § 1010.100 of this Chapter, the definition in this Section is what applies to Part 1026. Unless otherwise indicated, for the purposes of this Part:

(a) *Account.* For purposes of § 1026.220:

(1) *Account* means a formal relationship with a futures commission merchant, including, but not limited to, those established to effect transactions in contracts of sale of a commodity for future delivery, options on any contract of sale of a commodity for future delivery, or options on a commodity.

(2) *Account* does not include:

(i) An account that the futures commission merchant acquires through

any acquisition, merger, purchase of assets, or assumption of liabilities; or

(ii) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(b) *Commodity* means any good, article, service, right, or interest described in Section 1a(4) of the Commodity Exchange Act (7 U.S.C. 1a(4)).

(c) *Contract of sale* means any sale, agreement of sale or agreement to sell as described in Section 1a(7) of the Commodity Exchange Act (7 U.S.C. 1a(7)).

(d) *Customer.* For purposes of § 1026.220:

(1) *Customer* means:

(i) A person that opens a new account with a futures commission merchant; and

(ii) An individual who opens a new account with a futures commission merchant for:

(A) An individual who lacks legal capacity; or

(B) An entity that is not a legal person.

(2) *Customer* does not include:

(i) A financial institution regulated by a Federal functional regulator or a bank regulated by a state bank regulator;

(ii) A person described in § 1020.315(b)(2) through (4) of this Chapter; or

(iii) A person that has an existing account, provided the futures commission merchant or introducing broker has a reasonable belief that it knows the true identity of the person.

(3) When an account is introduced to a futures commission merchant by an introducing broker, the person or individual opening the account shall be deemed to be a *customer* of both the futures commission merchant and the introducing broker for the purposes of this section.

(e) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

(f) *Futures commission merchant* means any person registered or required to be registered as a futures commission merchant with the Commodity Futures Trading Commission ("CFTC") under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to Section 4f(a)(2) of the Commodity Exchange Act (7 U.S.C. 6f(a)(2)).

(g) *Introducing broker* means any person registered or required to be registered as an introducing broker with the CFTC under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to Section 4f(a)(2) of the Commodity Exchange Act (7 U.S.C. 6f(a)(2)).

(h) *Option* means an agreement, contract or transaction described in Section 1a(26) of the Commodity Exchange Act (7 U.S.C. 1a(26)).

Subpart B—Programs

§ 1026.200 General.

Futures commission merchants and introducing brokers in commodities are subject to the program requirements set forth and cross referenced in this subpart. Futures commission merchants and introducing brokers in commodities should also refer to Subpart B of Part 1010 of this Chapter for program requirements contained in that subpart which apply to futures commission merchants and introducing brokers in commodities.

§ 1026.210 Anti-money laundering program requirements for futures commission merchants and introducing brokers in commodities.

A financial institution regulated by a self-regulatory organization shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if:

(a) The financial institution complies with the requirements of §§ 1010.610 and 1010.620 of this Chapter and any applicable regulation of its Federal functional regulator governing the establishment and implementation of anti-money laundering programs; and

(b)(1) The financial institution implements and maintains an anti-money laundering program that complies with the rules, regulations, or requirements of its self-regulatory organization governing such programs; and

(2) The rules, regulations, or requirements of the self-regulatory organization have been approved, if required, by the appropriate Federal functional regulator.

§ 1026.220 Customer identification programs for futures commission merchants and introducing brokers.

(a) *Customer identification program: Minimum requirements*—(1) *In general.* Each futures commission merchant and introducing broker must implement a written Customer Identification Program (CIP) appropriate for its size and business that, at a minimum, includes each of the requirements of paragraphs (a)(1) through (a)(5) of this section. The CIP must be a part of each futures commission merchant's and introducing broker's anti-money laundering compliance program required under 31 U.S.C. 5318(h).

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable each futures commission merchant and introducing broker to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on the futures commission merchant's or introducing broker's assessment of the relevant risks, including those presented by the various types of accounts maintained, the various methods of opening accounts, the various types of identifying information available, and the futures commission merchant's or introducing broker's size, location and customer base. At a minimum, these procedures must contain the elements described in paragraph (a)(2) of this section.

(i)(A) *Customer information required.* The CIP must include procedures for opening an account that specify identifying information that will be obtained from each customer. Except as permitted by paragraph (a)(2)(i)(B) of this section, each futures commission merchant and introducing broker must obtain, at a minimum, the following information prior to opening an account:

(1) Name;

(2) Date of birth, for an individual;

(3) Address, which shall be:

(i) For an individual, a residential or business street address;

(ii) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of a next of kin or another contact individual; or

(iii) For a person other than an individual (such as a corporation, partnership or trust), a principal place of business, local office or other physical location; and

(4) Identification number, which shall be:

(i) For a U.S. person, a taxpayer identification number; or

(ii) For a non-U.S. person, one or more of the following: A taxpayer identification number, a passport number and country of issuance, an alien identification card number, or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Note to Paragraph (a)(2)(i)(A)*(4)(ii)*: When opening an account for a foreign business or enterprise that does not have an identification number, the futures commission merchant or introducing broker must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of each customer, using information obtained in accordance with paragraph (a)(2)(i) of this section, within a reasonable time before or after the customer's account is opened. The procedures must describe when the futures commission merchant or introducing broker will use documents, non-documentary methods, or a combination of both methods, as described in this paragraph (a)(2)(ii).

(A) *Verification through documents.* For a futures commission merchant or introducing broker relying on documents, the CIP must contain procedures that set forth the documents the futures commission merchant or introducing broker will use. These documents may include:

(1) For an individual, an unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(2) For a person other than an individual (such as a corporation, partnership or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

(B) *Verification through non-documentary methods.* For a futures commission merchant or introducing broker relying on non-documentary methods, the CIP must contain procedures that set forth the non-documentary methods the futures commission merchant or introducing broker will use.

(1) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; or obtaining a financial statement.

(2) The futures commission merchant's or introducing broker's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the futures commission merchant or introducing broker is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the futures commission merchant or introducing broker; and where the futures commission merchant or introducing broker is otherwise presented with circumstances that increase the risk that the futures commission merchant or introducing broker will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the futures commission merchant's or introducing broker's risk assessment of a new account opened by a customer that is not an individual, the futures commission merchant or introducing broker will obtain information about individuals with authority or control over such account in order to verify the customer's identity. This verification method applies only when the futures commission merchant or introducing broker cannot verify the customer's true identity after using the verification methods described in paragraphs (a)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the futures commission merchant or introducing broker cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When an account should not be opened;

(B) The terms under which a customer may conduct transactions while the futures commission merchant or introducing broker attempts to verify the customer's identity;

(C) When an account should be closed after attempts to verify a customer's identity have failed; and

(D) When the futures commission merchant or introducing broker should file a Suspicious Activity Report in accordance with applicable law and regulation.

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under procedures implementing paragraph (a) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (a)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (a)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of a customer under paragraphs (a)(2)(ii)(B) and (C) of this section; and

(D) A description of the resolution of each substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* Each futures commission merchant and introducing broker must retain the records made under paragraph (a)(3)(i)(A) of this section for five years after the account is closed and the records made under paragraphs (a)(3)(i)(B), (C), and (D) of this section for five years after the record is made. In all other respects, the records must be maintained pursuant to the provisions of 17 CFR 1.31.

(4) *Comparison with government lists.* The CIP must include procedures for determining whether a customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the futures commission merchant or introducing broker to make such a determination within a reasonable period of time after the account is opened, or earlier if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures also must require the futures commission merchant or introducing broker to follow all Federal directives issued in connection with such lists.

(5)(i) *Customer notice.* The CIP must include procedures for providing customers with adequate notice that the futures commission merchant or introducing broker is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the futures commission merchant or introducing broker generally describes the identification requirements of this section and provides such notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example,

depending upon the manner in which the account is opened, a futures commission merchant or introducing broker may post a notice in the lobby or on its Web site, include the notice on its account applications or use any other form of written or oral notice.

(iii) *Sample notice.* If appropriate, a futures commission merchant or introducing broker may use the following sample language to provide notice to its customers:

Important Information About Procedures for Opening a New Account

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on another financial institution.* The CIP may include procedures specifying when the futures commission merchant or introducing broker will rely on the performance by another financial institution (including an affiliate) of any procedures of its CIP, with respect to any customer of the futures commission merchant or introducing broker that is opening an account, or has established an account or similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h), and is regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the futures commission merchant or introducing broker that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) specified requirements of the futures commission merchant's or introducing broker's CIP.

(b) *Exemptions.* The CFTC, with the concurrence of the Secretary, may by order or regulation exempt any futures commission merchant or introducing broker that registers with the CFTC or any type of account from the requirements of this section. In issuing such exemptions, the CFTC and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, and in the public interest, and may consider other necessary and appropriate factors.

(c) *Other requirements unaffected.* Nothing in this section relieves a futures commission merchant or introducing broker of its obligation to comply with any other provision of this chapter, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

Subpart C—Reports Required To Be Made by Futures Commission Merchants and Introducing Brokers in Commodities

§ 1026.300 General.

Futures commission merchants and introducing brokers in commodities are subject to the reporting requirements set forth and cross referenced in this subpart. Futures commission merchants and introducing brokers in commodities should also refer to Subpart C of Part 1010 of this Chapter for reporting requirements contained in that subpart which apply to futures commission merchants and introducing brokers in commodities.

§ 1026.310 Reports of transactions in currency.

The reports of transactions in currency requirements for futures commission merchants and introducing brokers in commodities are located in subpart C of Part 1010 of this Chapter and this subpart.

§ 1026.315 Exemptions.

Refer to § 1010.315 of this Chapter for exemptions from the obligation to file reports of transactions in currency for futures commission merchants and introducing brokers in commodities.

§ 1026.320 Reports by futures commission merchants and introducing brokers in commodities of suspicious transactions.

(a) *General*—(1) Every futures commission merchant ("FCM") and introducing broker in commodities ("IB–C") within the United States shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. An FCM or IB–C may also file with FinCEN a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section. Filing a report of a suspicious transaction does not relieve an FCM or IB–C from the responsibility of complying with any other reporting requirements imposed by the CFTC or any registered futures association or registered entity as those terms are defined in the Commodity Exchange Act ("CEA"), 7 U.S.C. 21 and 7 U.S.C. 1a(29).

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through an FCM or IB–C, it involves or aggregates funds or other assets of at least $5,000, and the FCM or IB–C knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any Federal law or regulation or to avoid any transaction reporting requirement under Federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this chapter or of any other regulations promulgated under the Bank Secrecy Act;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the FCM or IB–C knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the FCM or IB–C to facilitate criminal activity.

(3) The obligation to identify and properly and timely to report a suspicious transaction rests with each FCM and IB–C involved in the transaction, provided that no more than one report is required to be filed by any of the FCMs or IB–Cs involved in a particular transaction, so long as the report filed contains all relevant facts.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report by Securities and Futures Industries ("SAR–SF"), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SAR–SF shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR–SF.

(3) *When to file.* A SAR–SF shall be filed no later than 30 calendar days after the date of the initial detection by the reporting FCM or IB–C of facts that may constitute a basis for filing a SAR–SF under this section. If no suspect is identified on the date of such initial detection, an FCM or IB–C may delay

filing a SAR–SF for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as terrorist financing or ongoing money laundering schemes, the FCM or IB–C shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR–SF. FCMs and IB–Cs wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR–SF if required by this section. The FCM or IB–C may also, but is not required to, contact the CFTC to report in such situations.

(c) *Exceptions*—(1) An FCM or IB–C is not required to file a SAR–SF to report—

(i) A robbery or burglary committed or attempted of the FCM or IB–C that is reported to appropriate law enforcement authorities;

(ii) A violation otherwise required to be reported under the CEA (7 U.S.C. 1 *et seq.*), the regulations of the CFTC (17 CFR chapter I), or the rules of any registered futures association or registered entity as those terms are defined in the CEA, 7 U.S.C. 21 and 7 U.S.C. 1a(29), by the FCM or IB–C or any of its officers, directors, employees, or associated persons, other than a violation of 17 CFR 42.2, as long as such violation is appropriately reported to the CFTC or a registered futures association or registered entity.

(2) An FCM or IB–C may be required to demonstrate that it has relied on an exception in paragraph (c)(1) of this section, and must maintain records of its determinations to do so for the period specified in paragraph (d) of this section. To the extent that a Form 8–R, 8–T, U–5, or any other similar form concerning the transaction is filed consistent with CFTC, registered futures association, or registered entity rules, a copy of that form will be a sufficient record for the purposes of this paragraph (c)(2).

(d) *Retention of records.* An FCM or IB–C shall maintain a copy of any SAR–SF filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR–SF. Supporting documentation shall be identified as such and maintained by the FCM or IB–C, and shall be deemed to have been filed with the SAR–SF. An FCM or IB–C shall make all supporting documentation available to FinCEN, the CFTC, or any other appropriate law enforcement agency or regulatory agency, and, for purposes of paragraph (g) of this section, to any registered futures association, registered entity, or self-regulatory organization ("SRO") (as defined in section 3(a)(26) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(26)), upon request.

(e) *Confidentiality of reports.* No financial institution, and no director, officer, employee, or agent of any financial institution, who reports a suspicious transaction under this chapter, may notify any person involved in the transaction that the transaction has been reported, except to the extent permitted by paragraph (a)(3) of this section. Thus, any person subpoenaed or otherwise requested to disclose a SAR–SF or the information contained in a SAR–SF, except where such disclosure is requested by FinCEN, the CFTC, another appropriate law enforcement or regulatory agency, or for purposes of paragraph (g) of this section, a registered futures association, registered entity, or SRO shall decline to produce the SAR–SF or to provide any information that would disclose that a SAR–SF has been prepared or filed, citing this paragraph and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto.

(f) *Limitation of liability.* An FCM or IB–C, and any director, officer, employee, or agent of such FCM or IB–C, that makes a report of any possible violation of law or regulation pursuant to this section or any other authority (or voluntarily) shall not be liable to any person under any law or regulation of the United States (or otherwise to the extent also provided in 31 U.S.C. 5318(g)(3), including in any arbitration or reparations proceeding) for any disclosure contained in, or for failure to disclose the fact of, such report.

(g) *Examination and enforcement.* Compliance with this section shall be examined by the Department of the Treasury, through FinCEN or its delegates, under the terms of the Bank Secrecy Act. Reports filed under this section or § 1023.320 of this Chapter (including any supporting documentation), and documentation demonstrating reliance on an exception under paragraph (c) of this section or § 1023.320 of this Chapter, shall be made available, upon request, to the CFTC, Securities and Exchange Commission, and any registered futures association, registered entity, or SRO, examining an FCM, IB–C, or broker or dealer in securities for compliance with the requirements of this section or § 1023.320 of this Chapter. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the BSA or of this chapter.

(h) *Applicability date.* This section applies to transactions occurring after May 18, 2004.

Subpart D—Records Required To Be Maintained By Futures Commission Merchants and Introducing Brokers in Commodities

§ 1026.400 General.

Futures commission merchants and introducing brokers in commodities are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Futures commission merchants and introducing brokers in commodities should also refer to Subpart D of Part 1010 of this Chapter for recordkeeping requirements contained in that subpart which apply to futures commission merchants and introducing brokers in commodities.

§ 1026.410 Recordkeeping.

Refer to § 1010.410 of this Chapter.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 1026.500 General.

Futures commission merchants and introducing brokers in commodities are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Futures commission merchants and introducing brokers in commodities should also refer to Subpart E of Part 1010 of this Chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to futures commission merchants and introducing brokers in commodities.

§ 1026.520 Special information sharing procedures to deter money laundering and terrorist activity for futures commission merchants and introducing brokers in commodities.

(a) Refer to § 1010.520 of this Chapter.

(b) [Reserved]

§ 1026.530 [Reserved]

§ 1026.540 Voluntary information sharing among financial institutions.

(a) Refer to § 1010.540 of this Chapter.

(b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Futures Commission Merchants and Introducing Brokers in Commodities

§ 1026.600 General.

Futures commission merchants and introducing brokers in commodities are subject to the special standards of diligence; prohibitions; and special measures requirements set forth and cross referenced in this subpart. Futures commission merchants and introducing brokers in commodities should also refer to Subpart F of Part 1010 of this Chapter for special standards of diligence; prohibitions; and special measures contained in that subpart which apply to futures commission merchants and introducing brokers in commodities.

§ 1026.610 Due diligence programs for correspondent accounts for foreign financial institutions.

(a) Refer to § 1010.610 of this Chapter.
(b) [Reserved]

§ 1026.620 Due diligence programs for private banking accounts.

(a) Refer to § 1010.620 of this Chapter.
(b) [Reserved]

§ 1026.630 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.

(a) Refer to § 1010.630 of this Chapter.
(b) [Reserved]

§ 1026.640 [Reserved]

§ 1026.670 Summons or subpoena of foreign bank records; Termination of correspondent relationship.

(a) Refer to § 1010.670 of this Chapter.
(b) [Reserved]

PART 1027—RULES FOR DEALERS IN PRECIOUS METALS, PRECIOUS STONES, OR JEWELS

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1027.530 [Reserved]
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Subpart F—Special Standards of Diligence; Prohibitions, and Special Measures for Dealers in Precious Metals, Precious Stones, or Jewels

1027.600 [Reserved]
1027.610 [Reserved]
1027.620 [Reserved]
1027.630 [Reserved]
1027.640 [Reserved]
1027.670 [Reserved]

Subpart A—Definitions

§ 1027.100 Definitions.

Refer to § 1010.100 of this Chapter for general definitions not noted herein. To the extent there is a differing definition in § 1010.100 of this Chapter, the definition in this Section is what applies to Part 1027. Unless otherwise indicated, for purposes of this Part:

(a) *Covered goods* means:

(1) Jewels (as defined in paragraph (c) of this section);

(2) Precious metals (as defined in paragraph (d) of this section);

(3) Precious stones (as defined in paragraph (e) of this section); and

(4) Finished goods (including, but not limited to, jewelry, numismatic items, and antiques), that derive 50 percent or more of their value from jewels, precious metals, or precious stones contained in or attached to such finished goods;

(b) *Dealer.* (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the term "dealer" means a person engaged within the United States as a business in the purchase and sale of covered goods and who, during the prior calendar or tax year:

(i) Purchased more than $50,000 in covered goods; and

(ii) Received more than $50,000 in gross proceeds from the sale of covered goods.

(2) For purposes of this section, the term "dealer" does not include:

(i) A retailer (as defined in paragraph (f) of this section), unless the retailer, during the prior calendar or tax year, purchased more than $50,000 in covered goods from persons other than dealers or other retailers (such as members of the general public or foreign sources of supply); or

(ii) A person licensed or authorized under the laws of any State (or political subdivision thereof) to conduct business as a pawnbroker, but only to the extent such person is engaged in pawn transactions (including the sale of pawn loan collateral).

(3) For purposes of paragraph (b) of this section, the terms "purchase" and "sale" do not include a retail transaction in which a retailer or a dealer accepts from a customer covered goods, the value of which the retailer or dealer credits to the account of the customer, and the retailer or dealer does not provide funds to the customer in exchange for such covered goods.

(4) For purposes of paragraph (b) of this section and § 1027.210(a), the terms "purchase" and "sale" do not include the purchase of jewels, precious metals, or precious stones that are incorporated into machinery or equipment to be used for industrial purposes, and the purchase and sale of such machinery or equipment.

(5) For purposes of applying the $50,000 thresholds in paragraphs (b)(1) and (b)(2)(i) of this section to finished goods defined in paragraph (a)(4) of this section, only the value of jewels, precious metals, or precious stones contained in, or attached to, such goods shall be taken into account.

(c) *Jewel* means an organic substance with gem quality market-recognized beauty, rarity, and value, and includes pearl, amber, and coral.

(d) *Precious metal* means:

(1) Gold, iridium, osmium, palladium, platinum, rhodium, ruthenium, or silver, having a level of purity of 500 or more parts per thousand; and

(2) An alloy containing 500 or more parts per thousand, in the aggregate, of two or more of the metals listed in paragraph (d)(1) of this section.

(e) *Precious stone* means a substance with gem quality market-recognized beauty, rarity, and value, and includes diamond, corundum (including rubies and sapphires), beryl (including emeralds and aquamarines), chrysoberyl, spinel, topaz, zircon, tourmaline, garnet, crystalline and cryptocrystalline quartz, olivine peridot, tanzanite, jadeite jade, nephrite jade, spodumene, feldspar, turquoise, lapis lazuli, and opal.

(f) *Retailer* means a person engaged within the United States in the business of sales primarily to the public of covered goods.

Subpart B—Programs

§ 1027.200 General.

Dealers in precious metals, precious stones, or jewels are subject to the program requirements set forth and cross referenced in this subpart. Dealers in precious metals, precious stones, or jewels should also refer to Subpart B of Part 1010 of this Chapter for program requirements contained in that subpart which apply to dealers in precious metals, precious stones, or jewels.

§ 1027.210 Anti-money laundering programs for dealers in precious metals, precious stones, or jewels.

(a) *Anti-money laundering program requirement.* (1) Each dealer shall develop and implement a written anti-money laundering program reasonably designed to prevent the dealer from being used to facilitate money laundering and the financing of terrorist activities through the purchase and sale of covered goods. The program must be approved by senior management. A dealer shall make its anti-money laundering program available to the Department of Treasury through FinCEN or its designee upon request.

(2) To the extent that a retailer's purchases from persons other than dealers and other retailers exceeds the $50,000 threshold contained in § 1027.100(b)(2)(i), the anti-money laundering compliance program required of the retailer under this paragraph need only address such purchases.

(b) *Minimum requirements.* At a minimum, the anti-money laundering program shall:

(1) Incorporate policies, procedures, and internal controls based upon the dealer's assessment of the money laundering and terrorist financing risks associated with its line(s) of business. Policies, procedures, and internal controls developed and implemented by a dealer under this section shall include provisions for complying with the applicable requirements of the Bank Secrecy Act (31 U.S.C. 5311 *et seq.*), and this chapter.

(i) For purposes of making the risk assessment required by paragraph (b)(1) of this section, a dealer shall take into account all relevant factors including, but not limited to:

(A) The type(s) of products the dealer buys and sells, as well as the nature of the dealer's customers, suppliers, distribution channels, and geographic locations;

(B) The extent to which the dealer engages in transactions other than with established customers or sources of supply, or other dealers subject to this rule; and

(C) Whether the dealer engages in transactions for which payment or account reconciliation is routed to or from accounts located in jurisdictions that have been identified by the Department of State as a sponsor of international terrorism under 22 U.S.C. 2371; designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the United States representative or organization concurs; or designated by the Secretary of the Treasury pursuant to 31 U.S.C. 5318A as warranting special measures due to money laundering concerns.

(ii) A dealer's program shall incorporate policies, procedures, and internal controls to assist the dealer in identifying transactions that may involve use of the dealer to facilitate money laundering or terrorist financing, including provisions for making reasonable inquiries to determine whether a transaction involves money laundering or terrorist financing, and for refusing to consummate, withdrawing from, or terminating such transactions. Factors that may indicate a transaction is designed to involve use of the dealer to facilitate money laundering or terrorist financing include, but are not limited to:

(A) Unusual payment methods, such as the use of large amounts of cash, multiple or sequentially numbered money orders, traveler's checks, or cashier's checks, or payment from third parties;

(B) Unwillingness by a customer or supplier to provide complete or accurate contact information, financial references, or business affiliations;

(C) Attempts by a customer or supplier to maintain an unusual degree of secrecy with respect to the transaction, such as a request that normal business records not be kept;

(D) Purchases or sales that are unusual for the particular customer or supplier, or type of customer or supplier; and

(E) Purchases or sales that are not in conformity with standard industry practice.

(2) Designate a compliance officer who will be responsible for ensuring that:

(i) The anti-money laundering program is implemented effectively;

(ii) The anti-money laundering program is updated as necessary to reflect changes in the risk assessment, requirements of this chapter, and further guidance issued by the Department of the Treasury; and

(iii) Appropriate personnel are trained in accordance with paragraph (b)(3) of this section.

(3) Provide for on-going education and training of appropriate persons concerning their responsibilities under the program.

(4) Provide for independent testing to monitor and maintain an adequate program. The scope and frequency of the testing shall be commensurate with the risk assessment conducted by the dealer in accordance with paragraph (b)(1) of this section. Such testing may be conducted by an officer or employee of the dealer, so long as the tester is not the person designated in paragraph (b)(2) of this section or a person involved in the operation of the program.

(c) *Implementation date.* A dealer must develop and implement an anti-money laundering program that complies with the requirements of this section on or before the later of January 1, 2006, or six months after the date a dealer becomes subject to the requirements of this section.

Subpart C—Reports Required To Be Made by Dealers in Precious Metals, Precious Stones, or Jewels

§ 1027.300 General.

Dealers in precious metals, precious stones, or jewels are subject to the reporting requirements set forth and cross referenced in this subpart. Dealers in precious metals, precious stones, or jewels should also refer to Subpart C of Part 1010 of this Chapter for reporting requirements contained in that subpart which apply to dealers in precious metals, precious stones, or jewels.

§ 1027.310 [Reserved]

§ 1027.315 [Reserved]

§ 1027.320 [Reserved]

§ 1027.330 Reports relating to currency in excess of $10,000 received in a trade or business.

Refer to § 1010.330 of this Chapter for rules regarding the filing of reports relating to currency in excess of $10,000 received by dealers in precious metals, precious stones, or jewels.

Subpart D—Records Required To Be Maintained By Dealers in Precious Metals, Precious Stones, or Jewels

§ 1027.400 General.

Dealers in precious metals, precious stones, or jewels are subject to the recordkeeping requirements set forth and cross referenced in this subpart.

Dealers in precious metals, precious stones, or jewels should also refer to Subpart D of Part 1010 of this Chapter for recordkeeping requirements contained in that subpart which apply to dealers in precious metals, precious stones, or jewels.

§ 1027.410 Recordkeeping.

Refer to § 1010.410 of this Chapter.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 1027.500 General.

Dealers in precious metals, precious stones, or jewels are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Dealers in precious metals, precious stones, or jewels should also refer to Subpart E of Part 1010 of this Chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to dealers in precious metals, precious stones, or jewels.

§ 1027.520 Special information sharing procedures to deter money laundering and terrorist activity for dealers in precious metals, precious stones, or jewels.

(a) Refer to § 1010.520 of this Chapter.

(b) [Reserved]

§ 1027.530 [Reserved]

§ 1027.540 Voluntary information sharing among financial institutions.

(a) Refer to § 1010.540 of this Chapter.

(b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Dealers in Precious Metals, Precious Stones, or Jewels

§ 1027.600 [Reserved]

§ 1027.610 [Reserved]

§ 1027.620 [Reserved]

§ 1027.630 [Reserved]

§ 1027.640 [Reserved]

§ 1027.670 [Reserved]

PART 1028—RULES FOR OPERATORS OF CREDIT CARD SYSTEMS

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Subpart A—Definitions

§ 1028.100 Definitions.

Refer to § 1010.100 of this Chapter for general definitions not noted herein. To the extent there is a differing definition in § 1010.100 of this Chapter, the definition in this Section is what applies to Part 1028. Unless otherwise indicated, for purposes of this Part:

(a) *Acquiring institution* means a person authorized by the operator of a credit card system to contract, directly or indirectly, with merchants or other persons to process transactions, including cash advances, involving the operator's credit card.

(b) *Credit card* has the same meaning as in 15 U.S.C. 1602(k). It includes charge cards as defined in 12 CFR 226.2(15).

(c) *Foreign bank* means any organization that is organized under the laws of a foreign country; engages in the business of banking; is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or the country of its principal banking operations; and receives deposits in the regular course of its business. For purposes of this definition:

(1) The term foreign bank includes a branch of a foreign bank in a territory of the United States, Puerto Rico, Guam, American Samoa, or the U.S. Virgin Islands.

(2) The term foreign bank does not include:

(i) A U.S. agency or branch of a foreign bank; and

(ii) An insured bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the U.S. Virgin Islands.

(d) *Issuing institution* means a person authorized by the operator of a credit card system to issue the operator's credit card.

(e) *Operator of a credit card system* means any person doing business in the United States that operates a system for clearing and settling transactions in which the operator's credit card, whether acting as a credit or debit card, is used to purchase goods or services or to obtain a cash advance. To fall within this definition, the operator must also have authorized another person (whether located in the United States or not) to be an issuing or acquiring institution for the operator's credit card.

(f) *Operator's credit card* means a credit card capable of being used in the United States that:

(1) Has been issued by an issuing institution; and

(2) Can be used in the operator's credit card system.

Subpart B—Programs

§ 1028.200 General.

Operators of credit card systems are subject to the program requirements set forth and cross referenced in this subpart. Operators of credit card systems should also refer to Subpart B of Part 1010 of this Chapter for program requirements contained in that subpart which apply to operators of credit card systems.

§ 1028.210 Anti-money laundering programs for operators of credit card systems.

(a) *Anti-money laundering program requirement.* Effective July 24, 2002, each operator of a credit card system shall develop and implement a written anti-money laundering program reasonably designed to prevent the operator of a credit card system from being used to facilitate money laundering and the financing of terrorist activities. The program must be approved by senior management. Operators of credit card systems must make their anti-money laundering programs available to the Department of the Treasury or the appropriate Federal regulator for review.

(b) *Minimum requirements.* At a minimum, the program must:

(1) Incorporate policies, procedures, and internal controls designed to ensure the following:

(i) That the operator does not authorize, or maintain authorization for, any person to serve as an issuing or acquiring institution without the operator taking appropriate steps, based upon the operator's money laundering or terrorist financing risk assessment, to guard against that person issuing the operator's credit card or acquiring merchants who accept the operator's credit card in circumstances that facilitate money laundering or the financing of terrorist activities;

(ii) For purposes of making the risk assessment required by paragraph (b)(1)(i) of this section, the following persons are presumed to pose a heightened risk of money laundering or terrorist financing when evaluating whether and under what circumstances to authorize, or to maintain authorization for, any such person to serve as an issuing or acquiring institution:

(A) A foreign shell bank that is not a regulated affiliate, as those terms are defined in § 1010.605(g) and (n) of this Chapter;

(B) A person appearing on the Specially Designated Nationals List issued by Treasury's Office of Foreign Assets Control;

(C) A person located in, or operating under a license issued by, a jurisdiction whose government has been identified by the Department of State as a sponsor of international terrorism under 22 U.S.C. 2371;

(D) A foreign bank operating under an offshore banking license, other than a branch of a foreign bank if such foreign bank has been found by the Board of Governors of the Federal Reserve System under the Bank Holding Company Act (12 U.S.C. 1841, *et seq.*) or the International Banking Act (12 U.S.C. 3101, *et seq.*) to be subject to comprehensive supervision or regulation on a consolidated basis by the relevant supervisors in that jurisdiction;

(E) A person located in, or operating under a license issued by, a jurisdiction that has been designated as noncooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member, with which designation the United States representative to the group or organization concurs; and

(F) A person located in, or operating under a license issued by, a jurisdiction that has been designated by the Secretary of the Treasury pursuant to 31 U.S.C. 5318A as warranting special measures due to money laundering concerns;

(iii) That the operator is in compliance with all applicable provisions of subchapter II of chapter 53 of title 31, United States Code and this chapter;

(2) Designate a compliance officer who will be responsible for assuring that:

(i) The anti-money laundering program is implemented effectively;

(ii) The anti-money laundering program is updated as necessary to reflect changes in risk factors or the risk assessment, current requirements of this chapter, and further guidance issued by the Department of the Treasury; and

(iii) Appropriate personnel are trained in accordance with paragraph (b)(3) of this section;

(3) Provide for education and training of appropriate personnel concerning their responsibilities under the program; and

(4) Provide for an independent audit to monitor and maintain an adequate program. The scope and frequency of the audit shall be commensurate with the risks posed by the persons authorized to issue or accept the operator's credit card. Such audit may be conducted by an officer or employee of the operator, so long as the reviewer is not the person designated in paragraph (b)(2) of this section or a person involved in the operation of the program.

Subpart C—Reports Required To Be Made by Operators of Credit Card Systems

§ 1028.300 General.

Operators of credit card systems are subject to the reporting requirements set forth and cross referenced in this subpart. Operators of credit card systems should also refer to Subpart C of Part 1010 of this Chapter for reporting requirements contained in that subpart which apply to operators of credit card systems.

§ 1028.310 [Reserved]

§ 1028.315 [Reserved]

§ 1028.320 [Reserved]

§ 1028.330 Reports relating to currency in excess of $10,000 received in a trade or business.

Refer to § 1010.330 of this Chapter for rules regarding the filing of reports relating to currency in excess of $10,000 received by operators of credit card systems.

Subpart D—Records Required To Be Maintained By Operators of Credit Card Systems

§ 1028.400 General.

Operators of credit card systems are subject to the recordkeeping requirements set forth and cross referenced in this subpart. Operators of credit card systems should also refer to Subpart D of Part 1010 of this Chapter for recordkeeping requirements contained in that subpart which apply to operators of credit card systems.

§ 1028.410 Recordkeeping.

Refer to § 1010.410 of this Chapter.

Subpart E—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

§ 1028.500 General.

Operators of credit card systems are subject to the special information sharing procedures to deter money laundering and terrorist activity requirements set forth and cross referenced in this subpart. Operators of credit card systems should also refer to Subpart E of Part 1010 of this Chapter for special information sharing procedures to deter money laundering and terrorist activity contained in that subpart which apply to operators of credit card systems.

§ 1028.520 Special information sharing procedures to deter money laundering and terrorist activity for operators of credit card systems.

(a) Refer to § 1010.520.

(b) [Reserved]

§ 1028.530 [Reserved]

§ 1028.540 Voluntary information sharing among financial institutions.

(a) Refer to § 1010.540 of this Chapter.

(b) [Reserved]

Subpart F—Special Standards of Diligence; Prohibitions; and Special Measures for Operators of Credit Card Systems

§ 1028.600 [Reserved]

§ 1028.610 [Reserved]

§ 1028.620 [Reserved]

§ 1028.630 [Reserved]

§ 1028.640 [Reserved]

§ 1028.670 [Reserved]

PARTS 1029–1099 [RESERVED]

Dated: October 7, 2010.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

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Part IV

Securities and Exchange Commission

17 CFR Part 242

Ownership Limitations and Governance Requirements for Security-Based Swap Clearing Agencies, Security-Based Swap Execution Facilities, and NationalSecurities Exchanges With Respect to Security-Based Swaps Under Regulation MC; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–63107; File No. S7–27–10]

RIN 3235–AK74

Ownership Limitations and Governance Requirements for Security-Based Swap Clearing Agencies, Security-Based Swap Execution Facilities, and National Securities Exchanges With Respect to Security-Based Swaps Under Regulation MC

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: In accordance with Section 765 ("Section 765") of Title VII ("Title VII") of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), the Securities and Exchange Commission ("SEC" or "Commission") is proposing Regulation MC under the Securities Exchange Act of 1934 ("Exchange Act") for clearing agencies that clear security-based swaps ("security-based swap clearing agencies") and for security-based swap execution facilities ("SB SEFs") and national securities exchanges that post or make available for trading security-based swaps ("SBS exchanges"). Regulation MC is designed to mitigate potential conflicts of interest that could exist at these entities. Specifically, the Commission seeks to mitigate the potential conflicts of interest through conditions and structures relating to ownership, voting, and governance of security-based swap clearing agencies, SB SEFs, and SBS exchanges.

DATES: Comments should be submitted on or before November 26, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–27–10 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F St., NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–27–10. This file number should be included on the subject line if e-mail is used. To help us 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/proposed.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F St., NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. 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.

FOR FURTHER INFORMATION CONTACT: *Proposals relating to security-based swap clearing agencies:* Catherine Moore, Senior Special Counsel, at (202) 551–5710; and Joseph P. Kamnik, Special Counsel, at (202) 551–5710; Office of Clearance and Settlement, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010; *proposals relating to security-based swap execution facilities and national securities exchanges that post or make available for trading security-based swaps:* Nancy Burke-Sanow, Assistant Director, at (202) 551–5621; Molly Kim, Special Counsel, at (202) 551–5644; Steven Varholik, Special Counsel, at (202) 551–5615; Sarah Schandler, Attorney, at (202) 551–7145; and Iliana Lundblad, Attorney, at (202) 551–5871; Office of Market Supervision, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is proposing new Regulation MC under the Exchange Act relating to conflicts of interest with respect to security-based swap clearing agencies, SB SEFs, and SBS exchanges.

I. Introduction

On July 21, 2010, the President signed the Dodd-Frank Act into law.[1] The Dodd-Frank Act was enacted to, among other purposes, promote the financial stability of the United States by improving accountability and transparency in the financial system.[2] Title VII of the Dodd-Frank Act provides the Commission and the Commodity Futures Trading Commission ("CFTC") with the authority to regulate over-the-counter ("OTC") derivatives in light of the recent financial crisis, which demonstrated the need for enhanced regulation in the OTC derivatives market. The Dodd-Frank Act is intended to close loopholes in the existing regulatory structure and to provide the Commission and the CFTC with effective regulatory tools to oversee the OTC swaps market, which has grown exponentially in recent years and is capable of affecting significant sectors of the U.S. economy.

The Dodd-Frank Act provides that the CFTC will regulate "swaps," the Commission will regulate "security-based swaps," and the CFTC and the Commission will jointly regulate "mixed swaps."[3] The Dodd-Frank Act amends the Exchange Act to require, among other things, the following: (1) Transactions in security-based swaps must be cleared through a clearing agency if they are of a type that the Commission determines must be cleared, unless an exemption from mandatory clearing applies; (2) transactions in security-based swaps must be reported to a registered security-based swap data repository or

[1] The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, H.R. 4173).

[2] *See* Public Law 111–203, Preamble.

[3] Section 712(d) of the Dodd-Frank Act provides that the Commission and the CFTC, in consultation with the Board of Governors of the Federal Reserve System ("Federal Reserve"), shall jointly further define the terms "swap," "security-based swap," "swap dealer," "security-based swap dealer," "major swap participant," "major security-based swap participant," "eligible contract participant," and "security-based swap agreement." These terms are defined in Sections 721 and 761 of the Dodd-Frank Act and, with respect to the term "eligible contract participant," in Section 1a(18) of the Commodity Exchange Act ("CEA"), 7 U.S.C. 1a(18), as re-designated and amended by Section 721 of the Dodd-Frank Act. Further, Section 721(c) of the Dodd-Frank Act requires the CFTC to adopt a rule to further define the terms "swap," "swap dealer," "major swap participant," and "eligible contract participant," and Section 761(b) of the Dodd-Frank Act permits the Commission to adopt a rule to further define the terms "security-based swap," "security-based swap dealer," "major security-based swap participant," and "eligible contract participant," with regard to security-based swaps, for the purpose of including transactions and entities that have been structured to evade Title VII of the Dodd-Frank Act. Finally, Section 712(a) of the Dodd-Frank Act provides that the Commission and CFTC, after consultation with the Federal Reserve, shall jointly prescribe regulations regarding "mixed swaps" as may be necessary to carry out the purposes of Title VII. To assist the Commission and CFTC in further defining the terms specified above, and to prescribe regulations regarding "mixed swaps" as may be necessary to carry out the purposes of Title VII, the Commission and the CFTC have requested comment from interested parties. *See* Securities Exchange Act Release No. 62717 (August 13, 2010), 75 FR 51429 (August 20, 2010) (File No. S7–16–10) (advance joint notice of proposed rulemaking regarding definitions contained in Title VII of the Dodd-Frank Act) ("Definitions Release").

the Commission; and (3) if a security-based swap is subject to a clearing requirement, it must be traded on a registered trading platform, *i.e.,* a SB SEF or SBS exchange, unless no facility makes such security-based swap available for trading.[4]

II. Mandated Rulemaking on Mitigating Conflicts of Interest

Section 765 of the Dodd-Frank Act requires the Commission to adopt rules to mitigate specified conflicts of interest.[5] Section 765(a) requires the Commission to adopt rules, which rules may include numerical limits on the control of, or the voting rights with respect to, any security-based swap clearing agency, or on the control of any SB SEF or SBS exchange, by specified entities, such as a bank holding company with total consolidated assets of $50 billion or more,[6] a nonbank financial company,[7] an affiliate of such bank holding company or nonbank financial company, a security-based swap dealer,[8] or a major security-based swap participant (collectively, "Specified Entities").[9]

Section 765(b)—captioned "Purposes"—provides that the Commission shall adopt such rules if it determines they are necessary or appropriate to improve the governance of, or to mitigate systemic risk, promote competition or mitigate conflicts of interest in connection with a security-based swap dealer's or major security-based swap participant's conduct of business with, a security-based swap clearing agency, SB SEF, or SBS exchange and in which such security-based swap dealer or major security-based swap participant has a material debt or equity investment.[10] Section 765(b) sets forth a number of underlying policy objectives for the Commission's rulemaking—improving governance, mitigating systemic risk, promoting competition, and mitigating conflicts of interest with respect to security-based swap clearing agencies, SB SEFs, and SBS exchanges. In considering proposed rules to mitigate conflicts of interest, the Commission is mindful that, in some instances, certain of these diverse policy objectives may be in tension with others. For example, as described in Section III.A.2.a below, with respect to security-based swap clearing agencies, the statutory objective of promoting competition, which may be furthered through enhanced access to cleared products and clearing venues, may to some extent be in tension with the objective of minimizing systemic risk through effective risk management of the clearing agency.

Section 765(c) of the Dodd-Frank Act also provides that in adopting rules under Section 765, the Commission shall consider any conflicts of interest arising from the amount of equity ownership and voting by a single investor; the ability of owners to vote, cause the vote of, or withhold votes entitled to be cast on any matters by the holders of the ownership interest; and the governance arrangements of any derivatives clearing organization that clears swaps, or swap execution facility or board of trade designated as a contract market that posts swaps or makes swaps available for trading.[11]

The Commission is cognizant that the proposed rules discussed herein, as well as other proposals that the Commission may consider in the coming months to implement the Dodd-Frank Act, if adopted, could significantly affect—and be significantly affected by—the nature and scope of the security-based swaps market in a number of ways. For example, the Commission recognizes that if the measures proposed in this release are adopted and are too onerous for new entrants, they could hinder the further development of a market for security-based swaps by unduly discouraging competition and the formation of new security-based swap clearing agencies and of new SB SEFs or SBS exchanges. On the other hand, if the Commission adopts rules that are too permissive, conflicts of interest may be inadequately mitigated and such conflicts may incentivize restricting access to centralized clearing and lack of transparency in the trading of security-based swaps as described in detail in Section III below. The Commission is also mindful that the further development of the security-based swaps market may alter the calculus for future regulation of conflicts of interest. As commenters review the instant proposals, they are urged to consider generally the role that regulation may play in fostering or limiting the development of the market for security-based swaps (or, vice versa, the role that market developments may play in changing the nature and implications of regulation) and specifically to focus on this issue with respect to the proposals to mitigate conflicts of interest for security-based swap clearing agencies, SB SEFs, and SBS exchanges.

[4] *See* Section 761 of the Dodd-Frank Act, added as Section 3(a)(77) of the Exchange Act, 15 U.S.C. 78(c)(a), which defines the term "security-based swap execution facility" to mean "a trading system or platform in which multiple participants have the ability to execute or trade security-based swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility that (A) facilitates the execution of security-based swaps between persons; and (B) is not a national securities exchange." *See* Public Law 111–203, Section 761. The Dodd-Frank Act amends the CEA to provide for a similar regulatory framework with respect to transactions in swaps regulated by the CFTC.

[5] *See* Public Law 111–203, Section 765.

[6] The term "bank holding company" has the meaning set forth in Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) ("Bank Holding Company Act"), and generally means any company that has control over any bank or over any company that is or becomes a bank holding company by virtue of the Bank Holding Company Act.

[7] Under Section 765(a) of the Dodd-Frank Act, the term "nonbank financial company" has the meaning set forth in Section 102 of the Dodd-Frank Act, and generally means a company, other than a bank holding company, national securities exchange, clearing agency, SB SEF, registered security-based swap data repository, board of trade designated as a contract market ("DCM"), derivatives clearing organization, swap execution facility ("SEF") or registered swap data repository, that is predominantly engaged in financial activities (including through a branch in the U.S., if such company is incorporated or organized in a country other than the U.S.). *See* Public Law 111–203, Section 102 for the complete definition.

[8] Pursuant to Section 761 of the Dodd-Frank Act, the term "security-based swap dealer" is added as Section 3(a)(71) of the Exchange Act, 15 U.S.C 78c(a), and generally means any person who (A) holds themselves out as a dealer in security-based swaps; (B) makes a market in security-based swaps; (C) regularly enters into security-based swaps with counterparties as an ordinary course of business for its own account; or (D) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps. *See* Public Law 111–203, Section 761 for the complete definition. *See also* Definitions Release, 75 FR 51429, *supra* note 3.

[9] Pursuant to Section 761 of the Dodd-Frank Act, the term "major security-based swap participant" is added as Section 3(a)(67) of the Exchange Act, 15 U.S.C 78c(a), and generally means any person (A) who is not a security-based swap dealer; and (B)(I) who maintains a substantial position in security-based swaps for any of the major security-based swap categories, as such categories are determined by the Commission, excluding positions held for hedging or mitigating commercial risk; (II) whose outstanding security-based swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the U.S. banking system or financial markets; or (III) that is a financial entity that (a) is highly leveraged relative to the amount of capital such entity holds and that is not subject to capital requirements established by an appropriate Federal banking regulator; and (b) maintains a substantial position in outstanding security-based swaps in any major security-based swap category, as such categories are determined by the Commission. *See* Public Law 111–203, Section 761 for the complete definition. *See also* Definitions Release, 75 FR 51429, *supra* note 3.

[10] *See* Public Law 111–203, Section 765(b).

[11] *See* Public Law 111–203, Section 765(c). Although this provision refers to swaps and to entities regulated by the CFTC, the Commission believes that the Congress intended it to refer to security-based swaps and to security-based swap clearing agencies, SB SEFs, and SBS exchanges, because Section 765 pertains to transactions in security-based swaps and persons and entities related thereto.

The Commission must adopt the rules required by Section 765 of the Dodd-Frank Act by January 17, 2011, which is 180 days after enactment of the Dodd-Frank Act.[12] The Commission therefore is proposing Regulation MC under the Exchange Act to mitigate conflicts of interest with respect to security-based swap clearing agencies, SB SEFs, and SBS exchanges.

This proposed rulemaking is among the first that the Commission has considered in connection with its mandates under the Dodd-Frank Act, and the Commission is mindful of the considerations raised by this timing. In particular, under the prescribed timeframes of the Dodd-Frank Act, the Commission must propose rules required by Section 765 before it has the opportunity to consider proposed rules that also are likely to affect the development of security-based swap clearing agencies, SB SEFs, and SBS exchanges, as well as the security-based swaps market overall. The Commission also notes that the market for security-based swaps is in a nascent stage of development compared to the markets for equity securities and listed options and that the market for security-based swaps could develop further as the Dodd-Frank Act is fully implemented and these transactions continue to move to central clearing and trading on organized markets.

III. Discussion of Potential Conflicts of Interest

A. Security-Based Swap Clearing Agencies

1. Current Regulatory Structure

Credit market events from the last few years have demonstrated that a security-based swaps market operating without meaningful regulation[13] and central counterparties[14] can pose systemic risks. In November 2008, under the auspices of the President's Working Group on Financial Markets, the Secretary of the Department of the Treasury, the Chairs of the Board of Governors of the Federal Reserve, the Office of the Comptroller of the Currency, the CFTC, and the Commission established as a policy objective for the OTC derivatives market that regulators and prudential supervisors require participants in a central counterparty ("CCP") arrangement to clear all eligible contracts through that CCP.[15] In furtherance of this policy objective, the Commission, the Federal Reserve, and the CFTC signed a Memorandum of Understanding that established a framework for consultation and information sharing on issues related to central counterparties for the OTC derivatives market.[16]

The Commission has taken steps to help foster the prompt development of CCPs. In particular, the Commission acted to authorize the clearing of OTC security-based swaps by permitting certain clearing agencies to clear credit default swaps ("CDS") on a temporary conditional basis.[17] Today, a significant volume of CDS transactions is cleared centrally and the Commission monitors the activities of these clearing agencies.[18]

The Exchange Act does not impose specific requirements regarding the ownership structure of a clearing agency. As a result, clearing agencies may operate under a variety of appropriate organizational structures provided that they have the capacity to meet the standards in Section 17A of the Exchange Act.[19] Certain clearing agencies registered with the Commission are owned either by participants or by securities exchanges.[20] Other clearing agencies, such as the security-based swap clearing agencies that, once registered, would be required to comply with proposed Regulation MC, are subsidiaries of or partly-owned by publicly traded companies.[21] These entities are not wholly-owned by participants or exchanges and may have different governance related issues than the securities clearing agencies currently registered with the Commission.

Upon the effective date of Title VII of the Dodd-Frank Act, clearing agencies that clear and settle security-based swap transactions will be subject to a number of regulatory obligations that are intended to promote the policy objectives of the Dodd-Frank Act, including increased clearing of security-based swaps and effective risk management. Accordingly, security-based swap clearing agencies will be required to be registered with, and regulated by, the Commission under Section 17A.[22] In addition, all registered

[12] Section 726 of the Dodd-Frank Act similarly requires the CFTC to adopt rules designed to mitigate conflicts of interest with respect to entities under its jurisdiction that clear or trade swaps. *See* Public Law 111–203, Section 726. The Commission preliminarily believes that an entity that registers with the Commission as either a security-based swap clearing agency or a SB SEF is likely to register also with the CFTC as a derivatives clearing organization or swap execution facility, respectively. As a result, the Commission staff and the CFTC staff have consulted and coordinated with one another regarding their respective agencies' proposed rules to mitigate conflicts of interest.

[13] *See, generally,* Policy Objectives for the OTC Derivatives Market, The President's Working Group on Financial Markets (November 14, 2008) (available at *http://www.ustreas.gov/press/releases/reports/policyobjectives.pdf*).

[14] *See* The Role of Credit Derivatives in the U.S. Economy before the H. Agric. Comm., 110th Cong. (2008) (Statement of Erik Sirri, Director of the Division of Trading and Markets, Commission) (available at *http://agriculture.house.gov/testimony/110/110-49.pdf*).

[15] *See supra* note 13. *See also* Policy Statement on Financial Market Developments, The President's Working Group on Financial Markets (March 13, 2008) (available at *http://www.treas.gov/press/releases/reports/pwgpolicystatemktturmoil_03122008.pdf*) and Progress Update on March Policy Statement on Financial Market Developments, The President's Working Group on Financial Markets (October 2008) (available at *http://www.treas.gov/press/releases/reports/q4progress%20update.pdf*).

[16] *See* Memorandum of Understanding Between the Board of Governors of the Federal Reserve System, the U.S. Commodity Futures Trading Commission, and the U.S. Securities and Exchange Commission Regarding Central Counterparties for Credit Default Swaps (November 14, 2008) (available at *http://www.treas.gov/press/releases/reports/finalmou.pdf).*

[17] The Commission authorized five entities to clear credit default swaps. *See* Securities Exchange Act Release Nos. 60372 (July 23, 2009), 74 FR 37748 (July 29, 2009) and 61973 (April 23, 2010), 75 FR 22656 (April 29, 2010) (CDS clearing by ICE Clear Europe Limited); 60373 (July 23, 2009), 74 FR 37740 (July 29, 2009) and 61975 (April 23, 2010), 75 FR 22641 (April 29, 2010) (CDS clearing by Eurex Clearing AG); 59578 (March 13, 2009), 74 FR 11781 (March 19, 2009), 61164 (December 14, 2009), 74 FR 67258 (December 18, 2009) and 61803 (March 30, 2010), 75 FR 17181 (April 5, 2010) (CDS clearing by Chicago Mercantile Exchange Inc.); 59527 (March 6, 2009), 74 FR 10791 (March 12, 2009), 61119 (December 4, 2009), 74 FR 65554 (December 10, 2009) and 61662 (March 5, 2010), 75 FR 11589 (March 11, 2010) (CDS clearing by ICE Trust US LLC); 59164 (December 24, 2008), 74 FR 139 (January 2, 2009) (temporary CDS clearing by LIFFE A&M and LCH.Clearnet Ltd.) (collectively, "CDS Clearing Exemption Orders"). LIFFE A&M and LCH.Clearnet Ltd. allowed their order to lapse without seeking renewal.

[18] To date most cleared CDS transactions have cleared at ICE Trust US LLC ("ICE Trust") or ICE Clear Europe Limited ("ICE Clear Europe"). As of October 8, 2010, ICE Trust had cleared approximately $7.1 trillion notional amount of CDS contracts based on indices of securities and approximately $490 billion notional amount of CDS contracts based on individual reference entities or securities. As of October 8, 2010, ICE Clear Europe had cleared approximately €3.09 trillion notional amount of CDS contracts based on indices of securities and approximately €560 billion notional amount of CDS contracts based on individual reference entities or securities. *See https://www.theice.com/marketdata/reports/ReportCenter.shtml.*

[19] *See* 78q–1(b)(3)(A).

[20] The Depository Trust and Clearing Corporation ("DTCC") is participant-owned and has three separate subsidiaries that are registered clearing agencies which function as quasi-utilities. The Options Clearing Corporation is owned by five unaffiliated options exchanges.

[21] These clearing agencies include ICE Trust US LLC, ICE Clear Europe Limited, Eurex Clearing AG, and Chicago Mercantile Exchange Inc.

[22] Section 763(b) of the Dodd-Frank Act adds new Section 17A(k) to the Exchange Act, which authorizes the Commission to exempt, conditionally or unconditionally, a security-based swap clearing agency from registration if the Commission determines it is subject to comparable, comprehensive supervision and regulation by the CFTC or appropriate government authorities in the

clearing agencies must comply with the standards in Section 17A, which include, but are not limited to, maintaining rules for promoting the prompt and accurate clearance and settlement of securities transactions, assuring the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, fostering cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, removing impediments to and perfecting the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, protecting investors and the public interest.[23] A registered clearing agency is also required to provide fair access to clearing and to have the capacity to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible, as well as to safeguard securities and funds in its custody or control or for which it is responsible.[24]

Pursuant to Section 765 of the Dodd-Frank Act, the Commission must identify the nature and sources of any conflicts of interest relating to the voting interests in and governance of a security-based swap clearing agency that may interfere with achieving the policy objectives described above or with the clearing agency complying with the regulatory mandates of Section 17A of the Exchange Act described above, including the obligation to adopt rules consistent with the protection of investors and the public interest.

2. Sources of Conflicts of Interest

The Commission's experience in monitoring the activities of the clearing agencies engaged in clearing CDS has provided it with insight into the potential sources of conflicts of interest that may exist at security-based swap clearing agencies. Since shortly after the enactment of the Dodd-Frank Act, the Commission staff and staff from the CFTC have met with interested persons to learn more about potential conflicts. Moreover, on August 20, 2010, the staff of the Commission and CFTC held a joint public roundtable in part to gain further insight into the sources of conflicts of interest at security-based swap clearing agencies, SB SEFs, and SBS exchanges, as well as methods for mitigating conflicts of interest ("Conflicts Roundtable").[25] Panelists from this roundtable included industry and non-industry participants.[26]

Drawing on these experiences, the Commission has reviewed the potential for conflicts of interest at security-based swap clearing agencies in accordance with Section 765 of the Dodd-Frank Act and has identified those conflicts that could affect access to clearing agency services, products eligible for clearing, and risk management practices of the clearing agencies. Preliminarily, the Commission believes that the most significant conflicts of interest that may have an adverse effect on statutory goals in Section 765 of the Dodd-Frank Act are those that arise when a small number of participants,[27] including participants that are Specified Entities and including related persons of the participants,[28] exercise undue control or influence over a security-based swap clearing agency.

The Commission has identified three key areas where it believes a conflict of interest of participants who exercise undue control or influence over a security-based swap clearing agency could adversely affect the central clearing of security-based swaps. First, participants could limit access to the security-based swap clearing agency, either by restricting direct participation in the security-based swap clearing agency or restricting indirect access by controlling the ability of non-participants to enter into correspondent clearing arrangements.[29] Second, participants could limit the scope of products eligible for clearing at the security-based swap clearing agency, particularly if there is a strong economic incentive to keep a product traded in the OTC market for security-based swaps. Third, participants could use their influence to lower the risk management controls of a security-based swap clearing agency in order to reduce the amount of collateral they would be required to contribute and liquidity resources they would have to expend as margin or guaranty fund to the security-based swap clearing agency.

Each of these potential conflicts of interest could limit the benefits of a security-based swap clearing agency in the security-based swaps market, and even potentially cause substantial harm to that market and the broader financial markets, as described below. Conflicts of interest in these areas could also potentially undermine the mandatory clearing requirement in Section 763 of the Dodd-Frank Act, thereby affecting transparency, investor protection, risk management, efficiency, and competition in the security-based swaps market.[30]

a. Limitations on Open Access to Security-Based Swap Clearing Agencies

The Commission believes that the increased use of central clearing for security-based swaps should help to promote robust risk management, foster greater efficiencies, improve investor protection, and promote transparency in the market for security-based swaps. For these reasons, the Commission has encouraged the use of central clearing for security-based swaps.[31] A consequence of increased use of central clearing services, however, is that participants that control or influence a security-based swap clearing agency may gain a competitive advantage in the security-based swaps market by restricting access to the clearing agency. If that occurred, financial institutions and marketplaces that do not have access to central clearing would have limited ability to trade in or list security-based swaps. This problem would continue to exist after the mandatory clearing requirement under Section 763 of the Dodd-Frank Act becomes effective, because financial institutions may be required either to submit security-based swaps for central

home country of the security-based swap clearing agency. *See* Public Law 111–203, Section 763(b).

[23] *See* 15 U.S.C. 78q–1(b)(3)(F). Section 17A of the Exchange Act also includes standards that help to mitigate conflicts of interest. *See infra* Section IV.C. for a discussion of these standards.

[24] 15 U.S.C. 78q–1(b)(3)(A), (B), and (F).

[25] *See* Securities Exchange Act Release No. 62725, 75 FR 51305 (August 19, 2010). The Commission solicited comments on the Conflicts Roundtable (comments received by the Commission are available at *http://sec.gov/cgi-bin/ruling-comments?ruling=4-609&rule_path=/comments/4-609&file_num=4-609&action=Show_Form&title=SEC%2DCFTC Roundtable on Swaps and Security%2DBased Swaps%3A Notice of roundtable discussion and request for comment*).

[26] The transcript of the Conflicts Roundtable is available on the CFTC's Web site at *http://cftc.gov/ucm/groups/public/@newsroom/documents/file/derivative9sub082010.pdf.*

[27] The term "participant" when used with respect to a clearing agency has the meaning set forth in Section 3(a)(24) of the Exchange Act, 15 U.S.C 78c(a), and shall include Specified Entities. *See* proposed Rule 700(o) under Regulation MC.

[28] *See infra* Section IV.A.3. for a discussion of "related person" in the context of a security-based swap clearing agency.

[29] *See, generally,* Matthew Leising and Shannon D. Harrington, "Wall Street Dominance of Swaps Must End, Brokers Say (Update 1)," *Bloomberg* (March 16, 2010).

[30] *See* Public Law 111–203, Section 763(a). Section 763(a) of the Dodd-Frank Act adds new Section 3C to the Exchange Act, which requires clearing for certain security-based swaps. Specifically, Section 3C(a)(1) provides that "It shall be unlawful for any person to engage in a security-based swap unless that person submits such security-based swap for clearing to a clearing agency that is registered under the Exchange Act or a clearing agency that is exempt from registration under the Exchange Act if the security-based swap is required to be cleared."

[31] *See* CDS Clearing Exemption Orders, *supra* note 17.

clearing or face heightened capital or margin requirements associated with bilateral agreements.

Market participants generally obtain access to a clearing agency in one of two ways: (1) Directly, by becoming a participant in a clearing agency or (2) indirectly, by entering into a correspondent clearing arrangement with a participant in a clearing agency.[32] There are several ways that both direct and indirect access to a security-based swap clearing agency could be restricted if persons who make decisions for or act on behalf of the clearing agency have a conflict of interest because of their incentives to further their own business interests outside of the security-based swap clearing agency. Participants may seek to limit the number of other direct participants in a security-based swap clearing agency in order to limit competition and increase their ability to maintain higher profit margins. A security-based swap clearing agency that is controlled by a limited number of participants might also adopt policies and procedures that are designed to unduly restrict access, or have the effect of unduly restricting access, to the clearing agency by other participants in ways that are unrelated to sound risk management practices.[33] At the same time, affording greater access to the clearing agency at some point may come at the expense of sound risk management practices.

The Commission recognizes that security-based swap clearing agencies must establish reasonable participation standards in order to ensure the participants in the clearing agency do not expose it to unacceptable risk or otherwise adversely affect the performance of the clearing agency, particularly during periods of market stress. However, participant standards may have the effect of restricting access to the clearing agency. On the one hand, panelists at the Conflicts Roundtable and others have raised the concern that participation requirements could be unnecessarily restrictive and primarily designed to limit the number of entities that are permitted to become direct participants in the clearing agency.[34] While appropriate participation standards are necessary for the sound operation of the security-based swap clearing agency, unduly high standards may needlessly exclude persons who are otherwise qualified to clear security-based swaps. On the other hand, some panelists at the Conflicts Roundtable also suggested that increasing access can come at the expense of sound risk management practices.[35]

Access could also be restricted by the way that clearing members determine executable end-of-day settlement prices. Since there is currently no exchange or other venue that publishes security-based swap prices, the Commission has required security-based swap clearing agencies to publish end-of-day settlement prices and any other prices with respect to cleared security-based swaps that the security-based swap clearing agency may use to calculate mark-to-market requirements.[36] To ensure that end-of-day settlement prices are reliable and consistent, a security-based swap clearing agency may require that the price submission be executable.[37] The security-based swap clearing agency, however, might not permit an entity to rely on a third party to provide an executable end-of-day settlement price. This could potentially prevent all but the largest dealer firms from having direct access to the clearing agency as they may be the only firms that have the processes to determine executable end-of-day settlement prices.[38]

In situations where direct access is limited by reasonable participation standards, non-participant firms may be able to access the security-based swap clearing agency through correspondent clearing arrangements with direct participants. Correspondent clearing is common in securities markets as well as in futures markets. However, the non-participant firms ultimately would be required to enter into a correspondent clearing arrangement with a participant in order to have the transactions submitted to the security-based swap clearing agency. Thus, the success of correspondent clearing arrangements depends on the willingness of security-based swap participants to enter into such arrangements with non-participant firms that may act as direct competitors to the participants. Given that current participants may have an incentive to restrict access to potential competitors, correspondent clearing arrangements may not be readily established while only the large dealer firms are direct participants in the security-based swap clearing agency.

In addition, procedural barriers may prohibit a firm from having indirect access to a security-based swap clearing agency. For example, although there are no overt restrictions on indirect access at the currently exempted security-based swap clearing agencies, many of the processing platforms by which participants submit transactions to the security-based swap clearing agency do not have the functionality to allow a non-participant firm to submit a trade with a customer to the security-based swap clearing agency through a correspondent arrangement with a direct member.

Prohibitively burdensome or restrictive direct participation standards and lack of availability of correspondent clearing arrangements effectively deny non-participant firms access to the security-based swap clearing agency's services and, accordingly, create a substantial competitive advantage for those firms that are direct participants in the security-based swap clearing agency. As previously noted, this competitive advantage would become even more significant after the mandatory clearing requirement for security-based swaps in the Dodd-Frank Act becomes effective.

b. Limitations on the Scope of Products Eligible for Clearing

As discussed above, Congress found and the Commission believes that increased use of central clearing would provide significant benefits to the security-based swaps market and mitigate systemic risk, particularly

[32] Correspondent clearing is an arrangement between a current participant of a clearing agency and a non-participant that desires to use the clearing agency for clearance and settlement services.

[33] An example of such restrictive policies and procedures would be a clearing agency establishing prohibitively high participation standards so that only the largest financial institutions qualify as participants.

[34] *See, generally,* Swaps and Derivatives Market Association, "Lessening Systemic Risk: Removing Final Hurdles to Clearing OTC Derivatives" (available at *http://media.ft.com/cms/fe51a538-78d7-11df-a312-00144feabdc0.pdf*) ("SDMA Letter"). *See also* Public Roundtable on Governance and Conflicts of Interest in the Clearing and Listing of Swaps, comments of Darrell Duffie ("[W]e want to be very careful that the members of a central clearing counterparty that determine what gets cleared * * * are the members that have * * * the right social incentives to create competition.") (available at *http://cftc.gov/ucm/groups/public/@newsroom/documents/file/derivative9sub082010.pdf* at 62).

[35] *See supra* note 25.

[36] *See, e.g.,* CDS Clearing Exemption Orders, *supra* note 17.

[37] As part of their internal processes, security-based swap clearing agencies generally calculate end-of-day settlement prices for each product in which they hold a cleared interest each business day. *See, e.g.,* Letter from Kevin McClear, ICE Trust, to Elizabeth Murphy, Secretary, Commission, December 4, 2009, and letter from Ann K. Shuman, Managing Director and Deputy General Counsel, CME, to Elizabeth Murphy, Secretary, Commission, December 14, 2009. One method for calculating an end-of-day settlement price for open positions is based on prices submitted by participants. As part of this mark-to-market process, the security-based swap clearing agency may periodically require participants to execute certain security-based swap trades at the applicable end-of-day settlement price. This is designed to ensure that participants' submitted prices reflect their best assessment of the value of their open positions on a daily basis. *Id.*

[38] *See* SDMA Letter, *supra* note 34.

during times of financial crisis. Central clearing of security-based swaps likely would result in lower spreads and lower transaction costs for end-users. A participant in a security-based swap clearing agency might, however, derive greater revenues from its activities in the OTC market for security-based swaps than it would from sharing in the profits of a security-based swap clearing agency in which it holds a financial interest. As a result, the increased use of central clearing may be contrary to the economic interests of some participants to a security-based swap clearing agency. Such participants or their related persons could therefore seek to have the security-based swap clearing agency limit the types of security-based swaps that are eligible for clearing at a security-based swap clearing agency over which they exercise influence or control.[39]

A further incentive for a clearing agency controlled by participants to restrict the products that are eligible for clearing at the security-based swap clearing agency may be to control a security-based swap's price transparency. Trading in the OTC derivatives market is currently dominated by a small number of firms.[40] Prior to the use of clearing agencies to clear security-based swaps, end-users had to transact directly with a small number of firms to trade in security-based swaps without the benefit of publicly available pricing data. Security-based swap clearing agencies provide greater price transparency by making certain price data available to the public and thereby helping to reduce the information asymmetry that benefits firms in the OTC market.[41] Publicly available pricing data may result in reducing the spreads and reduce the profit per trade for firms that have dominated the OTC market.

While certain security-based swaps may be suitable for central clearing, the Commission recognizes the possibility that some security-based swaps may not be suitable for clearing if their risks cannot be adequately managed by the security-based swap clearing agency. Clearing products whose risks cannot be adequately managed may increase the potential of a default of a participant or even the failure of the security-based swap clearing agency.[42] This in turn could adversely affect systemic risk, as participants and their customers would likely have significant funds and securities tied to the clearing agency and would be dependent on the continued operations of a security-based swap clearing agency in order to enter into new transactions in security-based swaps. This again highlights the potential tensions between sound risk management and the increased use of central clearing services. Expanding the number and scope of products cleared would in some cases be in the best interests of the security-based swap clearing agency and the security-based swaps market generally, because it provides processing efficiencies and replaces bilateral counterparty risk. However, allowing a greater number and scope of products to be centrally cleared would in some cases be harmful to the security-based swap clearing agency and the security-based swaps market, if sound risk management standards are compromised in order to clear those products.

The Commission is mindful of the need to balance goals associated with promoting the central clearing of security-based swaps and assuring that proposed rules are designed to increase the number of products eligible for central clearing with the goals associated with effective risk management. The Commission is also aware that any rules that it may ultimately adopt relating to conflicts of interest may affect this balance. The Commission believes, however, that decisions regarding the products that are eligible for clearing by a security-based swap clearing agency should not be subject to undue influence by parties that have a financial interest in keeping such products from being centrally cleared, while also noting that non-participants may have an interest in increasing access, which potentially could serve to compromise effective risk management.

c. Reduced Risk Management Controls

Security-based swap clearing agencies will perform a critical function in mitigating financial risk for market participants. The Commission believes that through uniform margining and other risk controls, including controls over market-wide concentrations that cannot be implemented effectively when counterparty risk management is decentralized, security-based swap clearing agencies would help to prevent a single market participant's failure from destabilizing other market participants and, ultimately, the broader financial system.

Although participants may seek to raise risk management controls in order to restrict access to the clearing agency or protect their financial stake in the clearing agency, they might also seek to lower certain risk management controls such as margin requirements in order to release collateral that they may wish to use for other purposes. Furthermore, as security-based swap clearing agencies become more established and the mandatory clearing requirement under Section 763 is implemented, more security-based swaps will likely be centrally cleared and clearing participants will be required to provide a substantially larger amount of liquid collateral to security-based swap clearing agencies in the form of margin. As a result, participants may be willing to accept greater risk than is prudent for the security-based swap clearing agency in order to reduce the amount of their margin contributions. A reduction in risk management controls ultimately could function to increase systemic risk by increasing the potential for a financial loss that must be borne by the participants of the security-based swap clearing agency.[43]

The Commission recognizes that participants generally have a financial incentive to ensure that the security-based swap clearing agency collects sufficient margin from each participant.

[39] Representative Barney Frank, who chaired the conference committee that reconciled the House Bill and the Senate Bill, referred to this specific concern when discussing the amendment adding Section 765 to the Dodd-Frank Act. Chairman Frank stated, "The purpose of this in part is to get many more derivatives cleared. But the clearing houses have the right to refuse them if they say the transactions aren't suitable for clearing. We believe that some banks have an interest in not having them cleared. So we don't want entities that have an interest and [sic] there being no clearing, owning the clearing houses. That's why this is an important amendment to us, and it was passed after considerable debate on the House floor." House-Senate Conf. Comm. Holds Markup on HR 4173, Financial Regulatory Overhaul Bill, June 24, 2010, *reprinted in* CQ Congressional Transcripts, 111th Cong. 182 (2010) (statement of Barney Frank, Chairman, House Comm. on Fin. Serv.).

[40] *See* Office of the Comptroller of the Currency, Quarterly Report on Bank Trading and Derivatives Activities, First Quarter 2010. ("Derivatives activity in the U.S. banking system continues to be dominated by a small group of large financial institutions. Five large commercial banks represent 97% of the total banking industry notional amounts * * *.")

[41] *See* Darrell Duffie, Ada Li, and Theo Lubke, "Policy Perspectives on OTC Derivatives Market Infrastructure," Federal Reserve Bank of New York Staff Report No. 424, dated January 2010, as revised March 2010 ("Even after an OTC derivatives product has achieved relatively active trading * * * dealers have an incentive to maintain the wide bid-ask spreads that they can obtain in the OTC market * * *. Thus, from the viewpoint of profits, dealers may prefer to reduce the migration of derivatives trading from the OTC market to central exchanges.").

[42] Section 763(a) adds new Section 3C(d)(3)(A) to the Exchange Act, which prohibits the Commission from requiring any clearing agency to accept a security-based swap for central clearing. *See* Public Law 111–203, Section 763(a).

[43] Such a scenario would arise, for example, where a defaulting participant has contributed insufficient margin to meet its obligations to the security-based swap clearing agency.

A clearing agency's rules and procedures typically provide that in the event of a participant default, losses exceeding a participant's individual margin contribution may be satisfied from a guaranty fund composed of contributions from all participants. As a result, participants have a unique financial incentive to ensure that the security-based swap clearing agency has sufficient collateral from each participant to withstand a participant default in almost all market conditions. However, participant defaults occur infrequently and the incentive for participants to protect their guaranty fund contributions may have less weight than the incentive to reduce margin requirements in order to release margin collateral for immediate use.

A non-participant does not contribute to a guaranty fund and may not have the same incentives as a participant with respect to establishing and maintaining sufficiently robust participant margin requirements. Non-participants' incentives may be to focus less on risk management and focus more on allowing more participants to be admitted to the clearing agency and more products to be made eligible for central clearing.

d. Implications for Ownership and Governance

As described above, conflicts of interest may arise if participants exercise undue control or influence over a security-based swap clearing agency. This influence, typically acquired through an ownership stake in the clearing agency, generally may be exercised by participants through either (i) voting interests in the security-based swap clearing agency or (ii) participation in the governance of the security-based swap clearing agency, such as by selecting (or influencing the selection of) the directors of the security-based swap clearing agency.[44] In either case, undue control or influence may be particularly acute if (i) the participants are part of the process for nominating the directors, even if such participants are not themselves directors, or (ii) the election of directors is subject to concentrated voting power in a small number of participants, especially if such participants also dominate much of the trading in security-based swaps and could use their controlling position to maintain or extend their dominant market position.

In addition, it is important to consider the likely incentives of individual directors, once they are on the Board, when they are governing the security-based swap clearing agency.[45] Directors of a security-based swap clearing agency owe a fiduciary duty to the security-based swap clearing agency and all of its shareholders. In addition, among other obligations, the Board as a whole is ultimately responsible for overseeing the clearing agency's compliance with the regulatory obligations of security-based swap clearing agencies under the Dodd-Frank Act and the Exchange Act, including the open and fair access requirements. At the same time, however, directors may be subject to different perspectives when fulfilling these duties and roles. Although the Commission recognizes that incentives and motivations may vary among directors and over time for a range of reasons—and therefore it is not possible to predict precisely how any individual director will address a particular matter—directors who are appointed by or related to participants ("participant-related directors") may on balance be more likely to reflect the views of participants than would directors who are not appointed by or related to participants ("non-participant-related directors").[46]

In light of these dynamics, as between the two categories of directors, participant-related directors, like participants themselves, may on balance be more likely to favor reducing or minimizing the risk exposure of the clearing agency, potentially at the expense of more open access. In addition, participant-related directors may also be more likely to favor restricting access to the clearing agency, which as discussed above would serve to preserve profits that participants earn through trading security-based swaps in the OTC markets.

In contrast, non-participant-related directors may, on balance, be more likely to seek to maximize the value of the enterprise, which, in addition to sound risk management, may involve increasing the revenues of the security-based swap clearing agency, such as by expanding the number and scope of products being cleared. Moreover, at a minimum it would seem less likely that non-participant-related directors would favor unduly restricting access to the clearing agency and its services. Thus, non-participant-related directors may be inclined to favor expanded access to products and services, which may increase the amount of risk that the clearing agency must successfully manage. The interest in expanded access to products and services may be especially relevant in the early stages of a clearing agency's development, when establishing a new entity as a viable clearing agency is especially important.

The Commission recognizes that other factors may also affect director incentives and behavior. For example, it may be argued that participant-related directors may in general have greater risk management expertise and experience than non-participant-related directors, and that non-participant-related directors may tend to defer to the views or judgment of participants or participant-related directors on risk matters, with the effect that open access may be unduly compromised in favor of risk management. On the other hand, it may be argued that qualified non-participant-related directors with sufficient risk management expertise can be readily found, and in any event these directors' independence of participants would justify their heightened involvement on the Board.

In addition, directors may face other conflicts of interest. For example, there may be conflicts between the competing interests of different shareholders—whether or not participants—which could have implications for director behavior, as discussed more fully below. There also may be a tension between the directors' incentives to maximize profits and their duties to oversee the security-based swap clearing agency's compliance with applicable legal restrictions which, although not necessarily unique to clearing agencies, may nevertheless affect how they decide any particular matter.

As described more fully below, the proposed rules are intended to strike a balance among these various

[44] Section 765 of the Dodd-Frank Act authorizes the Commission to adopt rules regarding conflicts of interest of Specified Entities at security-based swap clearing agencies in general. However, the Commission preliminarily believes that those entities that are participants in a security-based swap clearing agency will have a conflict of interest that could be acted upon to adversely affect the development of the market for security-based swaps consistent with the policy objectives of Section 765 of the Dodd-Frank Act.

[45] The Commission's discussion in this Release of the motivations or incentives of directors of a clearing agency, SB SEF, or SBS exchange comes in the context of requiring modes of governance that permit consideration of a variety of perspectives. As noted throughout this Release, a company's directors have a duty to all the company's shareholders, and the Commission does not regard any directors as simply surrogates for a particular group of shareholders. The Commission's discussion is intended to forestall *possible* conflicts and does not reflect findings that particular conflicts are present.

[46] This distinction between participant-related and non-participant-related directors may be most significant where the clearing agency is (i) a publicly owned corporation, or part of a publicly owned corporation, or (ii) otherwise owned by persons other than participants. The Commission recognizes that ownership structures for clearing agencies may take other forms, including ownership solely by participants, in which case the incentives and perspectives of the directors may be somewhat different.

considerations by allowing participants to maintain a significant voice within a security-based swap clearing agency while also imposing ownership limitations and independent director requirements to mitigate the potential influences of participant owners and participant-related directors.

e. Request for Comments Regarding Identified Conflicts of Interest

The Commission requests comment on the conflicts of interest it has identified with respect to security-based swap clearing agencies, including the conflicts related to participant standards, product eligibility, and risk management. Do commenters agree with the potential conflict concerns that the Commission has identified? Some parties have questioned the benefits of central clearing generally in terms of reducing systemic risk,[47] potentially suggesting a different analysis with respect to the identified conflicts of interest. What are commenters views on the potential benefits and costs of central clearing and the resulting effect on the conflicts of interest analysis?

What effect would the identified conflicts of interest likely have? Should the Commission focus on any of these conflicts more than others? Are there other existing conflicts concerns that commenters believe warrant scrutiny? If so, what are they and how are they likely to affect security-based swap clearing agencies?

The conflicts of interest discussed in part stem from the current concentrated market structure for security-based swaps. How is the current market structure likely to evolve over time? What effect will that evolution have on the consideration of conflicts of interest? Are there any other conflicts of interest that may result due to expected changes in the security-based swaps market or the clearing of security-based swaps that the Commission should consider? If so, what are they and how are they likely to affect security-based swap clearing agencies?

The central clearing of security-based swaps is still developing and may change significantly as the market for security-based swaps develops. In particular, the new provisions in the Dodd-Frank Act relating to the central clearing of security-based swaps are not yet effective. Once they become effective, security-based swap clearing agencies will be subject to substantially more regulation, which may have an effect on conflicts of interest. How are conflicts of interest likely to change as the central clearing of security-based swaps, and security-based swap clearing agencies, become more established? What potential new conflicts of interest could arise that the Commission should consider? How will potential changes in the trading of security-based swaps affect conflicts of interest at security-based swap clearing agencies? In addition, competitive forces within the security-based swaps market may help to mitigate conflicts of interest, for example, by increasing the number of institutions that trade in security-based swaps and creating a broader market in security-based swaps. How might competition issues affect or change current conflicts of interest? Will competition potentially create different or additional conflicts of interest that the Commission should consider? Will competition potentially mitigate conflicts of interest?

What other parties may have conflicts of interest that would affect whether they should control or participate in the governance of a security-based swap clearing agency? In what circumstances do these conflicts of interest arise? Under certain circumstances, there is the potential that incentives of shareholders to maximize profits could compromise prudent risk management by a security-based swap clearing agency. For example, shareholders could seek to increase revenue from clearing fees by increasing the number of products cleared by the clearing agency beyond those that can be appropriately risk managed or by having the clearing agency expand its services or engage in new lines of business that would expose the security-based swap clearing agency to increased risk. Shareholders that are not users of a security-based swap clearing agency may also not have the same incentives to keep the costs of clearing low. The Commission requests comment on the conflicts of interest that non-participant shareholders may have and the effect such conflicts could have on a security-based swap clearing agency. What are the differences in conflicts of interest between participants and non-participants? What are the different effects these conflicts could have on a security-based swap clearing agency? Which conflicts of interest could potentially cause the greatest harm to the security-based swap clearing agency?

Do persons who are selected to be directors of a security-based swap clearing agency by participants have a conflict of interest based on their status as directors that would affect their ability to act in the best interest of the clearing agency, to act in conformity with the Exchange Act, or to act to meet the policy objectives in Section 765 of the Dodd-Frank Act? Would directors be less likely to act to meet the policy objectives in Section 765 of the Dodd-Frank Act if they are selected by shareholders seeking to maximize the profits of the security-based swap clearing agency? What effect would they likely have on security-based swap clearing agencies? How do participants' conflicts of interest that affect risk management and open access issues compare with non-participants' interests regarding these issues? How do participants' incentives with respect to risk management compare with the incentives of non-participant shareholders or directors? How do the incentives of independent directors differ from the non-independent directors in terms of considering the potential for conflicts of interest?

The Commission also requests comment on the interplay of the identified conflicts of interest, and any additional conflicts of interest identified by commenters, and how that may affect a security-based swap clearing agency. For example, there may at times be a trade-off between risk management standards and open access to the clearing agency. What is the best way to balance these and other potential conflicts of interest in order to assure that the clearing agency has both robust risk management and fair and open access to clearing services? Are there any other conflicts of interest that pose similar trade-offs? What conflicts are these and how should the Commission balance the related concerns?

The Commission recognizes that other conflicts of interest may arise in the governance of security-based swap clearing agencies—for example, there may be a conflict between the interests of certain shareholders. The rules the Commission is proposing today focus on the conflicts of interest presented by the potential influence of participants in the security-based swaps market because, as described above, the Commission believes those conflicts may be most relevant to the development of security-based swap clearing agencies. The Commission recognizes that conflicts of interest may also arise with respect to independent directors and has attempted to achieve a balance between the different incentives of participant-related and non-participant-related directors and the potential benefits each might bring to the Board of a security-based swap clearing agency.

[47] *See, e.g.,* Craig Pirrong, "The Inefficiency of Clearing Mandates," Cato Institute Policy Analysis No. 665, July 21, 2010.

B. Security-Based Swap Execution Facilities and National Securities Exchanges

The Commission has also reviewed the potential for conflicts of interest at SB SEFs and SBS exchanges in accordance with Section 765 of the Dodd-Frank Act and has identified those conflicts that it believes may be mitigated by rules designed to improve the governance of a SB SEF or SBS exchange, promote competition, or mitigate conflicts of interest in connection with the operation of a SB SEF or SBS exchange by a security-based swap execution facility participant ("SB SEF participant") [48] or a member of an SBS exchange ("SBS exchange member") [49] that has an ownership interest in the SB SEF or SBS exchange. As with security-based swap clearing agencies, the Commission preliminarily believes that conflicts of interest that may have an adverse affect on the statutory goals of Section 765 are those that arise when a small number of market participants, including participants that are Specified Entities and including related persons of participants,[50] exercise control or undue influence over a SB SEF or SBS exchange. This influence may be exercised either through ownership of voting interests [51] or participation in the governance of the SB SEF or SBS exchange.

The Commission believes that through ownership of voting interests or ability to influence governance, market participants could exercise influence with respect to the services provided by SB SEFs or SBS exchanges, the rules and policies applicable to participants or members of such entities, and, more generally, the security-based swaps market. When a small group of those same market participants also dominate much of the trading in security-based swaps, control of a SB SEF or SBS exchange by these participants raises a heightened concern. If a SB SEF or a SBS exchange is controlled by a small group of dealers who also dominate trading in the market for security-based swaps, the dealers may have competitive incentives to exert undue influence to control the level of access to the SB SEF or SBS exchange and thus impede competition by other market participants. In other words, participants or members in a SB SEF or SBS exchange, as applicable, might seek to limit the number of direct participants in the trading venue in order to limit competition and increase their ability to maintain higher profit margins. Given such incentives, a SB SEF or SBS exchange that is controlled by a limited number of participants or members might adopt policies and procedures that are designed to restrict access.

Participants or members also might be motivated to restrict the scope of security-based swaps that are eligible for trading at SB SEFs or SBS exchanges if there is a strong economic incentive to keep such swaps in the OTC market. On the other hand, this concern may be mitigated by competitive forces if a greater number and variety of facilities where security-based swaps can be traded are available. A small number of firms currently dominate trading in the OTC derivatives market.[52] Centralized trading of security-based swaps likely would result in lower spreads and lower transaction costs for end-users, particularly as a result of increased pre-trade and post-trade transparency of prices, assuming sufficient trading volume and liquidity.[53] As noted above, increased price transparency might help to eliminate much of the basis for asymmetrical information, reduce spreads, and reduce the profit per trade for firms that dominated the OTC security-based swaps market. As a result, this might create an incentive for participants or members in a SB SEF or SBS exchange, as applicable, to seek to limit the number of security-based swaps that are made available for trading by such venues. The Commission recognizes, however, that there could in certain circumstances be legitimate concerns regarding liquidity or other trading characteristics of a security-based swap that reasonably might justify the decision of participants in a SB SEF or members of a SBS exchange not to make a particular product available for trading on a SB SEF or a SBS exchange. However, decisions regarding the eligibility of security-based swaps for trading on a SB SEF or SBS exchange should not be subject to undue influence by parties that have a financial interest in keeping such products from being centrally traded on a facility or exchange.

Finally, the Commission also believes that a SB SEF or SBS exchange could have potential conflicts of interest between the commercial interests of the SB SEF or SBS exchange or the SB SEF's or SBS exchange's owners and the SB SEF's or SBS exchange's market oversight responsibilities.[54] With respect to these kinds of conflicts of interest, the Commission's proposal is informed, in part, by its experience overseeing national securities exchanges. The Commission notes, however, that a SB SEF's regulatory obligations under Section 763(c) of the Dodd-Frank Act are not identical to those of a national securities exchange's obligations under Section 6 of the Exchange Act.

National securities exchanges are self-regulatory organizations ("SROs") and are statutorily required to comply, and enforce compliance by their members and their associated persons, with the Federal securities laws, the rules and regulations thereunder, and their own rules.[55] Exchanges also generally operate for-profit markets and, as a result, are concerned with preserving and enhancing their competitive positions vis-à-vis other exchanges.[56] Consequently, exchanges have potential conflicts of interest between carrying out their regulatory obligations to vigorously oversee their members and marketplace and promoting their and their shareholders' economic interests. For example, an exchange could put its interest and that of its members or

[48] The term "security-based swap execution facility participant" means a person permitted to directly effect transactions on the security-based swap execution facility. *See* proposed Rule 700(z) under Regulation MC.

[49] A "member" when used with respect to a national securities exchange means (i) any natural person permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, (ii) any registered broker or dealer with which such a natural person is associated, (iii) any registered broker or dealer permitted to designate as a representative such a natural person, and (iv) any other registered broker or dealer which agrees to be regulated by such exchange and with respect to which the exchange undertakes to enforce compliance with the provisions of the Exchange Act, the rules and regulations thereunder, and its own rules. *See* Section 3(a)(3)(A) of the Exchange Act, 15 U.S.C. 78c(a)(3)(A).

[50] *See infra* Section V.A. for a discussion of "related person" in the context of a SB SEF and SBS exchange or facility thereof.

[51] *See infra* Section V.A. for a discussion of the ownership and voting limits of proposed Rule 702 under Regulation MC.

[52] *See supra* note 40.

[53] The Commission will address the issue of transparency of security-based swap pricing and transaction data in a separate rulemaking.

[54] An entity that registers as a SB SEF will have oversight responsibility over its market pursuant to the Exchange Act (as amended by the Dodd-Frank Act) and rules adopted thereunder. *See* Section 763(c) of the Dodd-Frank Act, Public Law 111–203, Section 763(c). Similarly, all national securities exchanges, including those that may post or make available for trading security-based swaps, have oversight responsibilities over their markets and their members pursuant to the Exchange Act. *See* Section 6 of the Exchange Act, 15 U.S.C. 78(f).

[55] *See* Sections 6(b)(1) of the Exchange Act, 15 U.S.C. 78f(b)(1).

[56] Historically, national securities exchanges were structured as not-for-profit or similar organizations owned by their members. Exchanges, however, have more recently evolved to become shareholder-owned. *See supra* note 49 for the definition of "member" as applicable to national securities exchanges.

shareholders ahead of its regulatory responsibilities by failing to take regulatory or enforcement actions or to adequately fund self-regulation. Further, the commercial interests of the shareholders of an exchange may conflict with the regulatory obligations of an exchange. A shareholder may be incentivized to maximize profits through the economic stake it has in the exchange or, if the shareholder is also a member of the exchange, to more directly further its own commercial interests.[57] For example, a shareholder could promote the distribution of the exchange's revenues in a manner that could result in inadequate funding of the exchange's regulatory operations or, if also an exchange member, could use the exchange's disciplinary process potentially to harass or penalize a competitor.

The Commission has considered the conflicts between an exchange's regulatory responsibilities and its commercial interests in operating a marketplace for the trading of securities. To address these types of concerns, the Commission has developed, consistent with the requirements of Section 6 of the Exchange Act,[58] an approach to mitigate conflicts of interest for national securities exchanges.[59] Specifically, through its review of proposals filed by exchanges with respect to changes to their ownership and governance structures (generally from member-owned to shareholder-owned organizations) pursuant to Section 19 of the Exchange Act[60] or of applications filed by entities to register as national securities exchanges pursuant to Section 6 of the Exchange Act,[61] the Commission examines the way in which an exchange applies ownership and voting limits and addresses certain governance principles.[62] Namely, the Commission looks to ensure that there are limits on the ability of persons to own and control exchanges by, for example, requiring at a minimum that no person, alone or together with its related persons,[63] be permitted to own more than 40%, and no member, alone or together with its related persons, be permitted to own more than 20%, of the ownership interests of the exchange or be entitled to vote shares in excess of 20%.[64] Further, the Commission also looks to ensure that an exchange provide fair representation of members in the selection of directors and the administration of its affairs, consistent with the requirement in Section 6(b)(3) of the Exchange Act,[65] that an exchange is organized in a manner that allows it to carry out the purposes of the Exchange Act pursuant to Section 6(b)(1) of the Exchange Act,[66] and that it provides fair procedures for disciplining members, consistent with the requirements in Sections 6(b)(6) and 6(b)(7) of the Exchange Act.[67]

The Commission's recognition of potential conflicts of interest at exchanges and its approach to date in reviewing and approving measures designed to mitigate those conflicts of interest are a useful point of reference as the Commission identifies, and develops proposals to mitigate, the conflicts of interest potentially faced by SB SEFs and SBS exchanges as the trading of security-based swaps moves to regulated markets. However, as noted above, the Commission recognizes that a SB SEF's regulatory obligations are not the same as a national securities exchange's regulatory obligations.

The Commission in 2004 proposed rules to promote the fair administration and governance of, and to impose ownership and voting limitations on, national securities exchanges and registered national securities associations.[68] Among other things, the proposal would have required an exchange to: Have a Board composed of a majority of independent directors; maintain fully independent nominating, compensation, and audit committees; separate its regulatory obligations and business functions by establishing a fully independent regulatory oversight committee ("ROC") or equivalent structure; and limit ownership and voting control by members.[69] This proposal was intended to improve the governance of certain SROs by establishing independence standards for the board of directors ("Board") and key committees and by minimizing conflicts of interest by instituting ownership and voting limitations and the separation of the exchange's regulatory obligations and commercial interests. Although the

[57] *See* SRO Governance Proposing Release, 69 FR 71126, *infra* note 59.

[58] *See* Section 6(b) of the Exchange Act, 15 U.S.C. 78f(b).

[59] *See, e.g.,* Securities Exchange Act Release Nos. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (In the Matter of the Applications of EDGX Exchange, Inc., and EGDA Exchange, Inc. for Registration as National Securities Exchanges; Findings, Opinion, and Order of the Commission) ("Exchange Act Release No. 61698"); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (In the Matter of the Application of BATS Exchange, Inc. for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission) ("Exchange Act Release No. 58375"). In 2004, the Commission proposed rules relating to: the fair administration and governance of SROs; disclosure and regulatory reporting by SROs; recordkeeping requirements by SROs; ownership and voting limitations for SROs; and listing and trading of affiliated securities by SROs. The Commission has not taken action on these proposed rule changes. *See* Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004) ("SRO Governance Proposing Release").

[60] 15 U.S.C. 78s.

[61] 15 U.S.C. 78f.

[62] *See, e.g.,* Securities Exchange Act Release Nos. 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (order approving the demutualization of the Chicago Board Options Exchange, Incorporated ("CBOE")) and 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (order approving the merger of New York Stock Exchange, Inc. ("NYSE") and Archipelago and NYSE's demutualization).

[63] Generally, a "related person" means, with respect to any person, any other person, directly or indirectly, controlling, controlled by, or under common control with such person or any person acting in concert with such person.

[64] *See, e.g.,* Exchange Act Release No. 61698, 75 FR at 13156, *supra* note 59. The exchange's Board may waive the voting and ownership limits if it makes certain findings, including a finding that such a waiver would be consistent with the exchange's self-regulatory obligations. The board, however, may not waive these limits for any exchange members. Moreover, the exchange must file such waiver with the Commission as a proposed rule change for approval before it could be implemented.

The ownership limits currently in place for exchanges generally apply to any ownership interest. *See, e.g.,* Exchange Act Release No. 61698, 75 FR 13151, *supra* note 59; Amended and Restated Certificate of Incorporation of BATS Global Markets, Inc., Article FIFTH. In contrast, proposed Rule 702 would apply ownership limits only with respect to those shares or other interests entitled to vote. *See infra* Section V.A. for a discussion of the differences between the ownership and voting limits in proposed Rule 702 and those limits currently in place for exchanges.

[65] 15 U.S.C. 78f(b)(3). Pursuant to Section 6(b)(3), the Commission generally requires, at a minimum, that at least 20% of the directors on the board be selected by exchange members. The Commission also requires that exchange members be permitted to participate in the nomination process of such representative directors and that they have the right to petition for alternative candidates. *See, e.g.,* Securities Exchange Act Release No. 58375, 73 FR at 49500, *supra* note 59.

[66] 15 U.S.C. 78f(b)(1). Pursuant to Section 6(b)(1), the Commission generally requires, at a minimum, that the number of non-industry directors on the exchange's board equal or exceed the number of industry directors. Generally, a "non-industry director" is someone who is not subject to regulation by the exchange, is not a broker or dealer or an officer, director, or employee of a broker or dealer, is not associated with an entity that is affiliated with a broker or dealer, and has neither a material ownership interest nor investment in a broker or dealer. *See, e.g.,* CBOE By-Laws, Article III, Section 3.1. Some exchanges also have "independent directors." Typically, an independent director has no material relationship with the exchange or an exchange member. *See, e.g.,* Amended and Restated By-Laws of BATS Exchange, Inc., Article I(m). For example, an officer or director of a listed issuer generally is considered a non-industry director rather than an independent director. The definitions of "non-industry" and "independent" do, however, differ across exchanges.

[67] 15 U.S.C. 78f(b)(6) and (7). To find an exchange's disciplinary rules to be consistent with the Exchange Act, the Commission generally requires that disciplinary processes be balanced and include industry member participation. *See, e.g.,* Exchange Act Release No. 61698, 75 FR at 13160, n. 124, *supra* note 59.

[68] *See* SRO Governance Proposing Release, 69 FR 71126, *supra* note 59.

[69] *Id.*

Commission has not acted further on this proposal, a number of exchanges have adopted some of the governance concepts on their own initiative [70] and all of the exchanges registered under Section 6 of the Exchange Act have adopted ownership and/or voting limitations, with the Commission's approval.[71]

Each potential conflict of interest identified in this Section III.B. could limit the benefits of centralized trading in the security-based swaps market and potentially undermine the mandatory trading requirement in new Section 3C(h) of the Exchange Act, thereby negatively affecting efficiency and competition in the security-based swaps market.[72] Further, while the Commission believes that its past application of statutory requirements has been appropriate to improve the governance of, and mitigate the conflicts of interest for, exchanges, given the difference in the structure of the OTC derivatives market and the markets for exchange-listed securities, it also believes that potential conflicts of interest in SBS exchanges can and should be further examined.[73] Namely, unlike exchange-listed securities, trading in the OTC derivatives market is currently dominated by a small group of dealers.[74] Although mechanisms in place to address conflicts of interest among members, shareholders, and exchanges would help mitigate some concerns about conflicts of interest that could result from dealer control of the current security-based swaps market, the Commission believes that additional measures may be necessary to effectively mitigate conflict of interest concerns. For example, applying standards approved for exchanges to SB SEFs and SBS exchanges, as described above, may not alone adequately address the potential concern that a small group of dealers could gain control over such entities and limit security-based swaps from trading on, and participant or member access to, a centralized market. Accordingly, the Commission is proposing rules for SB SEFs and SBS exchanges that are designed to mitigate the potential conflicts of interest that it has identified in the context of the security-based swaps market, including ownership limitations and governance requirements, as more fully described below.[75]

The Commission has considered the mechanisms in place to mitigate conflicts of interest at national securities exchanges in developing its proposals to mitigate conflicts of interest for SB SEFs and SBS exchanges. The Commission notes that there are similarities and differences between the exchange-listed markets and the market for security-based swaps that merit consideration in crafting appropriate proposals to mitigate conflicts of interest for SB SEFs and SBS exchanges. National securities exchanges list and trade cash equity securities and options pursuant to a well-developed body of their own rules, as well as Commission rules, and compete actively with each other and with other non-exchange trading venues for market share and revenues associated with trading volume. The markets for cash equity securities and listed options are generally liquid, trading is widely dispersed, and there are numerous trading venues and market participants. Unlike the well-established cash equity and options markets, the security-based swaps market is at an earlier stage of development and, as noted above, is currently dominated by a small number of dealers. Further, the regulatory structure governing the security-based swaps market will not be completely realized until all provisions of the Dodd-Frank Act and any rules promulgated thereunder are fully implemented. However, like exchanges, SB SEFs may have shareholder-owners who also may be SB SEF participants and may compete with any other SB SEF to the extent that they trade the same security-based swaps. In addition, although SB SEFs would not be SROs and therefore would not be subject to the same obligations under the Exchange Act as SROs, they nonetheless will be subject to regulatory responsibilities under Section 763(c) of the Dodd-Frank Act and, as a result, will have to establish rules and enforce compliance with those rules by their participants.[76] Thus, the conflicts of interest that the Commission has experienced with exchanges may be similar, although not necessarily identical, to the conflicts of interest that SB SEFs and SBS exchanges may face. The Commission nevertheless is mindful of the need to mitigate conflicts of interest for SB SEFs and SBS exchanges without unduly restricting the ability of trading facilities to be formed or the emergence of a competitive market for the trading of security-based swaps.

The Commission requests comment on the types of conflicts of interest it has identified with respect to SB SEFs and SBS exchanges, including the listing and trading of security-based swaps on SB SEFs and SBS exchanges. Has the Commission identified all of the significant potential conflicts concerns? Do commenters disagree with any potential conflicts concerns that the Commission has identified? What other conflicts concerns may exist, if any?

As discussed above, the Commission seeks to minimize the conflicts of interest for national securities exchanges through ownership limitations and governance requirements. Are the conflicts of interest relating to exchanges, which could elect to trade swaps and thus become SBS exchanges, different than the conflicts of interest relating to SB

[70] *See, e.g.,* CBOE By-Laws, Article III, Board of Directors ("Board of Directors" must have a majority of "Non-Industry Directors") and Article IV, Committees ("Regulatory Oversight Committee" must consist of at least three directors, all of whom shall be "Non-Industry Directors"); By-Laws of the NASDAQ Stock Market LLC ("Nasdaq"), Article III, Board of Directors, Section 2, Qualifications ("Board of Directors" must have a majority of "Non-Industry Directors") and Section 5, Committees Composed Solely of Directors (Regulatory Oversight Committee must consist of at least three members, each of whom shall be a "Public Director" and an "independent director" as defined in Nasdaq Rule 4200).

[71] *See, e.g.,* Amended and Restated Certificate of Incorporation of BATS Global Markets, Inc., Article FIFTH.

[72] *See* Public Law 111–203, Section 763(a). Section 3C(h) of the Exchange Act imposes a mandatory trading requirement, which provides that counterparties shall execute a transaction in a security-based swap subject to the clearing requirement of Section 3C(a)(1) on an exchange or a registered SB SEF or a SB SEF that is exempt from registration pursuant to Section 3D(e) of the Exchange Act.

[73] Within the past several years, the Commission has reviewed and assessed comprehensively the governance structure of each national securities exchange, either in connection with a significant transaction by the exchange or as part of its application for registration as a national securities exchange. *See, e.g.,* Securities Exchange Act Release Nos. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (order approving The NASDAQ OMX Group, Inc.'s ("Nasdaq OMX") acquisition of the Boston Stock Exchange, Inc. ("BSE")); 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (order approving Nasdaq OMX's acquisition of the Philadelphia Stock Exchange, Inc. ("Phlx")); 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (order approving the business combination between NYSE and Euronext N.V.); 56955 (December 13, 2007), 72 FR 71979 (December 19, 2007) (order approving acquisition of International Securities Exchange, Inc. ("ISE") by Eurex Frankfurt AG); Exchange Act Release No. 58375, 73 FR at 49500, *supra* note 59; 61152 (December 10, 2009), 74 FR 66699 (December 16, 2009) (order approving application of C2 Options Exchange, Incorporated to register as a national securities exchange); Exchange Act Release No. 61698, 75 FR at 13156, *supra* note 59; 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (order approving Nasdaq's application to register as a national securities exchange).

[74] *See supra* note 40.

[75] As of the date of this release, the Commission has not proposed rules regarding the scope, registration requirements, and operation of a SB SEF, including the types of entities that would qualify for registration as a SB SEF.

[76] *See* Section 763(c) of the Dodd-Frank Act, Public Law 111–203, Section 763(c).

SEFs, and, if so, how? To what extent, if any, should the Commission draw on its experience with conflicts of interest that may arise in the exchange context and with efforts to mitigate those conflicts and apply that experience in assessing conflicts of interest that may arise in the context of SB SEFs and SBS exchanges? What are the differences and similarities between the conflicts of interest that the Commission has encountered with respect to national securities exchanges and the conflicts of interest that it has identified with respect to SB SEFs and SBS exchanges?

Further, are the conflicts of interest relating to SBS exchanges different than the conflicts of interest relating to exchanges that do not post or make available for trading security-based swaps? If there are no differences, should the Commission propose to adopt rules to mitigate conflicts of interest with respect to national securities exchanges that are not SBS exchanges or are the existing approaches to mitigating conflicts of interest for such exchanges sufficient?

The Commission also requests comment on potential changes in these conflicts of interest. The Commission recognizes that the conflicts of interest that may exist today with respect to the trading of security-based swaps by SB SEFs and SBS exchanges may evolve over time and that, as this market evolves, the conflicts of interest that the Commission has identified for SB SEFs and SBS exchanges may change. The centralized trading of security-based swaps is still developing and may change significantly as the market for security-based swaps develops. In particular, the provisions in the Dodd-Frank Act relating to the centralized trading of security-based swaps are not yet effective. Once they become effective, market participants that trade security-based swaps will be subject to substantially more regulation, which may have an effect on the conflicts of interest at SB SEFs and SBS exchanges. What are commenters' views on whether and how conflicts of interest for SB SEFs and SBS exchanges may evolve over time and how the Commission should respond to such changes? How are conflicts of interest likely to change as the centralized trading of security-based swaps and SB SEFs and SBS exchanges become more established? Are the conflicts of interest identified by the Commission likely to change as the trading of security-based swaps moves to regulated markets that must provide for impartial access and, if so, how? What potential new conflicts of interest could arise that the Commission should consider? How will potential changes in the clearing of security-based swaps affect conflicts of interest at SB SEFs and SBS exchanges? In addition, competitive forces within the security-based swaps market may help to mitigate conflicts of interest, for example, by increasing the number of institutions that trade security-based swaps and creating a broader market for security-based swaps. How will competition issues affect or change current or identified conflicts of interest? Will competition potentially create different or additional conflicts of interest that the Commission should consider? Would the Commission's proposal to apply to SB SEFs and SBS exchanges standards to mitigate conflicts of interest that are similar to those approved for national securities exchanges influence whether those conflicts of interest will increase, diminish, or remain unchanged over time?

Are there any other conflicts of interest that warrant examination? What other parties may have conflicts of interest that would affect whether they should control or participate in the governance of a SB SEF or SBS exchange? In what circumstances would these conflicts of interest arise? For example, might non-participant or non-member shareholders have a conflict of interest? What would be the differences in conflicts of interest between participants and non-participants or members and non-members that would affect the SB SEF or SBS exchange?

Would persons who are selected to be directors of a SB SEF or SBS exchange by participants or members have conflicts of interest based on their status as directors that would affect their ability to act in the best interest of the entity or in conformity with the Exchange Act, or to act to meet the policy objectives in Section 765 of the Dodd-Frank Act? Would directors be less likely to act to meet the policy objectives in Section 765 of the Dodd-Frank Act if they are selected by shareholders seeking to maximize the profits of the SB SEF or SBS exchange? How would participants' or members' potential conflicts of interest concerning open access and products traded compare to non-participants' or non-members' conflicts on such issues? How do the incentives of independent directors differ from those of non-independent directors with respect to increasing access or promoting competition?

IV. Discussion of Proposed Regulation MC: Mitigation of Conflicts of Interest of Security-Based Swap Clearing Agencies

Section 765 directs the Commission to adopt rules to mitigate conflicts of interest, which rules may include numerical limits on control of, or voting rights with respect to, any security-based swap clearing agency. The Commission preliminarily believes that requirements applicable to both governance and voting interests can play an essential role in mitigating conflicts of interests. However, the Commission recognizes that the nature of the governance, ownership and voting requirements to mitigate conflicts may differ depending on the conflicts of interest of the persons making decisions on behalf of the security-based swap clearing agency. In particular, the nature of the ownership and voting power of stockholders of the security-based swap clearing agency plays a role in determining the nature of the conflicts of interest that directors of the security-based swap clearing agency will face.

As previously noted, the Commission preliminarily believes that conflicts of interest may arise when a small number of participants exercise control or undue influence over a security-based swap clearing agency. Conflicts of interest may also arise, however, simply because directors and other decision-makers at a security-based swap clearing agency have multiple interests and goals, including maximizing profit for the benefit of shareholders and imposing risk restraints that may limit short-term profits, among others.

In seeking to address conflicts of interests, the imposition of governance restrictions may lessen the need to impose certain voting limitations, while the imposition of certain voting limitations may alleviate the need to impose certain governance restrictions. Accordingly, the Commission is proposing two alternative approaches with respect to voting limitations and governance that would place differing levels of emphasis on each of these factors.[77]

The proposed rule would allow the security-based swap clearing agency to elect between the two alternatives. The first alternative places an emphasis on voting limitations while also imposing certain governance restrictions ("Voting Interest Focus Alternative").[78] The second alternative places an emphasis on governance restrictions while also

[77] *See* proposed Rule 701(a) and (b) of Regulation MC.

[78] *See* proposed Rule 701(a) under Regulation MC.

imposing certain voting limitations ("Governance Focus Alternative").[79] Although the Commission is proposing two separate alternatives, the Commission may also consider adopting only one alternative as the final rule or may combine aspects of each proposed alternative and adopt it as a single rule.[80]

In addition, the existing standards in Section 17A of the Exchange Act also help to mitigate conflicts of interest at registered clearing agencies and will be applied in addition to any standards adopted by the Commission under the Dodd-Frank Act.[81]

A. Alternative I: Voting Interest Focus Alternative

As more fully described below, under the Voting Interest Focus Alternative, the Commission is proposing limitations on the voting interests held by individual participants of a security-based swap clearing agency and by participants acting collectively as a group. In addition, the Commission is proposing certain requirements related to governance that would give independent directors a strong role in overseeing the security based-swap clearing agency.

1. Voting Interest Focus Alternative: Individual Voting Limitation

The Voting Interest Focus Alternative would provide that a security-based swap clearing agency may not permit a participant, either alone or together with its related persons, to (1) beneficially own, directly or indirectly, any interest in the security-based swap clearing agency that exceeds 20% of any class of securities, or other ownership interest, entitled to vote of such security-based swap clearing agency or (2) directly or indirectly vote, cause the voting of, or give any consent or proxy with respect to the voting of, any interest in the security-based swap clearing agency that exceeds 20% of the voting power of any class of securities or other ownership interest of such security-based swap clearing agency.[82] This proposed limitation on individual participant voting interest is designed to prevent any individual participant from owning, on a direct or indirect basis, a voting interest that would allow it to act on conflicts of interest in the security-based swap clearing agency to the detriment of such security-based swap clearing agency and the security-based swaps market.

The terms "beneficial ownership," "beneficially owns" or any derivatives thereof would be defined in reference to Rule 13d–3 under the Exchange Act, Determination of Beneficial Ownership.[83] The concept of beneficial ownership in Rule 13d–3 is designed to encompass any person or group of persons that may be able to act to influence or control an issuer. The Commission proposes to use the same definition of beneficial ownership in this rule because it also would describe those persons or groups of persons that may be able to act to influence or control a security-based swap clearing agency. However, to the extent any participant beneficially owns any security or other ownership interest solely because such participant is a member of a group within the meaning of Section 13(d)(3) of the Exchange Act, such participant would not be deemed to beneficially own such security or other ownership interest for purposes of this section, unless such person had the power to direct the vote of such security or other ownership interest. The Commission proposes to exclude beneficial ownership that results solely from being a member of a group to provide more certainty to those that would be required to comply with the limitations, in light of the effect of exceeding the ownership limit—*i.e.*, that the participant will be divested of the excess interest.

While the Commission has not previously adopted voting interest limitations for registered clearing agencies in the other securities markets, the security-based swaps market presents a different potential concern with respect to conflicts of interests. In the securities markets for which clearing agencies currently registered with the Commission provide clearance and settlement services,[84] there are significantly more dealers and participants. The incentives of participant-owners of these registered clearing agencies are generally aligned with those of the clearing agency: To accept for clearing as many participants that can meet reasonable participation standards and as many transactions that fit into the clearing agencies' risk management structure. Furthermore, the OTC derivatives market has a relatively high concentration of market activity among a limited number of dealers[85] that earn significant revenues from the currently opaque OTC market.[86] The existing cash equities and listed options markets, on the other hand, are transparent and widely disbursed over a range of market participants. As previously discussed, participants in a security-based swap clearing agency may have incentives to limit participation in the clearing agency and to limit the scope of products cleared. Moreover, the Commission's experience regulating security-based swap clearing agencies along with the views expressed by market participants suggest that security-based swap clearing agencies may be particularly susceptible to conflicts of interest.[87] The Commission preliminarily believes that prohibiting a participant and its affiliates and related persons from having more than a 20% voting interest in a security-based swap clearing agency, taking into account the other requirements under the Voting Interest Focus Alternative as described below, would establish a sufficiently high threshold to preclude any one participant from exerting undue influence over the security-based swap clearing agency. The 20% threshold proposed for participant voting interests in a security-based swap clearing agency is similar to the threshold that the Commission previously proposed for national securities exchanges and national securities associations, is the same as the threshold now being proposed for SBS exchanges and SB SEFs, and is consistent with the limits

[79] *See* proposed Rule 701(b) under Regulation MC.

[80] *See infra* Section VIII requesting comment on whether alternatives with or without modifications should be allowed and whether certain requirements in each alternative should be combined to form a single approach.

[81] *See* discussion *infra* Section IV.C. Security-based swap clearing agencies will be required to be registered with the Commission under Section 17A of the Exchange Act upon the effective date of Title VII and, as a result, must comply with the standards in Section 17A that are applicable to all registered clearing agencies.

[82] *See* proposed Rule 701(a)(1)(i) and (ii) under Regulation MC.

[83] *See* proposed Rule 700(b) under Regulation MC, which provides that the terms "beneficial ownership," "beneficially owns," or any derivative thereof would be defined as having the same meaning, with respect to any security or other ownership interest, as set forth in § 240.13d–3, as if (and whether or not) such security or other ownership interest were a voting equity security registered under Section 12 of the Exchange Act (15 U.S.C. 78l); provided that to the extent any person beneficially owns any security or other ownership interest solely because such person is a member of a group within the meaning of Section 13(d)(3) of the Exchange Act (15 U.S.C. 78m(d)(3)), such person shall not be deemed to beneficially own such security or other ownership interest, unless such person has the power to direct the vote of such security or other ownership interest.

[84] The four clearing agencies registered with the Commission that have active business operations include: The Depository Trust Company, The National Securities Clearing Corporation, The Fixed Income Clearing Corporation, and The Options Clearing Corporation.

[85] *See supra* note 40.

[86] *Id.* (stating that U.S. commercial banks reported trading revenues of $8.3 billion in the first quarter of 2010).

[87] *See supra* notes 26 and 34.

currently in place with respect to national securities exchanges.[88]

2. Voting Interest Focus Alternative: Aggregate Voting Limitation

The Voting Interest Focus Alternative would provide that a security-based swap clearing agency may not permit a participant, either alone or together with its related persons, to in the aggregate with any other security-based swap clearing agency participants and their related persons (1) beneficially own, directly or indirectly, any interest in the security-based swap clearing agency that exceeds 40% of any class of securities, or other ownership interest, entitled to vote of such security-based swap clearing agency or (2) directly or indirectly vote, cause the voting of, or give any consent or proxy with respect to the voting of, any interest in the security-based swap clearing agency that exceeds 40% of the voting power of any class of securities or other ownership interest of such security-based swap clearing agency.[89] Under the individual participant voting limitation and without this aggregate limitation on voting interest, five entities that have voting interests of 20% could control the security-based swap clearing agency. Since a small number of dealers currently control the OTC derivatives market,[90] the Commission preliminarily believes that this aggregate limitation on voting interest is a necessary corollary to the individual participant voting limitation. The 40% aggregate limitation on voting interest, which is consistent with limits used in similar contexts,[91] would restrict participants' ability to collectively acquire a majority voting interest, while maintaining the integrity of the 20% individual participant limitation.

3. Voting Interest Focus Alternative: Indirect or Affiliate Ownership and Ownership Through Related Persons

The Voting Interest Focus Alternative would also address conflicts of interest created by indirect voting interests of the security-based swap clearing agency because a rule that limits only direct voting interests could be circumvented by holding the interest through an affiliated party or by holding an interest in a controlling entity. For purposes of determining a security-based swap clearing agency participant's voting interest, the proposed rule would, as indicated in the description of the rules above, combine such person's interest with those of its "related persons."[92]

The Commission proposes to define the term "related person" to include persons whose relationship with respect to a participant would likely cause them to have the same conflicts of interest with respect to the security-based swap clearing agency (*e.g.,* "affiliate," "immediate family member," and "person associated with a participant in a security-based swap clearing agency"). Specifically, proposed Rule 700(u) would define "related person" as that term relates to security-based swap clearing agencies as: (i) Any affiliate[93] of a participant in a security-based swap clearing agency; (ii) any person associated with a participant in a security-based swap clearing agency;[94] (iii) any immediate family member[95] of a participant in the security-based swap clearing agency that is a natural person, or any immediate family member of the spouse of such person, who, in each case, has the same home as the participant in the security-based swap clearing agency, or who is a director or officer of the security-based swap clearing agency or any of its parents or subsidiaries; and (iv) any immediate family member of a person associated with a participant in the security-based swap clearing agency that is a natural person, or any immediate family member of the spouse of such person, who, in each case, has the same home as the person associated with the participant in the security-based swap clearing agency, or who is a director or officer of the security-based swap clearing agency, or any of its parents or subsidiaries.

A voting interest limitation of 20% for an individual participant of a security-based swap clearing agency and an aggregate voting interest limitation of 40% for all participants of a security-based swap clearing agency is intended to restrict the ability of security-based swap clearing agency participants to exercise undue influence over the governance of a security-based swap clearing agency for their own self-interest. At the same time, these voting limitations would still permit participants to hold significant economic interests in a security-based swap clearing agency.

4. Voting Interest Focus Alternative: Divestiture and Voting Restriction Requirement

In order to assure that a security-based swap clearing agency maintains the proposed voting interest limitations, the Commission is proposing to require security-based swap clearing agencies to have rules in place for the divestiture of voting interests that exceed the prescribed limitations.[96] The Commission preliminarily believes that in order for the voting limitations to be effective, the rule must require security-based swap clearing agencies to take action to reduce participants' and participants' related persons' voting interests.

The Commission is proposing to provide security-based swap clearing agencies flexibility in determining how

[88] As previously noted, national securities exchanges generally prohibit exchange members, alone or together with their related persons, from owning more than 20% of the exchange or being entitled to vote shares in excess of 20%. *See, e.g.,* Securities Exchange Act Release No. 61698, 75 FR at 13156, *supra* note 59.

[89] *See* proposed Rule 701(a)(1)(iii) and (iv) under Regulation MC.

[90] *See supra* note 40.

[91] As previously noted, the Commission has generally prohibited any person, alone or together with its related persons, from owning more than 40% of a national securities exchange. *See, e.g.,* Securities Exchange Act Release No. 61698, 75 FR at 13156, *supra* note 59.

[92] *See* proposed Rule 700(u) of Regulation MC.

[93] The term "affiliate" would be defined as any person that, directly or indirectly, controls, is controlled by, or is under common control with, the person. *See* proposed Rule 700(a) under Regulation MC. "Control" would be defined as the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. Any person that (i) is a director, general partner, or officer exercising executive responsibility (or having similar status or function); (ii) directly or indirectly has the right to vote 25% or more of a class of voting securities or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that person. *See* proposed Rule 700(e) under Regulation MC.

[94] There is currently not a definition for a "person associated with a participant in a clearing agency" in the Exchange Act or in Commission rules. However, the Commission believes that the definition for the term "person associated with a member" in Section 3(a)(21) of the Exchange Act should be used as the basis for the definition of the term "person associated with a participant in a security-based swap clearing agency," as the purposes of the two defined terms are similar. Accordingly, the Commission proposes to define the term "person associated with a participant in a security-based swap clearing agency" as (1) any partner, officer, director, or branch manager of such security-based swap dealer or major security-based swap participant (or any person occupying a similar status or performing similar functions); (2) any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant; or (3) any employee of such security-based swap dealer or major security-based swap participant. This term does not include any person associated with a participant in a security-based swap clearing agency whose functions are solely clerical or ministerial. *See* proposed Rule 700(r) of Regulation MC.

[95] The term "immediate family member" would be defined in the proposed rules as a person's spouse, parents, children, and siblings, whether by blood, marriage, or adoption, or anyone residing in such person's house. *See* proposed Rule 700(i) under Regulation MC.

[96] *See* proposed Rule 701(a)(2) under Regulation MC.

to implement this divesture requirement. Any rules adopted by a security-based swap clearing agency must assure that the security-based swap clearing agency has a viable, enforceable mechanism to divest a participant and its related persons of any voting interest owned in excess of the 20% limitation, and not to give effect to the portion of any voting interest in excess of the 20% individual limitation or the 40% aggregate limitation. The Commission is also proposing to require a security-based swap clearing agency's procedures to provide a mechanism for the security-based swap clearing agency to obtain information relating to the voting interests in the security-based swap clearing agency held by its participants and their related persons.[97] The Commission believes that this requirement is essential to a security-based swap clearing agency's ability to monitor the voting interest held by its participants and their related persons in relation to the proposed voting limitations.

5. Voting Interest Focus Alternative: Independent Directors on Board

The Commission's Voting Interest Focus Alternative would impose substantive requirements on the governance of security-based swap clearing agencies that are designed to address the concern that participants' conflicts of interest may lead them to take actions that would potentially limit fair and open access and product eligibility for central clearing, as well as potentially weaken the risk management of security-based swap clearing agencies. The proposed governance provisions, as discussed below, are intended to help mitigate potential conflicts of interest and assure the fair administration and governance of a security-based swap clearing agency by limiting the control that any one participant or group of participants may exercise over the security-based swap clearing agency.

The Commission proposes under the Voting Interest Focus Alternative to require the Board[98] of a security-based swap clearing agency to be composed of at least 35% independent directors.[99] The presence of a significant number of independent directors on the Board of a security-based swap clearing agency should provide the addition of strong and independent oversight within the security-based swap clearing agency to serve as a potential check against conflicts of interest that could pose a detriment to the security-based swap clearing agency, other firms, or the security-based swaps market generally. The Commission preliminarily believes that a level below 35% independent directors may not be sufficient to assure that independent directors have a significant voice.[100] A requirement lower than 35% would potentially place independent directors in a small enough minority that, relative to the remaining director slots that could potentially be filled by participant or management directors, the views of the independent directors would not be given enough consideration. While independent directors would have less than a majority representation on the Board under the Voting Interest Focus Alternative, they would have a meaningful opportunity to contribute to determinations made by the Board and the various Board committees. The Commission is proposing to require at least 35% independent directors combined with the proposal to limit participant voting interests in a security-based swap clearing agency, both on an individual and aggregate basis, as a means of effectively mitigating conflict of interest concerns while also permitting a greater proportion of participants to serve on the Board of a security-based swap clearing agency.[101] This aspect of the proposal may address potential concerns that requiring a majority independent Board would affect the Board's ability to effectively perform risk management functions.

The Commission also proposes that no director may qualify as an independent director unless the Board affirmatively determines that the director does not have a material relationship with the security-based swap clearing agency or any affiliate of the security-based swap clearing agency, or a participant in the security-based swap clearing agency, or any affiliate of a participant in the security-based swap clearing agency. The purpose of this proposal is to provide assurance that an independent director candidate does not have any relationships or affiliations that would prevent the candidate from being independent of the security-based swap clearing agency. Accordingly, the Commission proposes to define the term "independent director," as it is used with respect to a security-based swap clearing agency, as a director who has no material relationship with:

(1) The security-based swap clearing agency;

(2) Any affiliate of the security-based swap clearing agency;

(3) A participant in the security-based swap clearing agency; or

(4) Any affiliate of a participant in the security-based swap clearing agency.[102]

Some relationships or affiliations would clearly exclude a director from qualifying as independent of a security-based swap clearing agency. For example, a director would not be considered independent if any of the following circumstances exists:

- The director, or an immediate family member, is employed by or otherwise has a material relationship with the security-based swap clearing agency or any affiliate thereof; or within the past three years was employed by or otherwise had a material relationship with the security-based swap clearing agency or any affiliate thereof;
- The director is a participant in the security-based swap clearing agency or within the past three years was employed by or affiliated with a participant or any affiliate thereof, or the director has an immediate family member that is, or within the past three years was, an executive officer of a participant in the security-based swap clearing agency or any affiliate thereof;
- The director, or an immediate family member, has received during any twelve-month period within the past three years payments that reasonably could affect the independent judgment or decision-making of the director from the security-based swap clearing agency or any affiliate thereof or from a participant in the security-based swap clearing agency or any affiliate thereof, other than the following:
  - ○ Compensation for Board or Board committee services;
  - ○ Compensation to an immediate family member who is not an executive officer of the security-based swap clearing agency or any affiliate thereof or of a participant in the security-based

[97] *Id.*

[98] The term "Board" would be defined as the Board of Directors or Board of Governors of the SB SEF, SBS exchange or facility thereof that posts or makes available for trading security-based swaps, or security-based swap clearing agency, as applicable, or any equivalent body. *See* proposed Rule 700(c) under Regulation MC.

[99] The term "director" would be defined as any member of the Board. *See* Proposed Rule 700(f) under Regulation MC.

[100] Other regulators have previously chosen 35% as an appropriate level for independent representation on the Board of self-regulatory organizations. *See* 72 FR 6936 (February 14, 2007), which adopts final rules to address conflicts of interest at self-regulatory organizations regulated by the CFTC. Specifically, the final rules establish acceptable practices under Core Principle 15 applicable to DCMs and that provide that the Board is composed of at least 35% public directors.

[101] Proposed Rule 700(c) under Regulation MC does not prescribe the number of participant directors that are required to be on the Board. A security-based swap clearing agency may choose to have the majority of the Board be composed of independent directors.

[102] *See* proposed Rule 700(j) under Regulation MC.

swap clearing agency or any affiliate thereof; or

○ Pension and other forms of deferred compensation for prior services, not contingent on continued service.

• The director, or an immediate family member, is a partner in, or controlling shareholder or executive officer of, any organization to or from which the security-based swap clearing agency or any affiliate thereof made or received payments for property or services in the current or any of the past three full fiscal years that exceed 2% of the recipient's consolidated gross revenues for that year, other than the following:

○ Payments arising solely from investments in the securities of the security-based swap clearing agency or affiliate thereof; or

○ Payments under non-discretionary charitable contribution matching programs.

• The director, or an immediate family member, is, or within the past three years was, employed as an executive officer of another entity where any executive officers of the security-based swap clearing agency serve on that entity's compensation committee;

• The director, or an immediate family member, is a current partner of the outside auditor of the security-based swap clearing agency or any affiliate thereof, or was a partner or employee of the outside auditor of the security-based swap clearing agency or any affiliate thereof who worked on the audit of the security-based swap clearing agency or any affiliate thereof, at any time within the past three years; or

• In the case of a director that is a member of the audit committee, such director (other than in his or her capacity as a member of the audit committee, the Board, or any other Board committee), accepts, directly or indirectly, any consulting, advisory, or other compensatory fee from the security-based swap clearing agency or any affiliate thereof or a participant in the security-based swap clearing agency or any affiliate thereof, other than fixed amounts of pension and other forms of deferred compensation for prior service, provided such compensation is not contingent in any way on continued service.[103]

Under the proposed rule, the term "material relationship" would be defined as a relationship, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision-making of the director.[104] This definition is intended to encompass all significant instances in which a director's independence is compromised.[105] In determining whether a "material relationship" exists, security-based swap clearing agencies should consider the known relationships between a director and the security-based swap clearing agency to determine whether the relationship is likely to impair the independence of the director in making decisions that affect the security-based swap clearing agency. The proposed definitions of "independent director" and "material relationship" should help to reduce the potential that the independent directors on the Board of the security-based swap clearing agency are subject to conflicts of interest.

Under the Voting Interest Focus Alternative, the security-based swap clearing agency would be required to establish policies and procedures to require each director, on his or her own initiative or upon request of the security-based swap clearing agency, to inform the security-based swap clearing agency of the existence of any relationship or interest that may reasonably be considered to bear on whether such director is an independent director.[106] The security-based swap clearing agency would be expected to take reasonable measures to confirm the accuracy of the information provided. This requirement should help the security-based swap clearing agency to assure that it is informed of the existence of any relationship or interest that may reasonably be considered to bear on whether a director is independent as soon as possible and without requiring the security-based swap clearing agency to investigate for such information.

6. Voting Interest Focus Alternative: Board Committees

a. Nominating Committee

The Voting Interest Focus Alternative would require security-based swap clearing agencies to create and maintain a nominating committee for the selection of Board members, and would require that such nominating committee be composed of a majority of independent directors.[107] Directors serving on the nominating committee that are not independent may be more likely to select Board candidates whose views align with such directors' interests instead of the interests of the security-based swap clearing agency or the markets generally. Having a nominating committee that is composed of majority independent directors should help to address and facilitate the selection of independent directors.

The Voting Interest Focus Proposal would also require that the nominating committee identify candidates for Board membership through a consultative process with the participants of the security-based swap clearing agency consistent with criteria approved by the Board.[108] This should help assure that the selection of directors of the Board is conducted in a prudent manner while at the same time allowing for the participants of the security-based swap clearing agency to have fair representation in the selection of the directors of the Board.[109]

b. Other Board Committees

The Voting Interest Focus Alternative would require that other Board committees of a security-based swap clearing agency that are delegated authority to act on the Board's behalf, including but not limited to the risk committee, consist of at least 35% independent directors similar to the requirement that would be imposed on the Board itself.[110] This requirement should give independent directors a meaningful voice, similar to the one they would have in the Board itself, within Board committees that essentially perform the functions of a Board. The proposed requirement would also apply to an "advisory committee" to the extent that the committee is authorized to act on behalf of the Board, including instances where the Board is required to seek approval from the committee before making a determination. However, the Commission preliminarily believes that the independence requirement should not extend to a committee that functions in a purely advisory role, because members of those committees are not in a position to exercise powers of the

[103] *See* proposed Rule 700(j)(2) under Regulation MC.

[104] *See* proposed Rule 700(l) under Regulation MC.

[105] *See* Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (order approving SRO rules that would find a director independent only where that director does not have a relationship with the company that would impair her independence).

[106] *See* proposed Rule 701(a)(3)(iii) under Regulation MC.

[107] *See* proposed Rule 701(a)(4)(i) under Regulation MC.

[108] *See* proposed Rule 701(a)(4)(ii) under Regulation MC.

[109] Section 17A(a)(3)(C) of the Exchange Act requires fair representation among participants of a clearing agency by providing them with a meaningful opportunity to participate in the selection of directors. 15 U.S.C. 78q–1(a)(3)(C).

[110] *See* proposed Rule 701(a)(5) under Regulation MC.

Board or exert influence over the Board by dictating how the Board will act.

c. Disciplinary Panels

The Commission's Voting Interest Focus Alternative would impose special requirements on the composition of disciplinary panels (or their equivalents) of security-based swap clearing agencies that have not been delegated authority to act on the Board's behalf.[111] The Commission believes that participants of a security-based swap clearing agency should be appropriately disciplined for failure to comply with the rules of a security-based swap clearing agency, particularly as they relate to the ongoing risk management related requirements applicable to participants. Accordingly, the Commission is proposing that the disciplinary processes of a security-based swap clearing agency preclude any group or class of persons that are participants in the security-based swap clearing agency from exercising disproportionate influence on any disciplinary panels. In other words, to the extent that there is more than one type of group or class of persons that are participants in a security-based swap clearing agency, the composition of the disciplinary panel shall include representation of each group or class and shall not allow one group or class to have representation on the disciplinary panel that is out of proportion as compared to other groups or classes of persons that are participants in the security-based swap clearing agency. Furthermore, the disciplinary panel of the security-based swap clearing agency would include at least one person who would qualify as an independent director.

7. Voting Interest Focus Alternative: Request for Comment

The Commission requests comment on all aspects of the voting limitations under the Voting Interest Focus Alternative, including whether the 20% limitations on individual participant voting interest and the 40% aggregate limitation on participant voting interest are sufficient to limit the ability of a participant or a group of participants to exercise undue influence or control over the governance of a security-based swap clearing agency. Should the 20% and 40% limitations be lower given the existing concentration of the industry in a small number of large dealers? If so, what limitations would be appropriate and why? Are there other conflicts of interest not discussed in this release that the Commission should consider generally and specifically with respect to voting limitations? Would the proposed restrictions have an effect on the ability to form new security-based swap clearing agencies or to effectively operate existing security-based swap clearing agencies?

The Commission also requests comment on whether there may be other ways to structure the interests in a security-based swap clearing agency to mitigate potential conflicts of interest. Are there other thresholds for voting limitations or approaches that the Commission should consider? Are there other methods for mitigating conflicts of interest the Commission should consider, such as limitations on holding non-voting interests in a security-based swap clearing agency? How would non-voting interests affect the potential for conflicts of interests?

Section 765 enumerates Specified Entities for the Commission to consider in its rulemaking. The proposed rule would apply only to Specified Entities that are participants of the security-based swap clearing agency and not to other Specified Entities, because the Commission preliminarily believes that those entities that are participants of a clearing agency are most likely to have a conflict of interest that would affect the access, product eligibility, and risk management issues discussed in this release. However, the Commission requests comment on whether all Specified Entities, regardless of participant status, should be subject to the proposed restrictions on voting interests. What are the potential conflicts of interest associated with Specified Entities that are not participants? Might Specified Entities that are not participants in a security-based swap clearing agency have an interest in limiting the number or type of security-based swaps that are accepted for clearing to the extent that they may profit from trading security-based swaps that are not centrally cleared? Are there any other classes of persons, such as participants or members of SB SEFs or SBS exchanges, that should also be subject to the proposed restrictions even though they are not participants of a security-based swap clearing agency? What effect would such restrictions have on mitigating conflicts of interest at security-based swap clearing agencies? What effect would such restrictions have on the ability to form new security-based swap clearing agencies?

The Voting Interest Focus Alternative would require that voting limitations be determined by including interests held directly by a participant in the security-based swap clearing agency, by including indirect interests of a participant in the security-based swap clearing agency, and by including interests held by related persons of a participant in the security-based swap clearing agency. The Commission requests comment on whether its formulation for calculating the aggregate and individual limits is appropriate. Specifically, the Commission requests comment on whether the scope of the definitions of "affiliate," "immediate family member," and "related person" are over-inclusive or under-inclusive and, if either, why? Is there a different methodology to reach the interest of any person with whom a security-based swap clearing agency participant may be able to act in concert with to unduly influence or control a security-based swap clearing agency that the Commission should consider?

The Commission seeks comment on whether requiring the Board of a security-based swap clearing agency to be composed of at least 35% independent directors would improve governance of the security-based swap clearing agency and mitigate potential conflicts of interest. Is 35% sufficient to give independent directors a meaningful voice within the Board, or would a higher or lower level be appropriate? Should the Commission require that a majority of the Board be composed of independent directors? How are these independent directors likely to affect the activities of the security-based swap clearing agency? What are their incentives to assure open and fair access, increased product eligibility, and sound risk management at a security-based swap clearing agency? Do independent directors have any conflicts of interest that would affect their ability to facilitate these objectives?

The Commission also requests comment on whether other measures concerning governance should be used to mitigate conflicts of interest at security-based swap clearing agencies, either in addition to or instead of the proposals outlined in this release. In particular, what other approaches would improve governance and mitigate conflicts of interest for security-based swap clearing agencies? For example, would State laws governing the fiduciary duty owed by the Board to a corporation help to mitigate conflicts of interest? Should the Commission

[111] *See* proposed Rule 701(a)(6) under Regulation MC. If the security-based swap clearing agency does not have a disciplinary panel, these requirements should be interpreted as applying to the equivalent of a disciplinary panel in the security-based swap clearing agency's internal processes, unless the disciplinary panel (or its equivalent) has been delegated authority to act on the Board's behalf, in which case it would be subject to the 35% independent director requirement.

consider any additional requirements related to fiduciary duties? The policies and charter documents of individual corporations also often impose additional responsibilities and obligations on directors. Should security-based swap clearing agencies be required to put in place specific policies or charters to address conflicts of interest by the Board? What policies or charters would be necessary to provide assurance that participant directors will act in the best interests of the security-based swap clearing agency? What other requirements, if any, should be in place with respect to the duties owed by the Board in order to mitigate conflicts of interest at security-based swap clearing agencies?

In addition, the Commission requests comment on its proposed definitions, including the definitions of "independent director" and "material relationship." Are there other ways to define "independent director" or "material relationship?" If so, what are they? Should the Commission adopt other provisions that contain particular circumstances that would preclude a finding that a director is independent or that would deem a relationship material? Should the Commission take into account a director's salary or benefits he or she receives for being a director in order to consider whether an interest in keeping the directorship could make a director more likely to act favorably toward those that control the Board? Should the Commission adopt a specific look-back period within which to determine whether a "material relationship" exists? Should additional terms used in the proposed rule be defined?

The Commission requests comment on the proposed compositional requirements of committees of the Board under the Voting Interest Focus Alternative. Is the requirement that Board committees that are delegated authority to act on behalf of the Board be composed of at least 35% independent directors appropriate? The Commission also requests comment on whether there may be other ways to structure governance restrictions for security-based swap clearing agencies to mitigate potential conflicts of interest. In particular, the Commission requests comment on the proposed compositional requirements of the nominating committee. What is the potential effect of requiring a security-based swap clearing agency to have a majority independent nominating committee? Are there other processes for the selection of independent directors and the fair representation of the participants and shareholders of a security-based swap clearing agency that the Commission should consider with respect to the nominating committee? Should end-users or any other group be given guaranteed rights of participation in the governance of the security-based swap clearing agency? Should the Commission participate in the Board selection process, such as by requiring consultation on appointments? Should the Commission consider an alternative to a compositional requirement for a nominating committee, such as allowing a security-based swap clearing agency to have a board of trustees responsible for nominating candidates for the Board? If this were a viable alternative, should there be compositional requirements or other limits imposed on the board of trustees? How should such a board of trustees be appointed? Would the alternative of a board of trustees to nominate directors provide greater assurance that independent directors are truly independent not only at the time of their nomination but during their service on the Board as well?

With respect to governance as it relates to the risk committee, should there be special requirements relating to the risk committee, or its equivalent, of the Board? For instance, one possible alternative approach could be to provide separate requirements applicable only to the risk committee that reflect the highly specialized risk management expertise required of directors serving on that committee. For example, instead of requiring that the risk committee be composed of at least 35% independent directors (where such committee is delegated authority to act on the Board's behalf), the requirement could apply to a smaller number of independent directors, and also explicitly require that other interested persons, such as customers of participants, be represented on the risk committee. The Commission requests comment on whether a more prescriptive approach such as the one described above would be appropriate for the risk committee and what levels of participation by participants, customers of participants, or others would be appropriate. Are there factors that warrant treating the risk committee differently from other Board committees? Should the Commission require the Board to report to the Commission if the Board disagrees with a recommendation of the risk committee? Is the risk committee more or less prone to conflict of interest issues? Are there factors other than conflicts of interest that should be taken into consideration? Is it desirable to have an explicit requirement with respect to customers of participants? If so, how many customers should serve on the risk subcommittee relative to independent directors and participant directors? What definition of customer should be used for these purposes? Are there distinctions that should be made between the different types of customer firms for this purpose?

Another possible alternative approach could be to limit the applicable restrictions on the risk committee to circumstances where a specific range of topics is being addressed. For example, restrictions on participation in a risk committee could be limited to only those circumstances in which a determination about issues such as participant standards and product eligibility were being made. What are the potential advantages or disadvantages of such an approach? Would it be possible to separate activities of a committee based on topics? Are there certain issues that pose more or less of a concern with respect to conflicts of interests?

The Commission also requests comment regarding whether any requirements should be imposed on advisory committees. Would an independence requirement on a purely advisory committee mitigate potential conflicts of interest? Are there circumstances in which a purely advisory committee exercises substantial power over the Board?

The Commission requests comment on the composition of the disciplinary panel of the security-based swap clearing agency. Would the proposed rule be sufficient to address potential conflicts of interest that may interfere with the fair and effective disciplinary processes of a security-based swap clearing agency? Should different restrictions be imposed?

Although independent directors may address some of the conflicts of interest concerns that underlie Section 765 of the Dodd-Frank Act, they may not effectively eliminate all conflicts. The Commission, however, believes that effective governance via a partially independent Board is compatible with the characteristics of security-based swap clearing agencies, and the types of conflicts that may be inherent with respect to such entities.

B. Alternative II: Governance Focus Alternative

As more fully described below, under the Governance Focus Alternative, the Commission is proposing governance restrictions including requiring a majority of independent directors on the Board and voting restrictions that would be applicable only to individual

participants of a security-based swap clearing agency. The Governance Focus Alternative differs from the Voting Interest Focus Alternative in that it provides greater emphasis on requirements regarding the governance arrangements of a security-based swap clearing agency as the primary means to mitigate conflicts of interest. As with the Voting Interest Focus Alternative, the Commission is proposing rules related to the governance of a security-based swap clearing agency and the voting interests held by participants because the Commission believes each contributes to conflict of interest concerns. However, the Voting Interest Focus Alternative places greater emphasis on the ability of participants to hold voting interests in the security-based swap clearing agency than it does on participants' ability to participate in the governance of the security-based swap clearing agency, while the Governance Focus Alternative, as described in more detail below, places greater emphasis on the ability of participants to participate in the governance of the security-based swap clearing agency than it does on the ability of participants on a collective basis to hold a voting interest in the security-based swap clearing agency.

1. Governance Focus Alternative: Voting Limitation

The Governance Focus Alternative would require that a security-based swap clearing agency may not permit a participant, either alone or together with its related persons, to (1) beneficially own, directly or indirectly, any interest in the security-based swap clearing agency that exceeds 5% of any class of securities, or other ownership interest, entitled to vote of such security-based swap clearing agency or (2) directly or indirectly vote, cause the voting of, or give any consent or proxy with respect to the voting of, any interest in the security-based swap clearing agency that exceeds 5% of the voting power of any class of securities or other ownership interest of such security-based swap clearing agency.[112] The 5% limitation on participant voting interest is intended to help mitigate conflicts of interest because each individual participant's voting interest would be substantially limited and, therefore, its ability to control the security-based swap clearing agency would also be limited.[113] As discussed previously, the Voting Interest Focus Alternative would permit a higher individual participant voting interest of 20%, but would limit the aggregate voting interests held by all participants to 40%. However, the Voting Interest Focus Alternative would allow a security-based swap clearing agency to have a Board with a majority of directors selected by participants. The Commission believes that the 5% limit per participant, in combination with the requirements related to governance arrangements described below, is sufficiently low that there is no need for the 40% aggregate cap on the voting interests held by all participants.

Furthermore, the Commission notes that the 40% aggregate cap on participant voting interests proposed in the Voting Interest Focus Alternative may restrict the potential formation of participant-owned security-based swap clearing agencies. Some clearing agencies currently registered with the Commission are user-owned or user-controlled institutions that function as quasi-utilities. This structure may provide certain benefits to the participants and the securities markets generally because such clearing agencies generally seek to match the fees charged to participants to the clearing agency's costs and not to maximize profits.[114]

In addition, potential users may have a strong incentive to form a new clearing agency if they believe an existing clearing agency is not effectively serving the security-based swaps market. Not imposing an aggregate cap on participant voting interests in a security-based swap clearing agency could help encourage the formation of new security-based swap clearing agencies and thereby increase the potential for competition among security-based swap clearing agencies. In addition, the 5% voting interest limitation may encourage open access by creating incentives for a larger number of participants to acquire a voting interest in the security-based swap clearing agency. While the Commission has not previously adopted voting limitations or governance rules for registered clearing agencies in the other securities markets, as previously discussed under the Voting Interest Focus Alternative, the security-based swaps market presents different concerns with respect to potential conflicts of interests that warrant additional scrutiny and efforts to mitigate such conflicts.

2. Governance Focus Alternative: Indirect or Affiliate Ownership and Ownership Through Related Persons

The Commission believes that a rule that limits only direct voting interests could be circumvented by holding the interest through an affiliated party or by holding an interest in a controlling entity. Accordingly, similar to the Voting Interest Focus Alternative,[115] the Governance Focus Alternative would address conflicts of interest created by indirect voting interests of the security-based swap clearing agency and would require aggregation of a security-based swap clearing agency participant's voting interest with its related persons'[116] voting interests.[117]

3. Governance Focus Alternative: Divestiture and Voting Restriction Requirement

Similar to the Voting Interest Focus Alternative,[118] the Governance Focus Alternative would require security-based swap clearing agencies to have rules in place for the divestiture of voting interests that exceed the 5% limitation and a mechanism to not give effect to the portion of any voting interest held by a participant in excess of the 5% voting limitation.[119] The Commission believes that this requirement is essential to a security-based swap clearing agency's ability to monitor voting interests by its participants in relation to the proposed voting limitations.

[112] *See* proposed Rule 701(b)(1) under Regulation MC.

[113] The 5% threshold level for ownership has previously been found by the Commission in other contexts to trigger reporting requirements to the Commission related to the ability to control an organization. *See* Rule 13d–1(a) under the Exchange Act, 17 CFR 240.13d–1(a) ("Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is specified in paragraph (i) of this section, is directly or indirectly the beneficial owner of more than 5% of the class shall, within 10 days after the acquisition, file with the Commission, a statement containing the information required by Schedule 13D"). In addition, investors acquiring more than a 5% interest in a company must file a form certifying that they acquired that interest without "the effect of changing or influencing the control of the issuer * * *" Rule 13d–1(c)(1) under the Exchange Act, 17 CFR 240.13d–1(c)(1). *See, also,* Gaf Corp. v. Milstein, 453 F.2d 709 (2d Cir. N.Y. 1971), stating that "[T]he purpose of section 13(d) is to alert the marketplace to every large, rapid aggregation or accumulation of securities, regardless of technique employed, which might represent a potential shift in corporate control. * * *" *Id.* at 717.

[114] *See, e.g.,* "The US Model for Clearing and Settlement: An Overview of DTCC," available at: *http://www.dtcc.com/downloads/about/US%20Model%20for%20Clearing%20and%20Settlement.pdf.* ("[O]wnership and governance of [The National Securities Clearing Corporation] and [The Depository Trust Company] were from the outset those typical of market utilities.").

[115] *See supra* Section I.A.3.

[116] *See supra* note 92 and accompanying text.

[117] *See* proposed Rule 701(b)(1) under Regulation MC.

[118] *See supra* Section I.A.4.

[119] *See* proposed Rule 701(b)(2) under Regulation MC.

4. Governance Focus Alternative: Majority Independent Board

As discussed previously, the Governance Focus Alternative differs from the Voting Interest Focus Alternative by placing greater emphasis on the governance arrangements of the security-based swap clearing agency. Each alternative approach seeks to strike a balance between the appropriate restrictions imposed on a security-based swap clearing agency relating to governance and voting rights held by participants. Under the Governance Focus Alternative, participants on a collective basis could potentially own all voting interests in a security-based swap clearing agency. While this option allows for potential benefits in terms of participants' ability to form new clearing agencies, it also allows participants' to control 100% of the voting interest in a security-based swap clearing agency, in contrast to the Voting Interest Focus Alternative, which would limit participants to holding no more than 40% of the voting interest. Accordingly, in order to balance the increased voting interest that may be held by participants collectively, the Commission proposes that a greater proportion of the Board be composed of independent directors under the Governance Focus Alternative.

The Governance Focus Alternative is intended to mitigate conflicts of interest by limiting the influence participants may have in the determinations of the Board or in the administration of a security-based swap clearing agency. Specifically, the Governance Focus Alternative would require the Board [120] of a security-based swap clearing agency to be composed of a majority of independent directors.[121] The presence of a majority of independent directors on the Board of a security-based swap clearing agency is intended to reduce the ability of non-independent directors to influence the operation of the security-based swap clearing agency in favor of their own self-interests and to promote open and fair access, product eligibility, and sufficient risk management standards. This should in turn benefit non-participant firms that enter into correspondent clearing arrangements with participants, and SBS exchanges and SB SEFs who will rely on the availability of a security-based swap clearing agency. A majority independent Board requirement is consistent with accepted corporate governance "best practices." [122] Furthermore, requiring a majority of the Board of a security-based swap clearing agency to be independent would still permit the security-based swap clearing agency to provide participants with fair representation in the selection of directors and the administration of the affairs of the security-based swap clearing agency as required under the Exchange Act.[123]

The Commission also proposes that no director may qualify as an independent director unless the Board affirmatively determines that the director does not have a material relationship with the security-based swap clearing agency or any affiliate of the security-based swap clearing agency,[124] or a participant in the security-based swap clearing agency, or any affiliate of a participant in the security-based swap clearing agency.[125] The proposed definitions of "independent director" and "material relationship" are designed to reduce the potential that the Board of the security-based swap clearing agency is controlled by persons who are subject to conflicts of interest.

While the proposal that a majority of the Board be composed of independent directors should help to mitigate certain conflicts of interest, and particularly those conflicts that are most likely to result in an adverse effect on the security-based swap clearing agency, the Commission recognizes that it would not completely eliminate conflicts of interest. Participant directors would still be permitted to serve on the Board. The Commission believes that participants may have operational, risk management, and market expertise that may be useful for effective oversight of a security-based swap clearing agency.

In addition, independent directors themselves may not be free of conflicts of interest. Although the independent directors would not have a material relationship with the clearing agency or any of its participants, they could still be influenced by other sources such as non-participant shareholders of the security-based swap clearing agency. The presence of independent directors may be an effective mechanism to address certain types of conflicts in certain types of institutions but not necessarily in all instances nor for all institutions. The Commission, however, believes that effective governance via a majority independent Board is compatible with the characteristics of security-based swap clearing agencies, and the types of conflicts that may be inherent with respect to such entities.

To help address these concerns, the proposed rules would require each security-based swap clearing agency to establish policies and procedures to require each director, on his or her own initiative or upon request of the security-based swap clearing agency, to inform the security-based swap clearing agency of the existence of any relationship or interest that may reasonably be considered to bear on whether such director is an independent director.[126] This requirement should keep the security-based swap clearing agency informed of the existence of any relationship or interest that may reasonably be considered to bear on whether a director is independent as soon as possible without requiring the security-based swap clearing agency to investigate for such relationships or interest.

5. Governance Focus Alternative: Board Committees

a. Nominating Committee

The Governance Focus Alternative would require security-based swap clearing agencies to create and maintain a nominating committee composed entirely of independent directors.[127] This is consistent with the purpose of the Governance Focus Alternative to place enhanced requirements on the governance arrangements of a security-based swap clearing agency, including the composition of the Board and Board committees, with less emphasis on the requirements with respect to the voting interests held by participants. Non-independent directors on the nominating committee could circumvent the majority independence requirement by nominating a candidate that is subject to their influence. Specifically, directors serving on the nominating committee that are not independent may be more likely to select Board candidates whose views align with such directors' interests instead of the interests of the security-based swap clearing agency or the markets generally. A requirement that

[120] *See supra* note 98.

[121] *See* proposed Rule 701(b)(3)(i) under Regulation MC. *See supra* note 99 for the definition of "director."

[122] *See, e.g.,* James H. Cheek III, *et al.,* Report of the American Bar Association Task Force on Corporate Responsibility (2003); and The Business Roundtable, Principles of Corporate Governance (May 2010).

[123] Section 17A(b)(3)(C) of the Exchange Act requires that the rules of a registered clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. 15 U.S.C. 78q–1(b)(3)(C).

[124] *See supra* note 102 and accompanying text.

[125] *See* proposed Rule 701(b)(3)(ii) under Regulation MC.

[126] *See* proposed Rule 701(b)(3)(iii) under Regulation MC.

[127] *See* proposed Rule 701(b)(4)(i) under Regulation MC.

all directors serving on the nominating committee be independent of participants would address these concerns by limiting participants' control over the nomination process. A fully independent nominating committee may be warranted under the Governance Focus Alternative because the lack of an aggregate cap in this proposal means that participants may collectively hold greater voting interests in selecting the independent directors.

The Governance Focus Alternative would also require that the nominating committee identify candidates for Board membership through a consultative process with the participants of the security-based swap clearing agency consistent with criteria approved by the Board.[128] This should assure that the selection of the independent directors of the Board is conducted in a prudent manner while at the same time allowing participants of the security-based swap clearing agency to have a fair voice in the selection of the directors of the Board.[129]

b. Other Board Committees

The Governance Focus Alternative would require that other Board committees of a security-based swap clearing agency that are delegated authority to act on the Board's behalf, including but not limited to the risk committee, consist of a majority of independent directors similar to the requirement that would be imposed on the Board itself.[130] This requirement should prevent the dilution of the majority Board independence requirement that may result if Board committees that essentially perform the functions of a Board are not themselves subject to a similar requirement. The proposed requirement would also apply to an "advisory committee" to the extent that such a committee is authorized to act on behalf of the Board, including instances where the Board is required to seek approval from the committee before making a determination. However, the Commission preliminarily believes that this majority independence requirement should not extend to a committee that functions in a purely advisory role, because members of those committees are not in a position to exercise powers of the Board or exert influence over the Board by dictating the actions of the Board.

c. Disciplinary Panels

Similar to the Voting Interest Focus Alternative,[131] the Governance Focus Alternative would impose special requirements on the composition of disciplinary panels (or their equivalents) of security-based swap clearing agencies that have not been delegated authority to act on the Board's behalf.[132]

6. Governance Focus Alternative: Request for Comment

The Commission requests comment on all aspects of the 5% participant voting interest limitation. Is the 5% voting limitation appropriate, or should the Commission consider a higher or lower limitation? How does the relative concentration of the security-based swaps market among a small number of large dealers affect whether a 5% limitation is appropriate? Would 5% still allow a relatively small number of participants to effectively dominate the Board of a clearing agency? Should the Commission consider any form of an aggregate cap under this alternative? How likely is it that a security-based swap clearing agency would adopt a utility model, given the status of the security-based swaps market? Would the 5% limit impede the ability of a clearing agency to adopt a utility model? What advantages or disadvantages would such a model have? Are there other conflicts of interest, not discussed in this release, that the Commission should consider generally and specifically with respect to voting interest limitations? Would the proposed restrictions have an effect on the ability to form new security-based swap clearing agencies?

Are there other ways to more narrowly target voting limitations? Should the Commission impose voting restrictions on only the largest participants because those participants control the majority of the security-based swaps market (based on either the volume of transactions cleared at the security-based swap clearing agency or the notional value of the participant's outstanding security-based swap positions)? If such an approach is preferable, what should the threshold be for determining whether a participant is "large"? Should the Commission require the security-based swap clearing agency to consider the participant's volume of cleared transactions at the security-based swap clearing agency, the notional value of the participant's outstanding security-based swap positions at the security-based swap clearing agency, or both? Should the Commission require the security-based swap clearing agency to consider either volume or outstanding notional value of a participant's positions held outside of a security-based swap clearing agency? How often should the Commission require the security-based swap clearing agency to reevaluate its standard? How effectively would such an approach address conflict of interest concerns? What would be the advantages and disadvantages of this approach compared to the approach proposed above? Are there administrative complexities associated with determining and monitoring the point at which a firm reaches large participant status? Are the conflicts of interest concerns regarding all large participants similar or should there be differences in the voting limitations among large participants?

Should the restrictions on voting interests apply to other large entities, such as the Specified Entities listed in Section 765, even if they are not participants in a security-based swap clearing agency? What potential conflicts of interest could result if Specified Entities that are not large participants controlled the voting interest in a security-based swap clearing agency? How should such potential conflicts of interest be addressed?

Should the Commission consider a limitation on the non-voting interests owned by participants? Should the Commission consider a limitation on the voting and non-voting interests held by Specified Entities?

The Commission seeks comment on whether requiring the Board of a security-based swap clearing agency to be composed of a majority of independent directors would improve governance of the security-based swap clearing agency and mitigate potential conflicts of interest. Would a majority independent Board be helpful in mitigating conflicts of interest if the voting interest of a security-based swap clearing agency is owned by participants? If a majority independent Board is not appropriate to mitigate conflicts, what percentage of the Board should be independent? What are the costs and benefits of requiring the Boards of security-based swap clearing agencies to be composed of a majority of independent directors? How do these costs and benefits differ from the proposal that 35% of the Board be composed of independent directors? Would independent directors be likely to have the necessary experience and

[128] *See* proposed Rule 701(b)(4)(ii) under Regulation MC.

[129] *See supra* note 123.

[130] *See* proposed Rule 701(b)(5) under Regulation MC.

[131] *See supra* Section I.A.8.d. and accompanying text.

[132] *See* proposed Rule 701(b)(6) under Regulation MC.

expertise to serve on the Board? Could less experience or expertise negatively affect risk management practices or the efficiency of the clearing agency and, if so, how? If any such experience or efficiency issues exist, how could they be overcome? What are the independent directors' incentives regarding fair and open access, product eligibility, and sound risk management? How are these incentives different from those of participants? Do they result in conflicts of interest? If so, how are the conflicts of interest different from those of participants? How should they be addressed by the Commission?

Should the Commission consider alternative limits, or alternative combinations of limits, on voting interests or independent directors? For example, should the voting interest restrictions of 20% on individual interests and 40% in the aggregate be combined with the requirements for a majority independent Board and a 100% independent nominating committee? Would an alternative combination of requirements related to voting interests and independent directors be more effective? For example, would a higher requirement in each case (*e.g.,* a 10% limit on individual voting interests and a requirement for 60% independent directors) be more effective? Or would other combinations be more effective? Should the Commission reduce the restrictions over time if conflict of interest concerns are lessened as the security-based swaps market develops? For example, if participation in the security-based swaps market becomes more open and includes a broader range of participants, the interests of the participants may become more aligned with those of the clearing agency and the markets generally. Would restrictions on voting interests and governance still be needed in this circumstance? Are there other circumstances where the voting interest and governance restrictions may be reduced or eliminated altogether? If, over time, the security-based swaps market does not become more competitive, should the Commission consider additional governance and voting measures to promote open access and competition? What measures would be appropriate? What standards should the Commission use to determine whether additional restrictions should or should not be imposed?

Could restrictions regarding the governance structure of a security-based swap clearing agency alone be sufficient to address conflict of interest concerns or are both restrictions on governance and voting interests needed? Would participants of a security-based swap clearing agency be able to exercise undue influence over a security-based swap clearing agency through a voting interest even if a majority of the Board is independent? Are requirements related to the governance structure of a security-based swap clearing agency more or less effective than voting limitations at addressing conflicts of interest?

The Commission requests comment on the proposed compositional requirements of the nominating committee. What is the potential effect of requiring a security-based swap clearing agency to have an entirely independent nominating committee? Would requiring an entirely independent nominating committee, which is required to consult with participants of the security-based swap clearing agency, be consistent with the fair representation requirement under the Exchange Act? Should end-users or any other group be given guaranteed rights of participation in the governance of the security-based swap clearing agency? Should the Commission have some oversight of the Board selection process? Should the Commission consider an alternative to a compositional requirement for a nominating committee, such as allowing a security-based swap clearing agency to have a board of trustees responsible for nominating candidates for the Board? If this were a viable alternative, should there be compositional requirements or other limits imposed on the board of trustees? How should such a board of trustees be appointed? Would the alternative of a board of trustees to nominate directors provide greater assurance that independent directors are truly independent not only at the time of their nomination but during their service on the Board as well?

The Commission requests comment on the proposed compositional requirements of committees of the Board under the Governance Focus Alternative. Is the requirement that Board committees that are delegated authority by the Board be composed of a majority of independent directors appropriate? Should there be special requirements relating to the risk committee, or its equivalent, of the Board? The Commission requests comment on the possible alternatives for risk committee governance as discussed in Section IV.A.7. Would the possible alternatives for the risk committee be more or less desirable with respect to the Governance Focus Alternative? Under the Governance Focus Alternative, should the percentage of directors on the risk committee be higher or lower than what is proposed? The Commission also requests comment on whether there are other ways to structure governance arrangements for security-based swap clearing agencies to mitigate potential conflicts of interest.

The Commission requests comment on the composition of the disciplinary panel of the security-based swap clearing agency. Would the proposed rule be sufficient to address potential conflicts of interest that may interfere with the fair and effective disciplinary processes of a security-based swap clearing agency? Should different restrictions be imposed?

C. Existing Standards for Registered Clearing Agencies

In addition to any new rules adopted by the Commission with respect to conflicts of interest at security-based swap clearing agencies, the standards in the Exchange Act that apply to all securities clearing agencies registered with the Commission will apply to security-based swap clearing agencies. The Dodd-Frank Act requires security-based swap clearing agencies to be registered as clearing agencies with the Commission under Section 17A of the Exchange Act.[133] Thus, security-based swap clearing agencies will be required to comply with the standards in Section 17A of the Exchange Act. Some of these standards may be used to address concerns related to conflicts of interest, regardless of whether a security-based swap clearing agency elects the Voting Interest Focus Alternative or the Governance Focus Alternative. As a result, the standards in Section 17A would be used in addition to specific conflict of interest rules adopted under Section 765 of the Dodd-Frank Act.[134]

The Section 17A standards may be used to mitigate conflicts of interest or the effects of conflicts of interest in a

[133] Depository institutions or derivatives clearing organizations that have previously cleared swaps pursuant to an exemption from registration as a clearing agency will be deemed to be registered with the Commission under Section 17A of the Exchange Act. *See* Public Law 111–203, Section 763(*l*).

[134] *See* Section 17A(b)(3) of the Exchange Act, which sets forth the standards for registered clearing agencies. 15 U.S.C. 78q–1(b)(3). *See also* Securities Exchange Act Release No. 16900 ("Standards Release") (June 17, 1980), 20 FR 416 (July 1, 1980). The Standards Release provides guidance on the standards to be used by the Commission's Division of Trading and Markets in connection with the registration of clearing agencies. The standards also serve as staff guidelines to assist clearing agencies in modifying their organizations, capacities, and rules to comply with the clearing agency registration provisions of the Exchange Act.

The Commission is also considering matters related to conflicts of interests as part of broader standards that would be applicable to clearing agencies in association with requirements under Sections 763(b) and 805(a) of the Dodd-Frank Act.

number of ways. As part of the initial registration process, the Commission approves the organizational structure of a clearing agency.[135] The Commission also reviews and approves significant changes to a clearing agency's governance structure after it is registered.[136] In addition, a clearing agency must admit persons such as banks and broker-dealers, and other entities that the Commission may designate by rule, as participants,[137] subject to the participation standards of the clearing agency.[138]

Clearing agencies also may not permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency.[139] These standards in Section 17A help to mitigate concerns related to conflicts of interest by promoting access to and use of a clearing agency by all qualified persons on an equivalent basis.[140] The Section 17A standards also help to prevent a participant from using its influence to amend the rules of the clearing agency in a manner that favors its own institution to the disadvantage of other participants because the rules of a clearing agency may not be applied on a discriminatory basis.[141]

Finally, the Section 17A standards help to mitigate conflict of interest concerns by providing that the rules of a registered clearing agency may not impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. This helps assure that the clearing agency operates in a manner that is consistent with the public interest and is not used by participants or other interested parties to gain an unfair competitive advantage.[142] The Commission staff has previously interpreted these standards as requiring that a clearing agency must justify any anticompetitive effect of membership criteria and that it will evaluate an anticompetitive effect in light of the following factors: (1) The essential nature of the service; (2) the number and type of potential participants denied access to clearance and settlement services; (3) the number of entities providing comparable clearance and settlement services; and (4) the availability of correspondent clearing arrangements to provide indirect access to a clearing agency's services.[143] The Commission believes these factors should also be used to evaluate the anticompetitive effect of the membership standards of security-based swap clearing agencies once they are registered clearing agencies under Section 17A of the Exchange Act.

The Commission requests comment on the application of the standards under Section 17A to security-based swap clearing agencies in conjunction with the proposed rules to address conflicts of interest. Will the proposed rules effectively build on the Section 17A standards? Should the Commission take a more targeted approach by focusing new requirements under Section 765 of the Dodd-Frank Act on Section 17A standards alone, such as by having requirements addressing only membership standards and determinations whether to clear products? Would such an approach sufficiently address conflicts of interests? If not, are the proposed rules sufficient to address potential gaps in the way Section 17A alone would address conflicts of interest with respect to security-based swap clearing agencies? Should additional rules be proposed under Section 17A to further address conflict of interest concerns? Should the Commission extend the application of the proposed rules for security-based swap clearing agencies to all registered clearing agencies? To what extent would competitive pressures in the security-based swaps market, particularly as it continues to develop, help to mitigate conflicts of interest? Would the standards under Section 17A help to promote competition in a way that would help to mitigate conflicts of interest? To what extent does the Commission's oversight of clearing agencies pursuant to the standards under Section 17A alleviate the need for ownership limitations and governance requirements?

V. Discussion of Proposed Rule 702 Under Regulation MC for Security-Based Swap Execution Facilities and National Securities Exchanges That Post or Make Available for Trading Security-Based Swaps

A. Ownership and Voting Limitations

Section 765 requires the Commission to adopt rules to mitigate conflicts of interest, which may include numerical limits on control of, or the voting rights with respect to, any clearing agency that clears security-based swaps, or on the control of any SB SEFs or SBS exchanges. Pursuant to this directive, the Commission is proposing ownership and voting limits for a SB SEF that would apply to any SB SEF participant and for a SBS exchange or facility of a national securities exchange that posts or makes available for trading security-based swaps ("SBS exchange facility") that would apply to any SBS exchange member. Specifically, the Commission proposes that a SB SEF, SBS exchange, or SBS exchange facility shall not permit any SB SEF participant or SBS exchange member, as applicable, either alone or together with its related persons, to: (1) Beneficially own, directly or indirectly, any interest in the SB SEF, SBS exchange, or SBS exchange facility, as applicable, that exceeds 20% of any class of securities, or other

[135] Section 17A(b)(3)(A) provides in full a clearing agency shall not be registered unless the Commission determines that the "clearing agency is so organized and has the capacity to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of [the Exchange Act] and the rules and regulations thereunder, to enforce (subject to any rule or order of the Commission pursuant to section 17(d) or 19(g)(2) of [the Exchange Act]) compliance by its participants with the rules of the clearing agency, and to carry out the purposes of [Section 17A of the Exchange Act]." 15 U.S.C. 78q–1(a)(3)(C).

[136] *See* Securities Exchange Act Release Nos. 612194 (December 22, 2009), 74 FR 68883 (December 22, 2009) (File No. SR–FICC–2009–10); 61215 (December 22, 2009), 74 FR 68888 (December 29, 2009) (File No. SR–NSCC–2009–10); and 61216 (December 22, 2009), 74 FR 68877 (December 29, 2009) (File No. SR–DTC–2009–16), notice and order granting accelerated approval of proposed rule changes filed by the clearing agency subsidiaries of the Depository Trust and Clearing Corporation (DTC, NSCC, and FICC) to permit DTCC to nominate non-participant candidates for election to its Board.

[137] 15 U.S.C. 78q–1(b)(3)(B).

[138] *Id. See also* Section 17A(b)(4)(B), which provides that a registered clearing agency may deny participation to, or condition the participation of, any person if such person does not meet such standards of financial responsibility, operational capability, experience, and competence as are prescribed by the rules of the clearing agency. A registered clearing agency may examine and verify the qualifications of an applicant to be a participant in accordance with procedures established by the rules of the clearing agency. 15 U.S.C. 78q–1(b)(4)(B).

[139] 15 U.S.C. 78q–1(b)(3)(F).

[140] *See* Standards Release, *supra* note 134, at 419. All participants utilizing similar clearing agency services, with the exception of participants that are registered clearing agencies for which specialized requirements apply, should be required to comply fully with the clearing agency's internal financial and operational rules such as clearing fund deposits, mark-to-market payments, and margin deposits related to the services used.

[141] *Id* at 418. The provisions in Section 17A recognize that a clearing agency may discriminate among persons in the admission to, or the use of, the clearing agency, by requiring that participants meet certain financial, operational, and other fitness standards. However, Section 17A also requires that sanctioned discriminations must not be unfair. In addition, the Commission must find that clearing agency rules embodying any discriminations are in the public interest and are consistent with the requirements of the Exchange Act.

[142] The standard does not prohibit all burdens on competition. However, if a proposed rule of a clearing agency would impose a burden on competition, the burden must be weighed against the benefits of the rule in achieving the purposes of the Exchange Act. For example, a clearing agency may impose participation standards that have an anticompetitive effect as long as any such anticompetitive effect is justified.

[143] *See* Standards Release, *supra* note 134, at 419.

ownership interest, entitled to vote of such SB SEF, SBS exchange, or SBS exchange facility; or (2) directly or indirectly vote, cause the voting of, or give any consent or proxy with respect to the voting of, any interest in the SB SEF, SBS exchange, or SBS exchange facility, as applicable, that exceeds 20% of the voting power of any class of securities or other ownership interest of such SB SEF, SBS exchange, or SBS exchange facility.[144]

The Commission is concerned that if a SB SEF participant or SBS exchange member, either alone or together with its related persons, were to own a significant stake in the SB SEF, SBS exchange, or SBS exchange facility, respectively, the SB SEF participant or SBS exchange member could use its significant ownership interest to influence the operations of the SB SEF, SBS exchange, or SBS exchange facility to unduly derive benefits at the expense of other owners and market participants. The Commission is particularly concerned that a SB SEF participant or SBS exchange member may have financial incentives to limit the level of access to, and the scope of products traded on, these trading venues as a means to impede competition from other market participants. For example, the Commission understands that many of the electronic multi-dealer trading platforms that exist today for OTC derivatives or fixed income products limit the number of dealers from which a customer can request a quote. The Commission believes that a fewer number of dealers participating on a platform or exchange could result in less competition on pricing. The Commission believes that imposing ownership and voting limits, as described above, could mitigate potential conflicts of interest with respect to the level of access to the market and determinations as to which products are traded by limiting the ability of a small group of persons (such as dealers) to control the Board[145] and thus the governance of the SB SEF, SBS exchange, or SBS exchange facility.[146]

Unlike the Voting Interest Focus Alternative or the Governance Focus Alternative for security-based swap clearing agencies, the Commission is not proposing an aggregate 40% voting interest limit collectively on all SB SEF participants (with respect to SB SEFs) and SBS exchange members (with respect to SBS exchanges) or a 5% individual voting interest limit, respectively. The Commission recognizes that, as with security-based swap clearing agencies, the proposed rule would limit, but not eliminate, the ability of a small group of SB SEF participants or SBS exchange members, as applicable, to own a SB SEF, SBS exchange, or SBS exchange facility. Specifically, as few as five entities could own SB SEFs, SBS exchanges, and SBS exchange facilities under this proposal. However, the Commission's concerns with respect to concentration of ownership in security-based swap clearing agencies and SB SEFs, SBS exchanges, and SBS exchange facilities are informed by the differences in the structure for clearing and trading of security-based swaps. The Commission's experience has been that the central clearing model in the securities markets historically has tended toward convergence to a single clearing agency for each type of cleared product, while the market structure for securities trading historically has not necessarily tended toward a similar model.[147] The Commission also notes that security-based swap clearing agencies perform a critical function in mitigating financial risk for security-based swaps market participants. Although SB SEFs, SBS exchanges, and SBS exchange facilities are critical to promoting price transparency and therefore market efficiency, the Commission does not believe that the operation of SB SEFs, SBS exchanges, and SBS exchange facilities would pose the same level of systemic risk as security-based swap clearing agencies. There generally will be a lower barrier to entry with respect to trading platforms because participants of a SB SEF or members of an SBS exchange would not incur the margin, guaranty fund, or other obligations that members of a clearing agency would incur, and thus multiple venues for the trading of security-based swaps are more likely to emerge. Thus, the Commission is not proposing identical ownership requirements for security-based swap clearing agencies and SB SEFs, SBS exchanges, and SBS exchange facilities.

For purposes of calculating a SB SEF participant's or SBS exchange member's ownership and voting interests, the proposed rule would aggregate such person's ownership and voting interests with those of its related persons. When used with respect to a SB SEF, proposed Rule 700(u) under Regulation MC would define the term "related person" to mean: (1) Any affiliate of a security-based swap execution facility participant; (2) any person associated with a security-based swap execution facility participant; (3) any immediate family member of a security-based swap execution facility participant or any immediate family member of the spouse of such person, who, in each case, has the same home as the security-based swap execution facility participant or who is a director or officer of the security-based swap execution facility or any of its parents or subsidiaries; or (4) any immediate family member of a person associated with a security-based swap execution facility participant or any immediate family member of the spouse of such person, who, in each case, has the same home as the person associated with the security-based swap execution facility participant or who is a director or officer of the security-based swap execution facility or any of its parents or subsidiaries.

Further, when used with respect to a SBS exchange or SBS exchange facility, proposed Rule 700(u) under Regulation MC would define the term "related person" to mean: (1) Any affiliate of a member of the national securities exchange that posts or makes available for trading security-based swaps; (2) any person associated with a member of the national securities exchange that posts or makes available for trading security-based swaps; (3) any immediate family member of a member of the national securities exchange that posts or makes available for trading security-based swaps or any immediate family member of the spouse of such person, who, in each case, has the same home as the member of the national securities exchange that posts or makes available for trading security-based swaps or who is a director or officer of the national securities exchange or facility thereof that posts or makes available for trading security-based swaps, or any of its parents or subsidiaries; or (4) any immediate family member of a person associated with a member of the national securities exchange that posts or makes available for trading security-based swaps or any immediate family member of the spouse of such person, who, in each case, has the same home as the person associated with the

[144] *See* proposed Rule 702(b) under Regulation MC.

[145] *See supra* note 98 for the proposed definition of "Board."

[146] The Commission also believes that such limits would further the ability of the SB SEF and SBS exchange to effectively carry out its obligations. Section 763(c) of the Dodd-Frank Act and Section 6 of the Exchange Act, respectively, and, in particular, provide market participants with impartial access to SB SEFs. *See* Section 763(c) of the Dodd-Frank Act, Public Law 111–203, Section 763(c), and 15 U.S.C. 78f.

[147] The Commission has not made any determinations about whether security-based swap clearing agencies will also tend to converge to a single clearing agency or even a small number of clearing agencies, as the central clearing of security-based swaps is still a developing area.

national securities exchange that posts or makes available for trading security-based swaps or who is a director or officer of the national securities exchange or facility thereof that posts or makes available for trading security-based swaps or any of its parents or subsidiaries. To further the purpose of the proposed limits, the Commission preliminarily believes that it would be important to aggregate the SB SEF participant's or SBS exchange member's ownership and voting interests with the interest of any person with whom such person may be able to act together to influence or control the SB SEF, SBS exchange, or SBS exchange facility.

The proposed rule would restrict indirect as well as direct ownership and voting of a SB SEF, SBS exchange, or SBS exchange facility. Because the proposed rule could be easily circumvented if the Commission were to limit solely direct ownership and voting, the Commission preliminarily believes it would be important to further the purpose of imposing ownership and voting limits to also restrict the indirect ownership and voting interests of SB SEF participants and SBS exchange members. For example, if the Commission simply proposed to prohibit a SB SEF participant from directly owning or voting shares, the participant could hold its ownership interests in the SB SEF through a holding company, thus easily circumventing the intent of the proposed rule. Accordingly, the ownership and voting limits would apply to ownership and voting of interests in a parent company of the SB SEF, SBS exchange, or SBS exchange facility. For example, if the SB SEF were wholly-owned by a holding company, a SB SEF participant would be prohibited from owning or voting more than 20% of the voting interest in the parent company. Finally, the proposed limits also would apply to a SB SEF participant or SBS exchange member that beneficially owns more than 25% of an entity that itself owns more than 20% of a SB SEF, SBS exchange, or SBS exchange facility.[148]

To assure that SB SEFs, SBS exchanges, and SBS exchange facilities maintain an ownership structure consistent with the proposed ownership and voting limits, the Commission proposes that these entities have rules that (1) provide an effective mechanism to divest a SB SEF participant's or SBS exchange member's ownership that, alone or together with its related persons, exceeds 20% and (2) are reasonably designed not to give effect to a SB SEF participant's or SBS exchange member's voting interest that, alone or together with its related persons, exceeds 20%.[149] The Commission believes that in order for the ownership and voting limits to be effective, each SB SEF, SBS exchange, and SBS exchange facility must take measures to reduce a SB SEF participant's or member's ownership interest or not give effect to any voting interest that exceeds the proposed limits. The Commission intends to provide SB SEFs, SBS exchanges, and SBS exchange facilities flexibility in determining how to implement these requirements. Any rules adopted by these trading venues, however, must assure that they have a viable, enforceable mechanism to divest a SB SEF participant or SBS exchange member of any interest held in excess of the 20% limit and to not give effect to the portion of voting interest held in excess of the 20% limit. The Commission also proposes to require each SB SEF, SBS exchange, or SBS exchange facility to have rules to provide a mechanism to obtain information relating to its ownership and voting interests.[150] The Commission believes that a requirement to collect information regarding ownership and voting interests of SB SEF participants and SBS exchange members is essential for registered trading venues to monitor and comply with the proposed ownership and voting limits.[151]

The Commission believes that an ownership and voting limit of 20% is an appropriate threshold. On the one hand, the restriction would limit the ability of a SB SEF participant or SBS exchange member to exert undue influence over the governance of a SB SEF, SBS exchange, or SBS exchange facility, respectively. On the other hand, such an ownership and voting limit should not overly interfere in such an entity's organizational structure or the ability of a SB SEF participant or SBS exchange member to acquire a substantial equity interest in a SB SEF, SBS exchange, or SBS exchange facility, as applicable.[152] Thus, the proposed ownership and voting limits should strike an appropriate balance between the objectives of mitigating conflicts of interest and refraining from unnecessarily hindering the ability of entities to form new trading venues. In addition, there may be incentives to create a new SBS exchange or SB SEF because a SBS exchange or SB SEF may draw significant new business by making available to trade a security-based swap that is required to be cleared under Section 763(a).[153] Furthermore, the risk management and economies of scale issues that may create a barrier to entry with respect to new security-based swap clearing agencies generally would not affect the creation of SBS exchanges or SB SEFs.

While the Commission believes that the proposed 20% ownership and voting limits are appropriate, it also understands that the movement of trading of security-based swaps onto SB SEFs, SBS exchanges, or SBS exchange facilities will foster enhanced transparency and market efficiency. The Commission does not intend to unnecessarily impede the emergence of what could be vital sources of, among other things, liquidity and pricing transparency for security-based swaps. However, imposing on SB SEFs and SBS exchanges ownership and voting limits similar to those that shareholder-owned cash equities and options exchanges have in place could have the unintended consequence of deterring new, competitive trading venues at a time when organized markets for security-based swaps are just beginning to develop. A trading platform that currently trades security-based swaps in the OTC market but would not meet the proposed ownership and voting limits would need to revise its ownership structure if it chooses to become a SB SEF. There could be costs and delays as the potential SB SEF seeks to find one or more additional owners to satisfy the proposed limits, with a possible diminution in the value of the original owner(s)' investment. Moreover, it is possible that imposing these limits may affect the security-based swaps market differently than the cash equities and listed options markets. Ownership and

[148] *See supra* note 93 for the proposed definition of "control."

[149] *See* proposed Rules 702(c)(1) and (2) under Regulation MC.

[150] *See* proposed Rule 702(c)(3) under Regulation MC.

[151] *See supra* Section IV.A.4.

[152] National securities exchanges that may trade security-based swaps currently prohibit a member from owning or voting more than 20% of the exchange, although an exchange's method of calculating the 20% interest, aggregated with any person with whom such person may be able to act together to influence or control an exchange, may vary from the Commission's proposal. *See, e.g.,* Amended and Restated Certificate of Incorporation of BATS Global Markets, Inc., Article FIFTH; Amended and Restated Certificate of Incorporation of NYSE Euronext, Article V.

[153] The counterparties to a transaction in a security-based swap that is required to be cleared under Section 763(a)(2) of the Dodd-Frank Act will be required to execute the transaction on a SBS exchange or on a SB SEF. There is an exception from the execution requirement if no SBS exchange or SB SEF makes the security-based swap available to trade. *See* Public Law 111–203, Section 763(h). The exception from trade execution is also available if the exception from mandatory clearing under Section 763(g) applies. *See* Public Law 111–203, Section 763(g).

voting limits were implemented at national securities exchanges at a time when the trading of exchange-listed securities was fairly well established and competitive. Consequently, a 20% ownership and voting limit may not negatively affect the ability of cash equity and options exchanges to promote competing trading venues but, if applied to the security based-swaps market that is in its infancy, could retard market development.

The Commission is sensitive to arguments against imposing ownership and voting limits for SB SEFs, SBS exchanges, and SBS exchange facilities, some of which were articulated at the Conflicts Roundtable. However, it also understands that the OTC derivatives market is highly concentrated and dealer dominated. Although ownership and voting limits arguably may have a less negative effect on new entrants to the cash equities and options markets and their ability to compete, there may also be less need for such limitations in those markets. In contrast, although ownership and voting limits may more directly affect the ability of SB SEFs and SBS exchanges to start up, the lack of market characteristics to promote competing trading venues for security-based swaps may emphasize the greater need for ownership and voting limits. If the market characteristics for security-based swaps naturally promote dealer domination without robust competing trading venues, there is more need to mitigate the types of concerns that underlie Section 765, such as by imposing ownership and voting limits.[154]

The Commission must weigh the potential implications of imposing ownership and voting limits against imposing other requirements that would allow a dealer-dominated security-based swaps market to continue. As part of the balance between mitigating conflicts of interest without unduly restricting the ability of a competitive market for trading of security-based swaps to emerge, the Commission proposes to limit ownership in SB SEFs, SBS exchanges, and SBS exchange facilities specifically to those interests entitled to vote.[155] Consequently, a SB SEF participant or SBS exchange member would not be prohibited from owning any percentage of a nonvoting interest in a SB SEF, SBS exchange, or SBS exchange facility. In contrast, national securities exchanges generally limit their members from owning more than 20% of any interest, voting or otherwise. However, as discussed above, trading venues for exchange-listed securities are well established and highly competitive. In this regard, the Commission does not believe that it is necessary to propose the same ownership limits as those currently in place at national securities exchanges. Further, the proposed 20% limit on ownership and voting would still allow as few as five entities to own a SB SEF, SBS exchange, or SBS exchange facility. Thus, the proposed limit by itself would not completely prohibit a small number of entities from potentially exerting undue influence over SB SEFs, SBS exchanges, or SBS exchange facilities in a way that could benefit the few to the detriment of others.

The Commission requests comment on all aspects of the proposed ownership and voting limits, including whether it is necessary and appropriate to have ownership and voting limits at all. If commenters believe that it is necessary and appropriate to impose ownership and voting limits to mitigate conflicts of interest, the Commission requests comment on whether the proposed limits are appropriate, or whether they would unduly hinder the development of SB SEFs without serving to mitigate any conflicts.[156] Should the Commission require a voting limit, but not an ownership limit or a different limit for ownership versus voting? Even with the prohibition against owning more than 20% of any interest entitled to vote, a SB SEF participant or SBS exchange member could have sufficient ownership of nonvoting interest, either alone or in addition to voting interest, to exert influence on these trading venues. Should the Commission require the ownership limit to apply to *any* class of equity securities or other ownership interest rather than any class of securities, or ownership interest, entitled to vote?[157] Would the proposed limits impede the number or types of SB SEFs from being established? Should the proposed ownership and voting limits be phased in for SB SEFs to provide a grace period for those entities that would not meet the requirements under Regulation MC?

The Commission also seeks comment on whether the proposed ownership and voting limits would continue to be important as the market for security-based swaps evolves. If multiple SB SEFs emerge as this market develops, would competitive pressures alleviate any of the conflicts of interest that are the basis for the Commission's proposals? In that case, would it be appropriate for the Commission to impose different limits? Should the Commission reduce the restrictions over time, if conflict of interest concerns are lessened as the security-based swaps market develops? For example, if participation in the trading of security-based swaps becomes more open and includes a broader range of participants, and multiple SB SEFs or SBS exchanges evolve to trade the same security-based swaps, would there still be a need to retain ownership and voting limits or are there factors that would allow such limits to be revised? What factors should the Commission consider in assessing whether any ownership and voting limits it may impose on SB SEFs should be revisited?

As mentioned above, each national securities exchange currently prohibits

[154] In the equities market a small group of broker-dealers or single-dealer proprietary firms can and do own alternative trading systems ("ATSs") and thus it can be argued that SB SEFs and SBS exchanges should be permitted to operate similarly. *See* Securities Exchange Act Release No. 60997 (November 13, 2009), 74 FR 61208 (November 23, 2009) (as of November 2009, there were approximately 73 ATSs that are subject to Regulation ATS). However, ATSs exist in the context of a marketplace with robust competition among numerous trading venues. Therefore, ATSs that are owned by one broker-dealer or a small group of broker-dealers, by virtue of their ownership structure alone, generally do not present a concern that they could lessen price competition or market efficiency.

[155] *See supra* note 64.

[156] In the SRO Governance Proposing Release, the Commission proposed a similar 20% ownership and voting limit for members of a national securities exchange. A number of commenters favored this proposal, including several commenters that were national securities exchanges or a facility of a registered securities association. *See, e.g.,* letter from Michael J. Simon, Secretary, ISE, to Jonathan G. Katz, Secretary, Commission, dated March 8, 2005 ("ISE Comment Letter") ("[The ownership limitation] provides SROs with flexibility, yet recognizes the unique conflicts that could arise if a member were to own a controlling interest in an SRO with regulatory responsibility for the member."); letter from Meyer S. Frucher, Chairman and Chief Executive Officer, Phlx, to Jonathan G. Katz, Secretary, Commission, dated March 8, 2005 ("Phlx Comment Letter") ("The Exchange unequivocally agrees with the Commission that a significant shareholder could use its voting power to influence the operations of an exchange in a way that adversely affects the mission, integrity or regulatory capacity of the exchange, or otherwise is detrimental to the public interest."); letter from Philip D. DeFeo, Chairman and Chief Executive Officer, Pacific Exchange, Inc. ("PSX"), to Jonathan G. Katz, Secretary, Commission, dated March 8, 2005 ("PSX Comment Letter"); letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq Stock Market, Inc., to Jonathan G. Katz, Secretary, Commission, dated March 8, 2005 ("Nasdaq Comment Letter"). The Commission notes, however, that the SRO Governance Proposing Release related to national securities exchanges that trade equity securities and listed options and registered securities associations, and the comments received did not address potential conflicts in other contexts.

[157] The CFTC has proposed similar ownership and voting limits for DCMs and registered SEFs, and applies the ownership limit only to any class of equity securities entitled to vote. *See http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister_governance.pdf.*

its members from owning an interest, voting or otherwise, or voting more than 20% (or less) of the exchange or a facility of the exchange.[158] Therefore, the Commission preliminarily does not believe that the proposed rules would have a material effect on an exchange's ability to post or make available for trading security-based swaps. Nevertheless, the Commission requests comment on whether the proposed limits in this rulemaking could affect a national securities exchange's ability or decision to post or make available for trading security-based swaps. Also, given that national securities exchanges currently have limits on ownership and voting by members, would codifying the proposed limits help to further mitigate the types of conflicts of interest that underlie the Dodd-Frank Act for SBS exchanges? Would there be any effect on the willingness of entities to register to become a national securities exchange and trade security-based swaps? What would be the implication, if any, on an exchange that chose to trade security-based swaps through a facility that is a separate legal entity? More generally, for SB SEFs and SBS exchanges or SBS exchange facilities, should ownership and voting be limited to the same threshold or should they be different? If the Commission should take a different approach for ownership and voting, what should that approach be?

As described above, Section 765 enumerates Specified Entities that the Commission should consider in its rulemaking. The Commission understands that, depending on who may be permitted to directly effect transactions on a SB SEF (or is a SBS exchange member), limits on ownership and voting that apply only to SB SEF participants or SBS exchange members could be either over-inclusive or under-inclusive or both, with respect to the Specified Entities. For example, restricting control of a SB SEF based on an entity's direct participation on the SB SEF could capture a person who is not one of the Specified Entities or, conversely, fail to take into consideration a Specified Entity. Accordingly, the Commission requests comment on whether the scope of the proposed ownership and voting limits is appropriate. Should the limits on ownership and voting extend to all or some of the Specified Entities, regardless of their direct participation on the SB SEF or SBS exchange? If so, why? What are the potential conflicts concerns that such Specified Entities may pose? How are conflicts concerns posed by such Specified Entities different from those posed by SB SEF participants or SBS exchange members who are not also Specified Entities? In this regard, the Commission notes that the definition of "related person" would encompass any such entity that is affiliated with such a SB SEF participant or SBS exchange member, although it may not itself be a SB SEF participant or SBS exchange member.

In addition, national securities exchanges generally limit ownership and voting by non-members, as well as members.[159] Specifically, exchanges generally limit each non-member to no more than 40% ownership of the exchange. The limit on ownership by non-members of an exchange is designed in part to provide the Commission and the exchange with the proper tools (such as access to books and records) necessary to carry out the Commission's and the exchange's respective regulatory oversight responsibilities, as well as to mitigate more general conflict concerns between owners' commercial interests and the exchange's regulatory obligations. The Commission requests comment on whether it should impose, as part of this rulemaking, similar limits on ownership and voting. Such an ownership limit would apply to the Specified Entities, to the extent they are not subject to the proposed ownership limit described above. In addition to the requirements of Section 765, the Dodd-Frank Act more generally requires a SB SEF to establish and enforce rules to minimize conflicts of interest in its decision-making process and establish a process for resolving the conflicts of interest. What are the types of conflicts that a person who is not a SB SEF participant or SBS exchange member may pose?

The Commission also requests comment on whether its formulation for calculating the 20% threshold is appropriate. Specifically, the Commission requests comment on all prongs of the definition of "related person," including whether the definition is over-inclusive or under-inclusive. What other method could the Commission use to reach the interest of any person with whom a SB SEF participant or SBS exchange member may be able to act together to influence or control a SB SEF or SBS exchange? Finally, the Commission expects a SB SEF, SBS exchange, and SBS exchange facility to have in place an effective mechanism for enforcing the ownership and voting limits. The Commission requests comment on whether the proposed rules related to divesture of ownership and voting limits are appropriate. Should the Commission explicitly require in the proposed rules specific ways to divest ownership and voting interest of SB SEF participants and SBS exchange members who violate the ownership and voting limits? Is the proposed rule pertaining to obtaining information on ownership and voting interest of SB SEFs, SBS exchanges, and SBS exchange facilities appropriate? Should the Commission require that trading venues collect information pertaining to certain ownership or voting thresholds?

B. Governance Requirements

The Commission is proposing substantive requirements with respect to the governance of SB SEFs, SBS exchanges, and SBS exchange facilities that are designed to address the conflict of interest concerns identified above, including the concern that dealer-owners could unduly influence the governance and operation of a SB SEF or SBS exchange. These governance provisions, as discussed below, should help mitigate conflicts of interest as directed by Section 765 of the Dodd-Frank Act.

1. Board

The Commission proposes that the Board of a SB SEF, SBS exchange, or SBS exchange facility be composed of a majority of independent directors.[160] The presence of a majority of independent directors on the Board should reduce the ability of owner-directors of a SB SEF, SBS exchange, or SBS exchange facility to improperly influence the operation of such entity to their own advantage and to the detriment of other users or potential users of the facility or exchange. A majority independent director requirement should help foster a greater degree of independent decision-making consistent with the objectives of the Dodd-Frank Act and the Exchange Act and should reduce the ability of owners that are participants or members to control key decisions regarding the operation of the SB SEF or SBS exchange and thereby potentially limit

[158] A member has in the past been permitted on a pilot basis to own more than 20% of a facility of an exchange subject to certain terms and conditions. *See* Securities Exchange Act Release Nos. 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (order approving on a pilot basis 50% ownership of the New York Block Exchange, a trading facility of NYSE, by BIDS ATS, a member of NYSE). This pilot has since been extended for an additional year and will expire on January 22, 2011 unless further extended or permanently approved. *See* Securities Exchange Act Release No. 61409 (January 22, 2010), 75 FR 4889 (January 29, 2010).

[159] *See supra* Section III.B.

[160] *See* proposed Rule 702(d)(1) under Regulation MC. *See also supra* note 102 and accompanying text for the proposed definition "independent director."

access to, or limit the products made available for trading on, the SB SEF or SBS exchange, which could adversely affect the trading of security-based swaps in regulated markets. Further, the definition of independent director is designed to assure that the independent director would not have a direct economic stake in the SB SEF or SBS exchange, or other relationship that would call into question the impartiality of the director, and thus would not be subject to the conflicts of interest identified above.

SB SEFs and SBS exchanges are intended to serve important roles in providing centralized, transparent trading of security-based swaps and, under Section 763(c) of the Dodd-Frank Act or existing Section 6 of the Exchange Act, as applicable, will have a number of responsibilities.[161] Requiring a majority independent Board should help assure that SB SEFs and SBS exchanges would operate in an impartial manner with respect to these (and other) mandated duties. Moreover, requiring a majority independent Board for SB SEFs and SBS exchanges would be commensurate with the manner in which national securities exchanges generally are governed today [162] and comports with the listing rules of exchanges, which are approved by the Commission.[163]

One of the alternatives the Commission proposes for security-based swap clearing agencies is to require the Board of any security-based swap clearing agency be composed of 35% independent directors. The Commission proposes this 35% independence alternative to address potential concerns that requiring a majority independent Board for security-based swap clearing agencies would affect the Board's ability to effectively perform risk management functions. Security-based swap clearing agencies perform a critical function in mitigating financial risk for security-based swaps market participants. Although critical to promoting price transparency and therefore market efficiency, as noted above, the Commission does not believe that the operation of SB SEFs, SBS exchanges, and SBS exchange facilities would pose the same level of systemic risk as security-based swap clearing agencies because they do not assume the risk of managing open positions or of guaranteeing the settlement of transactions. Thus, the Commission is not making the same proposal with respect to SB SEFs, SBS exchanges, and SBS exchange facilities.

Although a majority independent Board may address conflicts of interest concerns that underlie Section 765 of the Dodd-Frank Act, it may not effectively eliminate all conflicts. The presence of independent directors may be an effective mechanism to address certain types of conflicts in certain types of institutions but not necessarily in all instances nor for all institutions. The Commission, however, does not believe that the characteristics of SB SEFs and SBS exchanges, and the types of conflicts that may be inherent with respect to such entities, pose a set of circumstances that are incompatible with an effective governance via a majority independent Board.

Taking into account these and other concerns, the Commission has considered a less prescriptive governance rule to address conflicts of interest for venues that trade security-based swaps. However, especially because SB SEFs are not SROs and thus their rules are not subject to Commission approval pursuant to Section 19 of the Exchange Act,[164] a principles-based approach to governance may not give the Commission sufficient ability to address potential conflicts in the operation of SB SEFs. Although the Commission, through its authority to approve applications to register as a SB SEF, may be able to ascertain that a SB SEF at the time of its registration has a governance structure that sufficiently would mitigate conflicts of interest, a less prescriptive approach could make it more difficult for the Commission to assure that the SB SEF's governance structure continues to meet the proposed requirements over time.

The Commission welcomes commenters' insights to inform its understanding of the governance of trading venues for security-based swaps. As discussed above, a majority independent Board may not effectively address all conflicts. The Commission therefore seeks comment on all aspects of its proposal for a majority independent Board. Should the Commission adopt a less prescriptive approach to mitigating conflicts of interest in the governance of SB SEFs and SBS exchanges? Are there other approaches that would improve governance and mitigate conflicts of interest? For example, would State laws governing the fiduciary duty owed by corporate board members help to mitigate conflicts of interest or, as noted above, would such laws potentially aggravate the types of conflicts of interest that the Commission is trying to address? Should the Commission consider any additional requirements related to fiduciary duties to either enhance mitigation of conflicts or address deficiencies?

Further, the Commission requests comment on whether requiring the Board of a SB SEF, SBS exchange, or SBS exchange facility to be composed of a majority of independent directors would improve the governance of the SB SEF, SBS exchange, or SBS exchange facility, as applicable, and mitigate conflicts of interest that could arise. The Commission specifically requests comment on whether there are other Board structures that could help mitigate conflicts of interest. If having a majority independent Board is not necessary to mitigate conflicts, but some lesser percentage of independent directors would help address such concerns, what percentage of Board members should be required to be independent? What are the benefits and costs of requiring Boards of SB SEFs, SBS exchanges, and SBS exchange facilities to be composed of a majority of independent directors? Would a majority independent Board help to mitigate conflicts of interest if the ownership of a SB SEF, SBS exchange, or SBS exchange facility is concentrated in a small group of owners (*e.g.,* five owners) rather than a larger group (*e.g.,* greater than ten owners)? Would a majority independent Board help to mitigate conflicts of interest that could arise between the commercial interests of a SB SEF, SBS exchange, or SBS exchange facility or the owners of the SB SEF, SBS exchange or SBS exchange

[161] For SB SEFs, these responsibilities include establishing and enforcing rules with respect to the terms and conditions of the security-based swaps traded or processed on or through the facility and any limitation on access to the facility; trading procedures to be used in entering and executing orders traded on SB SEFs; and monitoring trading in SB SEFs to prevent manipulation, price distortion, and disruptions of the settlement process through surveillance, compliance and disciplinary practices and procedures. *See* Section 763(c) of the Dodd-Frank Act, Public Law 111–203, Section 763(c).

[162] *See supra* Section III.B. Currently, the governance structure of a facility of an exchange that is a separate legal entity from the exchange and that is not a wholly-owned subsidiary of the exchange is not subject to any specific board or committee compositional requirements. Given the nature of the conflict concerns for the trading of security-based swaps and the structure of the security-based swaps market—namely, the dominance by a small group of dealers and the concern with respect to undue influence in the operation of the SB SEF or SBS exchange—the Commission believes that it is necessary and appropriate to impose the same board and committee compositional requirements on a facility of an exchange if that facility posts or makes available for trading security-based swaps.

[163] *See* Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (order approving File Nos. SR–NYSE–2002–33, SR–NASD–2002–77, SR–NASD–2002–80, SR–NASD–2002–138, SR–NASD–2002–139, and SR–NASD–2002–141).

[164] 15 U.S.C. 78s.

facility and the regulatory responsibilities of the SB SEF or SBS exchange? Are there experience or efficiency issues if a majority of the Board must be composed of independent directors? Are there remedies for overcoming any such experience or efficiency issues? [165]

The Commission also notes that currently, for national securities exchanges, at a minimum, the number of non-industry directors should equal or exceed the number of industry directors.[166] The Commission requests comment on whether requiring a majority independent Board could further mitigate conflicts for SBS exchanges or whether the current standards exchanges have in place would sufficiently address the conflict concerns with respect to exchanges that would post or make available for trading security-based swaps. Further, the Commission requests comment as to whether the requirement for Board composition should be different for SB SEFs and SBS exchanges and, if so, why and how?

The Commission also requests comment on the proposed definitions of "independent director" and "material relationship." [167] Are the definitions of "independent director" and "material relationship" appropriate? If not, how should they be defined? The proposed rule provides circumstances that would preclude a finding that a director is independent.[168] The Commission requests comment on whether this approach is appropriate or whether the Commission should take a less prescriptive approach. The Commission also notes that the proposed rule precludes a director from being deemed independent if he or she has received from the SB SEF, SBS exchange, or SBS exchange facility within the past three years payments that reasonably could affect his or her independent judgment or decision-making, excluding remunerations for Board or Board committee services. The Commission requests comment on whether it is appropriate to exclude compensation for Board or Board committee service from disqualifying a director as an independent director. Are there circumstances or levels of compensation that should disqualify a candidate from being deemed independent? The Commission also requests comment on whether, instead of independence requirements, it should require that the number of "non-industry" directors equal or exceed the number of "industry" directors, as such terms are generally defined by the exchanges.[169] Are there other types of affiliations that the Commission should be concerned about that are not addressed by the proposed definitions of "independent director" or "material relationship"?

The Commission is not proposing that the Board composition requirement apply to parent companies of a SB SEF, SBS exchange, or SBS exchange facility.[170] In other words, the Commission is not proposing to require a holding company that wholly owns, or entities that control, a SB SEF, SBS exchange, or SBS exchange facility to have a majority independent Board.[171] The Commission preliminarily believes that the composition of the Board of a parent that wholly owns or controls a SB SEF, SBS exchange, or SBS exchange facility does not raise conflicts concerns that require Commission rulemaking. The Commission, however, requests comment on whether the majority independent Board requirement should apply to an entity that owns and controls a SB SEF, SBS exchange, or SBS exchange facility.

2. Regulatory Oversight Committee

In addition to a majority independent Board, the Commission proposes that a SB SEF or SBS exchange establish a ROC that is composed solely of independent directors to oversee the SB SEF's obligations under Section 763(c) of the Dodd-Frank Act or the SBS exchange's regulatory oversight responsibilities under Section 6 of the Exchange Act, respectively.[172] This requirement also would apply to a national securities exchange that posts or makes available for trading security-based swaps through a facility of the exchange.[173] The ROC would oversee the regulatory program on behalf of the Board. Specifically, the Commission expects that a ROC, among other things, would monitor a SB SEF's or SBS exchange's regulatory program for sufficiency, effectiveness, and independence; oversee all facets of the regulatory program; review the size and allocation of the regulatory budget and resources; and review regulatory proposals and advise the Board as to whether and how such changes may affect regulation. The proposed rule also would require that any recommendation of the ROC that is not adopted or implemented by the Board be reported promptly to the Commission.[174]

The proposed provisions relating to the ROC should help limit the ability of owners of the SB SEF and SBS exchange to unduly influence the operation of these entities, and thus would further the objectives of good governance and mitigation of conflicts of interest that underlie Section 765 of the Dodd-Frank Act. A ROC is intended to have an important role in assuring that a SB SEF or SBS exchange carries out its obligations in an even-handed and effective manner and that its oversight functions are adequately funded.

Although the Commission encourages national securities exchanges to have a wholly independent ROC, it has not in

[165] The SRO Governance Proposing Release proposed that the board of a national securities exchange or national securities association be composed of a majority of independent directors. *See* SRO Governance Proposing Release, *supra* note 59. A number of commenters, particularly national securities exchanges, favored this proposal. *See, e.g.,* PSX Comment Letter, *supra* note 156; Letter from Anthony K. Stankiewicz, Esq., Vice President, Legal and Governance, BSE, to Jonathan G. Katz, Secretary, Commission, dated March 8, 2005 (supporting the majority independent board requirement but objecting to the definition of independence) ("BSE Comment Letter"); Letter from Mary Yeager, Assistant Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated March 8, 2005 ("NYSE Comment Letter"). A few commenters objected to it as being an unnecessary requirement to mandate for all exchanges. *See, e.g.,* ISE Comment Letter, *supra* note 156; Letter from William J. Brodsky, Chairman and Chief Executive Officer, Chicago Board Options Exchange, Incorporated, to Jonathan G. Katz, Secretary, Commission, dated March 8, 2005 ("CBOE Comment Letter"). The Commission notes, however, that the SRO Governance Proposing Release related to national securities exchanges that trade equity securities and listed options and registered securities associations, and the comments received did not address potential conflicts in other contexts.

[166] *See supra* Section III.B.

[167] *See* proposed Rules 700(j) and (*l*) under Regulation MC.

[168] *See* Section 303A.02 of the NYSE Listed Company Manual and Nasdaq Rule 5605(a)(2), both of which contain specific circumstances that, if satisfied, would preclude a determination that the director is independent.

[169] *See supra* note 66.

[170] If the parent company of a SB SEF, SBS exchange or SBS exchange facility was itself a regulated entity that is subject to the Exchange Act and rules and regulations thereunder, then it would comply with any requirements that it is subject to in that capacity.

[171] The CFTC has proposed to apply a "public director" requirement to parent companies that operate DCMs and SEFs. *See http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister_governance.pdf.*

[172] *See* Section 763(c) of the Dodd-Frank Act, Public Law 111–203, Section 763(c), and 15 U.S.C. 78(f). *See also* proposed Rule 702(e)(1) under Regulation MC.

[173] Proposed Rule 702(e) under Regulation MC does not explicitly include a SBS exchange facility. A facility that posts or makes available for trading a security-based swap would do so under the registration of an exchange of which it is a facility. Therefore, the exchange is deemed the statutory entity posting or making available for trading the security based swap and is responsible for the regulatory oversight of the facility. Accordingly, the exchange whose facility posts or makes available for trading a security-based swap must itself establish the requisite ROC.

[174] *See* proposed Rule 702(e)(2) under Regulation MC.

the past required them to do so.[175] As mentioned above, however, the conflict concerns that Section 765 is intended to address are not entirely analogous to those posed by national securities exchanges. Rather, there is a heightened concern regarding conflicts of interest for trading venues of security-based swaps because a small group of dealers may exert undue influence to control the level of access to, and the scope of products traded on such venues. Further, while SB SEFs do not possess the full range of self-regulatory obligations that exchanges have, they nonetheless have a number of regulatory duties that are set forth in the core principles for SB SEFs contained in Section 763(c) of the Dodd-Frank Act.[176] Thus, it appears that a need for a wholly independent ROC may be greater for SB SEFs and SBS exchanges than for other registered national securities exchanges.[177]

The Commission also recognizes that, as mentioned above, an independent director, who by definition would be outside the management of a SB SEF or SBS exchange and not a SB SEF participant or SBS exchange member may not have access to the same amount or types of information as non-independent directors. Therefore, a ROC composed solely of independent directors may need to rely on management or non-independent directors for information, with attendant biases of information from such sources. If directors on a ROC, moreover, lack necessary information or are otherwise not sufficiently knowledgeable, the committee's effectiveness as a whole may be compromised. Such ROC may defer to management's expertise or the expertise of non-independent directors on the Board. Further, as mentioned above, independent directors may have their own biases that could compromise the structural protections intended by a wholly independent ROC. Therefore, the Commission seeks comment on the proposal relating to the composition and duties of the ROC. Would the establishment of a fully independent ROC help mitigate the identified conflicts of interest? Are there particular circumstances under which a ROC should be permitted to have non-independent directors? If so, please identify them.

Separately, the Commission requests comment on whether it should specify in the proposed rule the duties of the ROC. If so, what should be the scope of the ROC's duties? For example, should a ROC be required to oversee decisions as to which entities have access to the trading facility and under what circumstances, or which products are made available for trading? Is it appropriate to require that the Board submit to the Commission any recommendation of the ROC that it does not adopt or implement? Would this requirement help assure good governance that may mitigate conflicts? Should such reports be required to be submitted promptly to the Commission? Would a different time period be more appropriate? For instance, should such reports instead be required to be submitted semi-annually or, for SB SEFs, should they be incorporated as part of the annual report of the Chief Compliance Officer, which is required pursuant to core principle 14 under Section 763(c) of the Dodd-Frank Act? Are there reasons, consistent with mitigation of conflicts, why SB SEFs and SBS exchanges should be treated differently with respect to the proposal to require a fully independent ROC? Are there other ways in which material information pertaining to the ROC's ability to carry out its duties effectively can be brought to the Commission's attention?

3. Other Board Committees

The Commission is proposing compositional and other requirements with respect to various other Board committees. In this regard, proposed Rule 702(f)(1) under Regulation MC would require that the nominating committee of a SB SEF, SBS exchange, or SBS exchange facility be composed solely of independent directors. The proposed requirement for the Board of the SB SEF, SBS exchange, or SBS exchange facility to be composed of a majority of independent directors could be undercut if the nominating committee were dominated by persons that had an ownership interest in these entities, were affiliated with such owners, or were selected by the owner-directors or their affiliates. Further, the proposed rule would require that any committee of the Board that is delegated the authority to act on the Board's behalf, such as any executive committee, also must be composed of a majority of independent directors.[178] This proposed provision extends to Board committees that are authorized to act on behalf of the Board the compositional requirement proposed for the full Board and is designed to assure that the SB SEF, SBS exchange or SBS exchange facility would not subvert the proposed majority Board independence standard by delegating the Board's duties to a committee that does not have the same majority independence standard.

With respect to a wholly independent nominating committee, the Commission recognizes that the proposal may not sufficiently mitigate concerns that certain shareholders may be able to influence or control the director nominating process and thus undermine the intent of a majority independent Board. As discussed above, an independent director may not truly be independent from the influence of, or bias toward, a large shareholder or group of shareholders, other non-independent directors, or even from management. Consequently, if the nominating committee is composed of enough directors who are subject to such influence or bias, the palliative purpose of requiring a wholly independent nominating committee could be compromised. Accordingly, the Commission requests comment on

[175] In the SRO Governance Proposing Release, the Commission proposed to require SROs to have a ROC and to require that all members of such committee be independent. *See* SRO Governance Proposing Release, *supra* note 59. Some commenters generally favored the requirement of a ROC. *See, e.g.,* PSX Comment Letter, *supra* note 156; CBOE Comment Letter, *supra* note 165. However, a number of commenters objected to the requirement that certain board committees, including the ROC, be composed solely of independent directors. *See, e.g.,* Phlx Comment Letter, *supra* note 156 ("To impose this requirement on all Standing Committees would potentially exclude persons with the most experience and knowledge from serving on these committees."); CBOE Comment Letter, *supra* note 165; letter from Neal Wolkoff, Acting Chief Executive Officer, the American Stock Exchange LLC, to Jonathan G. Katz, Secretary, Commission, dated March 8, 2005 ("[A] number of the exchanges may find it difficult to find enough qualified independent directors with sufficient expertise to satisfy all of these committees."); letter from the Archipelago Exchange, BSE, the Chicago Stock Exchange, ISE, the Nasdaq Stock Market, and Phlx, to Jonathan G. Katz, Secretary, Commission, dated March 8, 2005 ("[As] a result of the potential loss of flexibility, we disagree with the mandated requirement for specific committees composed exclusively of directors that meet the [Commission's] proposed definition of independence."). The Commission notes, however, that the SRO Governance Proposing Release related to national securities exchanges that trade equity securities and listed options and registered securities associations, and the comments received did not address potential conflicts in other contexts.

[176] *See supra* note 54.

[177] Some exchanges have voluntarily created ROCs. *See, e.g.,* Securities Exchange Act Release Nos. 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (order approving demutualization of the Chicago Stock Exchange ("CHX")) (at the time of the demutualization, CHX proposed to have, and currently has, majority public directors on its ROC) and 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (order approving the demutualization of CBOE) (CBOE's ROC is composed solely of non-industry directors).

[178] *See* proposed Rule 702(f) under Regulation MC. This proposed provision would not apply to the ROC or the nominating committee since the proposals would require the ROC and the nominating committee to be composed solely of independent directors.

whether it should prescribe or limit the manner in which a SB SEF, SBS exchange, or SBS exchange facility could appoint the nominating committee. Should the Commission consider an alternative to a compositional requirement for a nominating committee, such as allowing a SB SEF, SBS exchange, or SBS exchange facility to have a board of trustees responsible for nominating candidates for the Board? If this were a viable alternative, should there be compositional requirements or other limits imposed on the board of trustees? How should such a board of trustees be appointed? Would the alternative of a board of trustees to nominate directors provide greater assurance that independent directors are truly independent not only at the time of their nomination but during their service on the Board as well?

Conversely, the Commission also notes that dealer-owners that are Board members would not be able to serve on a wholly independent nominating committee and thus would not have a voice in the process of nominating candidates for Board seats. This would mean that the nominating committee would not have access to the dealer-owners' potentially valuable insights with respect to qualified candidates for either independent or non-independent director positions. Accordingly, the Commission invites commenters to suggest the appropriate compositional requirements for the nominating committee and explain their views. Should the Commission instead require a majority independent nominating committee? Would a majority independent nominating committee be consistent with the proposal's goal to mitigate conflicts for SB SEFs and SBS exchanges? [179]

SB SEFs are not subject to "fair representation" requirements, like national securities exchanges, which must assure their members "fair representation" in the selection of directors and the administration of the exchange's affairs.[180] Should the Commission adopt additional compositional requirements to provide SB SEF participants a guaranteed voice in the selection of the SB SEF's directors and the administration of its affairs? [181] For example, should the Commission require that the nominating committee consult with participants in the SB SEFs or SBS exchanges, as applicable? Or, should the Commission require that the participants in the SB SEFs or SBS exchanges select a certain percentage of directors? If so, should the Commission also limit the ability of owner participants (such as dealers) to participate in this process? If that is the case, should any such limitation depend on whether ownership is concentrated in a small number of dealers? Should end users also be given guaranteed rights of participation in the governance of the SB SEF?

The Commission also seeks comment on whether the proposed compositional requirements relating to any committee that is delegated the authority to act on behalf of the Board are appropriate and whether there are any other areas in which the Commission should propose compositional requirements for SB SEF and SBS exchange committees. For example, the Commission requests comment on whether it should require any SB SEF, SBS exchange, or SBS exchange facility committee that determines which security-based swaps will trade on the SB SEF or SBS exchange, respectively, be composed of majority independent directors, or require participation by other groups on such committee. Should the ROC be required to oversee decisions regarding access to the SB SEF and regarding which security-based swaps are made available to trade on the SB SEF?

4. Disciplinary Process

As noted above, the Commission historically has required that national securities exchanges' disciplinary panels be balanced and include industry member representation.[182] Proposed Rule 702(g) under Regulation MC would require that any disciplinary process of a SB SEF and SBS exchange shall preclude any group or class of persons that is a SB SEF participant or SBS exchange member from dominating or exercising disproportionate influence. In other words, to the extent that there is more than one type of group or class of persons that are participants or members in a SB SEF or SBS exchange, as applicable, the composition of any disciplinary panel should not allow one group or class to have representation on the disciplinary panel that is out of proportion as compared to other groups or classes of persons that are participants in the SB SEF or SBS exchange. In addition, any panel that is responsible for disciplinary decisions, and any appeals body, must include at least one independent director.[183] These proposed provisions should help mitigate conflicts of interest in the SB SEF's and SBS exchange's disciplinary process. This requirement also would apply to a national securities exchange that posts or makes available for trading a security-based swap through its facility.[184]

The Commission seeks comment on the proposal relating to requirements of the disciplinary process, including the compositional requirements. Should any disciplinary panel also be required to include representatives selected by SB SEF participants or SBS exchange members, as applicable? Would the proposed provisions help to mitigate the identified conflicts of interest? Should any other persons be precluded from dominating the disciplinary process? Are there any additional provisions that should be proposed to mitigate conflicts of interest in the disciplinary process? [185] The Commission also requests comment on whether the Commission's proposal would meaningfully supplement or enhance the requirements that SBS exchanges, as national securities exchange, already have in place with respect to the disciplinary process.

VI. Discussion of Exemptive Authority Pursuant to Section 36 of the Exchange Act

The Commission pursuant to Section 36 of the Exchange Act may grant an exemption from any rule or any provision of any rule under Regulation MC. Any such exemption could be subject to conditions and could be revoked by the Commission at any time.

[179] The SRO Governance Proposing Release proposed that certain committees, including the nominating committee, be composed solely of independent directors. *See* SRO Governance Proposing Release, *supra* note 59. Some commenters favored this requirement. *See, e.g.,* PSX Comment Letter, *supra* note 156. A number of commenters, particularly national securities exchanges, objected to the requirement that certain board committees be composed solely of independent directors. *See supra* note 175.

[180] *See* Section 6(b)(3) of the Exchange Act, 15 U.S.C. 78f(b)(3).

[181] As discussed above, Section 763(c) of the Dodd-Frank Act sets forth 14 core principles that SB SEFs must satisfy, including one relating to conflicts of interest, and provides the Commission with rulemaking authority with respect to implementation of these core principles. As the Commission has not yet proposed rules regarding the requirements and operation of a SB SEF, including the scope of trading on and which entities would be allowed to directly access a SB SEF, the Commission may determine that it is more appropriate to propose participant representation requirements, if any, in its broader rulemaking relating to SB SEFs.

[182] *See supra* Section III.B.

[183] *See* proposed Rule 702(h) under Regulation MC.

[184] *See supra* note 173. Similar to the requirement pertaining to the ROC, the exchange, not the facility, bears the responsibility of disciplining its members. *See* Section 6 of the Exchange Act. Consequently, proposed Rule 702(h) does not explicitly mention SBS exchange facility. However, a national securities exchange that posts or makes available for trading a security-based swap through its facility must also comply with the requirements of proposed Rule 702(h) under Regulation MC.

[185] *See supra* note 181.

Generally, the Commission would consider granting an exemption where the exemption is necessary or appropriate in the public interest and consistent with the protection of investors. For example, the SBS exchange, SB SEF, or security-based swap clearing agency might be unable, on a temporary basis and for reasons beyond its control, to comply with one of the rules under Regulation MC. The Commission could also grant an exemption where the SBS exchange, SB SEF, or security-based swap clearing agency demonstrated that it established alternative means to effectively mitigate conflicts of interest as contemplated under Regulation MC and that it would otherwise be unable to comply with the requirements under Regulation MC, including as a start-up SB SEF, SBS exchange, or security-based swap clearing agency. The Commission in its sole discretion would determine whether to grant or deny a request for an exemption. In addition, the Commission could revoke an exemption at any time, including if the SBS exchange, SB SEF, or security-based swap clearing agency could no longer demonstrate that such exemption is necessary or appropriate in the public interest, or is consistent with the protection of investors.

The Commission requests comment on all aspects of the exemptive authority. Would such exemptive authority be useful to facilitate the purposes of Section 765? If so, in what circumstances should the Commission grant exemptions? Should exemptions only be granted in limited circumstances? Should the Commission potentially consider granting exemptions from all rules under Regulation MC or are exemptions only warranted for specific rules or specific entities? For example, should exemptions only be available with respect to the voting interest restrictions applicable to security-based swap clearing agencies? What specific factors should the Commission consider in determining whether to grant an exemption? Are there cases where exemptions may not be appropriate and should not be considered?

VII. Effective and Compliance Date

The Commission is required to adopt rules under Section 765 within 180 days of enactment of Title VII. However, certain of the rules the Commission is proposing today would apply to SB SEFs, which will be the subject of new definitional rules that are required under the Dodd-Frank Act to be completed by July 15, 2011. Accordingly, the Commission is proposing that provisions of Regulation MC as applicable to SB SEFs would become effective sixty (60) days after July 15, 2011. All other provisions of the rules under Regulation MC would become effective sixty (60) days after the final rules are published in the **Federal Register**.

The Commission recognizes that existing entities may need a transitional period to implement any final rules. Accordingly, the Commission is proposing to permit the phase-in implementation of the rules under Regulation MC over two (2) years or two regularly-scheduled Board elections. The phase-in implementation would apply to existing exchanges, clearing agencies, or other institutions that apply to register as a SBS exchange, SB SEF, or security-based swap clearing agency. However, the Commission expects that entities that are newly created in order to establish a SBS exchange, SB SEF, or security-based swap clearing agency would fully comply with the final rules.

The Commission requests comment on (i) the timing of effectiveness for the final rules, and (ii) the length and applicability of the implementation period.

VIII. General Request for Comments

The Commission seeks comment on the proposed rules that are intended to mitigate conflicts of interest with respect to security-based swap clearing agencies, SB SEFs, SBS exchanges, and SBS exchange facilities, on any additional or different provisions that would mitigate conflicts of interest for these entities, and on any other matters that might have an implication on the proposals. The Commission particularly requests comment from the point of view of entities that plan to register as security-based swap clearing agencies or SB SEFs and from national securities exchanges that plan to become SBS exchanges or create SBS exchange facilities; entities operating platforms that currently trade or clear security-based swaps; broker-dealers, financial institutions, major security-based swap participants, and other persons that trade security-based swaps; and end-users generally.

The Commission invites commenters to address whether the proposed rules are appropriately tailored to achieve the goal of mitigating conflicts of interest in the ownership and governance of security-based swap clearing agencies, SB SEFs, SBS exchanges, and SBS exchange facilities, including with respect to the administration of these entities' regulatory activities. The Commission also requests comment on the necessity and appropriateness of mandating ownership and voting limitations for security-based swap clearing agencies, SB SEFs, SBS exchanges, and SBS exchange facilities and on whether there are other means to achieve the statutory mandate of Section 765 of the Dodd-Frank Act.

The Commission is proposing governance requirements for security-based swap clearing agencies, SB SEFs, SBS exchanges, and SBS exchange facilities that are designed to mitigate conflicts of interest. The Commission requests comment on whether the governance requirements, by themselves, would be enough to mitigate conflicts.

The Commission requests comment on the two alternative proposals for security-based swap clearing agencies. Are there other alternatives that would more effectively mitigate conflicts of interest? Should security-based swap clearing agencies be permitted to choose between alternatives at all? The Commission may determine to adopt only one of the proposed alternatives as a final rule. If only one alternative were to be adopted as a final rule, which one should it be? Should any of the provisions of the proposed alternatives be revised? The Commission may combine aspects of each proposed alternative rule (with or without modifications) and adopt them as a single final rule. If that approach is taken, which aspects of each alternative should be combined? For example, should the voting interest restrictions in Rule 701(a) be combined with the governance restrictions in Rule 701(b) to create a stronger rule to mitigate conflicts of interest at security-based swap clearing agencies? As compared to each other, how is each alternative likely to affect access and risk management at security-based swap clearing agencies? How will each alternative affect and be affected by developments in the market, including the prospect of future competition?

The Commission also requests comment on the impact on competition the two alternative proposals might have. The Voting Interest Focus Alternative and the Governance Focus Alternative are designed to address the unique conflict of interest issues at security-based swap clearing agencies. The Commission requests comment on whether imposing voting interest and governance limitations could have the unintended consequence of deterring new, competitive security-based swap clearing agencies at a time when central clearing for security-based swaps is still developing. A security-based swap clearing agency that currently clears security-based swaps but would not

meet the proposed voting interest limits would need to revise its ownership structure. There could be costs and delays as the security-based swap clearing agency seeks to find one or more additional owners to satisfy the proposed limits, with a possible diminution in the value of the original owner(s)' investment.

The Commission is sensitive to arguments against imposing ownership and voting limits for security-based swap clearing agencies, some of which were articulated at the Conflicts Roundtable. However, it also understands that the OTC derivatives market is highly concentrated and dealer dominated. As a result, voting interest and governance restrictions may be necessary at security-based swap clearing agencies where they have not been necessary at other securities clearing agencies. Access to central clearing services will be crucial for most firms that will actively trade in security-based swaps that are required to be cleared. Although the proposed restrictions may have the effect of creating barriers to potential security-based swap clearing agencies (and thus market participants could have fewer clearing agencies to choose from) the incentives of independent directors will likely promote increased access to central clearing for market participants. In contrast, although ownership and voting limits may more directly affect the ability of SB SEFs and SBS exchanges to start up, the lack of market characteristics to promote competing trading venues for security-based swaps may emphasize the greater need for ownership and voting limits. If the market characteristics for security-based swaps naturally promote dealer domination without robust competing trading venues, there is more need to mitigate the types of concerns that underlie Section 765, such as by imposing ownership and voting limits.[186]

The CFTC is adopting rules to mitigate conflicts of interest for derivatives clearing organizations that clear swaps, swap execution facilities and boards of trade designated as a contract markets that post swaps or make swaps available for trading as required under Section 726 of the Dodd-Frank Act. Understanding that the Commission and the CFTC regulate different products and markets and, as such, appropriately may be proposing alternative regulatory requirements, the Commission requests comments on the impact of any differences between the Commission and CFTC approaches to the mitigation of conflicts of interest. Specifically, would the regulatory approaches under the Commission's proposed rulemaking pursuant to Section 765 of the Dodd-Frank Act and the CFTC's proposed rulemaking pursuant to Section 726 of the Dodd-Frank Act result in duplicative or inconsistent efforts on the part of market participants subject to both regulatory regimes or result in gaps between those regimes? If so, in what ways do commenters believe that such duplication, inconsistencies, or gaps should be minimized? Do commenters believe the approaches proposed by the Commission and the CFTC to mitigate conflicts of interest are comparable? If not, why? Do commenters believe there are approaches that would make the mitigation of conflicts of interest more comparable? If so, what? Do commenters believe that it would be appropriate for the Commission to adopt an approach proposed by the CFTC that differs from the Commission's proposal? Is so, which one? The Commission requests commenters to provide data, to the extent possible, supporting any such suggested approaches.

In addition, the Commission seeks comment regarding any potential implication of the proposals on users of any security-based swap clearing agencies, SB SEFs, and SBS exchanges, other market participants, and the public generally. The Commission seeks comment on the proposals as a whole, including their interaction with the other provisions of the Dodd-Frank Act. The Commission seeks comment on whether the proposals would help achieve the broader goals of increasing transparency and accountability in the OTC derivatives market.

Commenters should, when possible, provide the Commission with empirical data to support their views. Commenters suggesting alternative approaches should provide comprehensive proposals, including any conditions or limitations that they believe should apply, the reasons for their suggested approaches, and their analysis regarding why their suggested approaches would satisfy the statutory mandate contained in Section 765 of the Dodd-Frank Act regarding mitigation of conflicts of interest.

IX. Paperwork Reduction Act

The proposed rules contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[187] The titles for these collections are Rule 701 of Regulation MC, both in the Voting Interest Focus Alternative and the Governance Focus Alternative, and Rule 702 of Regulation MC.

The Commission has submitted the information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11.

A. Summary of Collection of Information

1. Security-Based Swap Clearing Agencies

Proposed alternative Rule 701(a)(2) under Regulation MC would require security-based swap clearing agencies to have rules that would: (1) Provide for an effective mechanism to divest any participant of any interest owned in excess of the proposed 20% ownership limit; (2) not give effect to the portion of any voting interest held by one participant in excess of the proposed 20% voting limit; (3) not give effect to the portion of any voting interest among all security-based swap clearing agency participants owned in the aggregate in excess of the proposed 40% ownership limit; and (4) provide an effective mechanism for the security-based swap clearing agency to obtain information relating to the voting interests in such entity. Alternative Rule 701(b)(2) under Regulation MC would require security-based swap clearing agencies to have rules that would: (1) Provide for an effective mechanism to divest any participant of any interest owned in excess of the proposed 5% ownership limit; (2) not give effect to the portion of any voting interest held by one participant in excess of the proposed 5% voting limit; and (3) provide an effective mechanism for the security-based swap clearing agency to obtain information relating to the voting interests in such entity. Each security-based swap clearing agency must comply with one of the alternatives. Establishing such rules would result in a paperwork burden for a security-based swap clearing agency. In addition, if the security-based swap clearing agency was to request to receive ownership and voting information from participants

[186] In the equities market a small group of broker-dealers or single-dealer proprietary firms can and do own alternative trading systems ("ATSs") and thus it can be argued that SB SEFs and SBS exchanges should be permitted to operate similarly. *See* Securities Exchange Act Release No. 60997 (November 13, 2009), 74 FR 61208 (November 23, 2009) (as of November 2009, there were approximately 73 ATSs that are subject to Regulation ATS). However, ATSs exist in the context of a marketplace with robust competition among numerous trading venues. Therefore, ATSs that are owned by one broker-dealer or a small group of broker-dealers, by virtue of their ownership structure alone, generally do not present a concern that they could lessen price competition or market efficiency.

[187] 44 U.S.C. 3501 *et seq.*

pursuant to Rule 701(a) or (b), the request would be a collection of information.

2. SB SEFs, SBS Exchanges, and SBS Exchange Facilities

Proposed Rule 702(c) under Regulation MC would require SB SEFs, SBS exchanges, and SBS exchange facilities to have rules that would: (1) Provide for an effective mechanism to divest any participant or member, as applicable, of any interest owned in excess of the proposed 20% ownership limit; (2) not to give effect to the portion of any voting interest help by one or more participants or members, as applicable, in excess of the proposed 20% voting limit; and (3) provide an effective mechanism for the SB SEF, SBS exchange or SBS exchange facility to obtain information relating to ownership and voting interests in such entity. Establishing such rules would result in a paperwork burden for a SB SEF, SBS exchange, or SBS exchange facility, as applicable. In addition, if a SB SEF, SBS exchange, or SBS exchange facility were to request to receive ownership and voting information from participants or members pursuant to Rule 702(c) that would be a collection of information.

Proposed Rule 702(e) under Regulation MC would require SB SEFs and SBS exchanges to establish a ROC that is composed solely of independent directors,[188] to oversee the SB SEF's and SBS exchange's obligations under Section 763(c) of the Dodd-Frank Act and Section 6 of the Exchange Act, respectively.[189] The proposed rule would require that any recommendation of the ROC that is not adopted or implemented by the SB SEF's or SBS exchange's Board be reported promptly to the Commission.

B. Proposed Use of Information

1. Security-Based Swap Clearing Agencies

The purpose of the collection of information in proposed Rule 701(a) or (b) under Regulation MC is to enable a security-based swap clearing agency to monitor voting interests with respect to the security-based swap clearing agency, and enable the security-based swap clearing agency to take necessary action if the voting interests by a participant or group of participants in the security-based swap clearing agency exceed those allowed under proposed Rule 701(a) or (b).

2. SB SEFs, SBS Exchanges, and SBS Exchange Facilities

The purpose of the collection of information in proposed Rule 702(c) under Regulation MC is to enable a SB SEF, SBS exchange, or SBS exchange facility to monitor voting interests with respect to such entity, and enable the SB SEF, SBS exchange, or SBS exchange facility, as applicable, to take necessary action if the ownership or voting rights by a participant or member or group of participants or members, as applicable, exceed those allowed under proposed Rule 702(b).

The purpose of the collection of information in proposed Rule 702(e) under Regulation MC is to provide the Commission with information regarding the instances in which the SB SEF or SBS exchange does not adopt or implement a recommendation of the ROC, which would help the Commission in its oversight of SB SEFs and SBS exchanges. The information collection also should promote sound regulatory policies and foster the effectiveness of the ROC by putting the SB SEF or SBS exchange on notice that the Commission must be apprised promptly of any recommendation that is made by the ROC that is not adopted or implemented.

C. Respondents

1. Security-Based Swap Clearing Agencies

The collection of information associated with the proposed Rule 701(a) and (b) under Regulation MC would apply to security-based swap clearing agencies. Currently, four clearing agencies are authorized to clear credit default swaps, including security-based swaps,[190] pursuant to temporary conditional exemptions under Section 36 of the Exchange Act.[191] The obligation to centrally clear security-based swap transactions is a new requirement under Title VII of the Dodd-Frank Act. Based on the fact that there are currently four clearing agencies authorized to clear security-based swaps and that there could conceivably be one or two more in the future,[192] the Commission preliminarily estimates that four to six clearing agencies may seek to clear security-based swaps and be subject to the information collection requirements in proposed Rule 701(a) or (b). The Commission is using the higher estimate of six for the PRA analysis.

2. SB SEFs, SBS Exchanges, and SBS Exchange Facilities

The collection of information associated with the proposed Rule 702(c) under Regulation MC would apply to SB SEFs, SBS exchanges, and SBS exchange facilities. In the Dodd-Frank Act, Congress defined for the first time a SB SEF and mandated the registration of these new facilities.[193] Based on conversations with the CFTC and industry sources, the Commission preliminarily believes that approximately 10–20 entities could seek to become SB SEFs and thus be subject to the collection of information requirement of proposed Rule 702(c). The Commission is using the higher estimate of 20 SB SEFs for this PRA analysis. In addition, there are currently 15 national securities exchanges that could be subject to the collection of information requirement of Rule 702(c).[194] To provide an estimate that is not under-inclusive, the Commission preliminarily estimates that all 15 of the currently registered national securities exchanges could become SBS exchanges or could create a separate legal entity that would be a facility of the exchange to trade security-based swaps.

The collection of information associated with the proposed Rule 702(e) under Regulation MC would apply to SB SEFs and SBS exchanges. Based on the estimates noted above, to provide an estimate that is not under-inclusive, the Commission preliminarily believes that 20 SB SEFs and 15 SBS exchanges or SBS exchange facilities would be subject to the collection of information requirement of Rule 702(e).

[188] Proposed Rule 702(e) under Regulation MC does not explicitly include SBS exchange facilities because the exchange whose facility posts or makes available for trading a security-based swap must itself establish the requisite ROC. *See supra* note 173.

[189] *See* Section 763(c) of the Dodd-Frank Act, Public Law 111–203, Section 763(c). Specifically, the ROC would oversee the SBS exchange's and SB SEF's regulatory program on behalf of the Board and the Board would be required to delegate sufficient authority, dedicate sufficient resources, and allow sufficient time for the ROC to fulfill its mandate.

[190] Of the four clearing agencies granted temporary exemptions from registration, only three have cleared products that are classified as security-based swaps under Title VII of the Dodd-Frank Act.

[191] 15 U.S.C. 78mm.

[192] The Commission does not expect there to be a large number of clearing agencies that clear security-based swaps, based on the significant level of capital and other financial resources necessary for the formation of a clearing agency.

[193] *See* Sections 763(a) and 763(c) of the Dodd-Frank Act, Public Law 111–203, Section 763(a) and (c).

[194] The 15 national securities exchanges are: BATS Exchange, Inc.; BATS Y–Exchange, Inc.; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; C2 Options Exchange, Incorporated, EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange, LLC; The NASDAQ Stock Market LLC; NASDAQ OMX BX, Inc.; NASDAQ OMX PHLX, Inc.; National Stock Exchange Inc.; New York Stock Exchange LLC; NYSE Amex LLC; and NYSE Arca, Inc.

D. Total Annual Reporting and Recordkeeping Burdens

1. Security-Based Swap Clearing Agencies

Proposed Rule 701(a) would require security-based swap clearing agencies to have rules that would: (1) Provide for an effective mechanism to divest any participant of any interest owned in excess of the proposed 20% ownership limit; (2) not give effect to the portion of any voting interest held by one participant in excess of the proposed 20% voting limit; (3) not give effect to the portion of any voting interest among all security-based swap clearing agency participants owned in the aggregate in excess of the proposed 40% ownership limit; and (4) provide an effective mechanism for the security-based swap clearing agency to obtain information relating to the voting interests in such entity. Proposed Rule 701(b) would require security-based swap clearing agencies to have rules that would: (1) Provide for an effective mechanism to divest any participant of any interest owned in excess of the proposed 5% ownership limit; (2) not give effect to the portion of any voting interest held by one participant in excess of the proposed 5% voting limit; and (3) provide an effective mechanism for the security-based swap clearing agency to obtain information relating to the voting interests in such entity. Each security-based swap clearing agency must comply with one of the alternatives.

Establishing such rules would result in a paperwork burden for a security-based swap clearing agency. The Commission preliminarily believes that there would be a one-time paperwork burden of 15 hours per entity associated with the drafting and implementation of any such rules by the security-based swap clearing agency for a total of 90 hours (15 hours × 6 respondents).

Any collection of information by a security-based swap clearing agency from a participant that has a voting interest in the security-based swap clearing agency would differ depending upon the number of shareholders or other owners of voting interests that are participants in the security-based swap clearing agency. Accordingly, the number of responses per year that would be generated by proposed Rule 701(a) or (b) under Regulation MC would vary by security-based swap clearing agency. At this point, however, currently only the largest fourteen dealer firms are participants that clear security-based swaps at such clearing agencies. The Commission believes that it would be reasonable for security-based swap clearing agencies to collect information related to the voting interests held by participants on a quarterly basis. This would provide the security-based swap clearing agency with sufficiently current information regarding participants' voting interests in the security-based swap clearing agency and allows the security-based swap clearing agency to review the information at a single point in time. Accordingly, the Commission preliminarily estimates that each security-based swap clearing agency would request information approximately 4 times per year from approximately 14 participants.

The Commission also estimates that the preparation and sending of each of the 4 requests for information would require approximately 4 hours and reviewing the responses to each of the 4 requests for information would require 10 hours. This would result in a total annual reporting and recordkeeping burden of 56 hours ((4 requests × 4 hours) + (4 requests × 10 hours)) for each security-based swap clearing agency, and a total annual burden for all security-based swap clearing agencies of 336 hours (56 hours × 6 clearing agencies). The Commission preliminarily estimates that each participant would require 1 hour to prepare and send the security-based swap clearing agency its response to the request, for a total annual reporting and recordkeeping burden for each participant of each security-based swap clearing agency of 4 hours (4 requests × 1 hour) and a total annual burden for all participants in all 6 security-based swap clearing agencies of 336 hours (14 participants × 4 hours × 6 security-based swap clearing agencies) thereby resulting in a total estimated annual burden for all security-based swap clearing agencies and participants of 672 hours (336 hours for all participants + 336 hours for all security-based swap clearing agencies). The Commission requests comment on these estimates.

The Commission estimates that the total paperwork burden resulting from the proposals relating to security-based swap clearing agencies is 762 hours for an initial paperwork burden and 672 hours thereafter.[195]

2. SB SEFs, SBS Exchanges, and SBS Exchange Facilities

Proposed Rule 702(c) would require SB SEFs, SBS exchanges, and SBS exchange facilities to have rules that would provide for an effective mechanism to divest any participant or member, as applicable, of any interest owned in excess of the proposed 20% ownership limit; that would not give effect to the portion of any voting interest held by one or more participants or members, as applicable, in excess of the proposed 20% voting limit; and that would provide an effective mechanism for the SB SEF, SBS exchange, or SBS exchange facility to obtain information relating to ownership and voting interests in such entity. Establishing such rules or policies and procedures, as applicable, would result in a paperwork burden for a SB SEF, SBS exchange, or SBS exchange facility, as applicable. The Commission preliminarily believes that there would be a one-time paperwork burden of 15 hours per entity associated with the drafting and implementation of any such rules by the SB SEF, SBS exchange, or SBS exchange facility, as applicable, for a total of 525 hours (15 hours × 35 respondents).

The number of responses per year that would be generated by requests by a SB SEF, SBS exchange, or SBS exchange facility, as applicable, for ownership or voting information from participants or members that are owners of securities entitled to vote or otherwise have a voting interest in the SB SEF, SBS exchange, or SBS exchange facility would depend upon the number of owners of voting securities that are participants or members. Assuming that all classes of securities entitled to vote are owned or otherwise controlled by participants or members, the minimum number per SB SEF, SBS exchange, or SBS exchange facility would be 5. Based on the Commission's understanding of the ownership structures and voting rights of existing entities that may register as SB SEFs, and its understanding of the ownership structures and voting rights of existing national securities exchanges, the Commission preliminarily estimates that each SB SEF, SBS exchange, or SBS exchange facility on average would request information from approximately 20 participants or members, as applicable. The Commission believes that it would be reasonable for a SB

[195] The aggregate initial paperwork burden is calculated as follows: 90 hours (one time paperwork burden for security-based swap clearing agencies to establish rules to divest any ownership interest in excess of the limit and not to give effect to any portion of the voting interests in excess of the limit) + 336 hours (annual burden for security-based swap clearing agencies to prepare and send requests for voting information) + 336 hours (annual burden for participants of security-based swap clearing agencies to prepare and send responses to requests for voting information) = 762 hours. After the initial year, the paperwork burden is calculated as follows: 762 hours (total paperwork burden resulting from the proposals relating to security-based swap clearing agencies) − 90 hours (one-time paperwork burden for security-based swap clearing agencies) = 672 hours.

SEF, SBS exchange, or SBS exchange facility to collect information on ownership and voting rights on a quarterly basis. Accordingly, the Commission preliminarily estimates that each SB SEF, SBS exchange, or SBS exchange facility would request information approximately 4 times per year from approximately 20 participants or members.

The Commission estimates that the preparation and sending of each of the 4 requests for information would require approximately 4 hours, and reviewing the responses to each of the 4 requests for information would require 10 hours. This would result in a total annual reporting and recordkeeping burden of 56 hours ((4 requests × 4 hours) + (4 requests × 10 hours)) for each SB SEF, SBS exchange, or SBS exchange facility, as applicable, and a total annual burden for all SB SEFs, SBS exchanges, and SBS exchange facilities of 1,960 hours (56 hours × 35 respondents). The Commission preliminarily estimates that each participant or member would require 1 hour to prepare and send the response to the request, for a total annual reporting and recordkeeping burden for each participant or member of 4 hours (4 requests × 1 hour) and a total annual burden for all participants or members of 2,800 hours (700 participants or members × 4 hours). The Commission requests comment on these estimates.

The Commission preliminarily believes that the collection of information burden imposed by proposed Rule 702(e) under Regulation MC would be minimal. The Commission estimates that a representative of the Board of a SB SEF or SBS exchange would spend no more than one hour to complete the required notice to the Commission. This figure includes the time to prepare, review, and electronically submit such notice to the Commission. The Commission expects to establish an electronic mailbox for these notices and would identify the address if the Commission were to adopt this specific proposal. Although the Commission preliminarily believes that the Board of a SB SEF or SBS exchange often would adopt or implement the recommendations of its ROC, the Commission preliminarily believes that the Board of a SB SEF or SBS exchange could occasionally decide not to adopt such recommendations. Although the Commission expects that this would be an infrequent occurrence, the Commission preliminarily estimates that a Board could decide not to adopt a ROC recommendation up to 12 times per year. This estimate assumes that the Board of a SB SEF or SBS exchange would meet at least once per month and would decide each time that it meets not to adopt a ROC recommendation. Therefore, the Commission estimates that the total reporting burden under the proposed Rule 702(e) for all SB SEFs and SBS exchanges combined would be 420 hours.[196]

The Commission estimates that the total paperwork burden resulting from the proposals relating to SB SEFs, SBS exchanges or SBS exchange facilities is 5,705 for an initial paperwork burden and 5,180 thereafter.[197]

E. Retention Period of Recordkeeping Requirements

1. Security-Based Swap Clearing Agencies

Security-based swap clearing agencies will be required to be registered with the Commission following the effective date of Title VII of the Dodd-Frank Act.[198] Accordingly, once registered with the Commission, security-based swap clearing agencies would be required to retain any collection of information pursuant to proposed Rules 701(a) or (b) under Regulation MC as applicable, in accordance with, and for the periods specified in Rule 17a–1 under the Exchange Act.[199] Retention and recordkeeping requirements have not been established for security-based swap clearing agencies before the effective date of Title VII; however, security-based swap clearing agencies may be required to retain records and information collected pursuant to proposed Rules 701(a) or (b) similar to the current recordkeeping requirements in Rule 17a–1.

2. SB SEFs, SBS Exchanges, and SBS Exchange Facilities

Although recordkeeping and retention requirements have not yet been established for SB SEFs under new Exchange Act provisions added by the Dodd-Frank Act, the Commission is authorized to adopt such rules.[200] In addition, the recordkeeping and reporting core principle applicable to SB SEFs, as set forth in Section 763(c) of the Dodd-Frank Act, requires a SB SEF to maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of five years.[201] Therefore, for purposes of this PRA, the Commission assumes that a SB SEF would be required to retain any collection of information pursuant to proposed Rules 702(c) and 702(e) under Regulation MC, as applicable, for a period of not less than five years. Should the Commission propose rules to implement the recordkeeping and reporting core principle for SB SEFs, it would include any collection of information burden with respect to any proposed recordkeeping and retention rules for SB SEFs in such rulemaking.

All registered national securities exchanges must currently comply with the recordkeeping and reporting requirements in Rule 17a–1 under the Exchange Act.[202] Therefore, SBS exchanges would be required to retain any collection of information pursuant to proposed Rules 702(c) and 702(e), as applicable, in accordance with, and for the periods specified in, Rule 17a–1 under the Exchange Act.

F. Collection of Information Is Mandatory

1. Security-Based Swap Clearing Agencies

The collection of information under proposed alternative Rules 701(a) and (b) under Regulation MC would be

[196] (20 (estimated number of SB SEFs subject to the collection of information under the proposed Rule 702(e)) + 15 (estimated number of SBS exchanges subject to the collection of information under the proposed Rule 702(e))) × 12 (estimated number of notices prepared annually by each SB SEF pursuant to the proposed Rule 702(e)) × 1 hour (estimate of total time to complete, review, and prepare required notice) = 420 hours.

[197] The aggregate initial paperwork burden is calculated as follows: 525 hours (one-time paperwork burden for SB SEFs, SBS exchanges and SBS exchange facilities to establish rules to divest any ownership interest in excess of, and to not give effect to any portion of voting interests in excess of, the proposed 20% limit) + 1,960 hours (annual burden for SB SEFs, SBS exchanges and SBS exchange facilities to prepare and send requests for ownership and voting information) + 2,800 hours (annual burden for participants to prepare and send responses to requests for ownership and voting information) + 420 hours (annual burden for SB SEFs and SBS exchanges to prepare and submit notices pursuant to proposed Rule 702(e)(2)) = 5,705 hours. After the initial year, the paperwork burden is calculated as follows: 5,705 hours (total paperwork burden resulting from the proposals relating to SB SEFs, SBS exchanges and SBS exchange facilities)—525 hours (one-time paperwork burdens for SB SEFs, SBS exchanges and SBS exchange facilities) = 5,180 hours.

[198] New Exchange Act Section 17A(g) provides that it shall be unlawful for a clearing agency, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to a security-based swap. 15 U.S.C. 78q–1(g).

[199] 17 CFR 240.17a–1.

[200] As discussed above, Section 763(c) of the Dodd-Frank Act sets forth 14 core principles that SB SEFs must satisfy, including one relating to recordkeeping and reporting, and provides the Commission with rulemaking authority with respect to implementation of these core principles. *See* Section 763(c) of the Dodd-Frank Act, Public Law 111–203, Section 763(c).

[201] *See* Section 763(c) of the Dodd-Frank Act, Public Law 111–203, Section 763(c).

[202] 17 CFR 240.17a–1.

mandatory. The collection of information under proposed Rules 701(a) and (b) would be required from participants in a security-based swap clearing agency upon request from the security-based swap clearing agency. The collection of information would allow the security-based swap clearing agency and the Commission to determine whether the requirements in proposed Rules 701(a) and (b) regarding limitations on voting interests are met.

2. SB SEFs, SBS Exchanges, and SBS Exchange Facilities

The collection of information under proposed Rule 702(c) under Regulation MC would be mandatory. The collection of information would allow the SB SEF, SBS exchange, or SBS exchange facility as applicable, and the Commission to determine whether the requirements in proposed Rule 702(c) regarding limitations on ownership and voting rights are met and enable the SB SEF, SBS exchange, or SBS exchange facility, as applicable, to take necessary action if the ownership or voting rights by a participant or group of participants exceed those allowed under proposed Rule 702(b).

The collection of information under proposed Rule 702(e) under Regulation MC would be mandatory and permit the Commission to collect accurate information about the regulatory program of SB SEFs and SBS exchanges. Specifically, the collection of information would allow the Commission to stay informed about the recommendations of the ROC that are not followed by the SB SEF or SBS exchange and the SB SEF's or SBS exchange's reasons for not adopting such recommendations.

G. Responses to Collection of Information Will Not Be Kept Confidential

1. Security-Based Swap Clearing Agencies

Other than information for which a security-based swap clearing agency requests confidential treatment and which may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, the collection of information pursuant to the proposed Rules 701(a) and (b) would not be confidential and would be publicly available.

2. SB SEFs, SBS Exchanges, and SBS Exchange Facilities

Other than information for which a SB SEF, SBS exchange or SBS exchange facility requests confidential treatment and which may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, the collection of information pursuant to the proposed Rules 702(c) and (e) would not be confidential and would be publicly available.

H. Request for Comment

Pursuant to 44 U.S.C. 3505(c)(2)(B), the Commission solicits comment to:

1. Evaluate whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information shall have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the following persons: (1) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, DC 20503; and (2) Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090 with reference to File No. S7–27–10. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The Commission has submitted the proposed collection of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–27–10, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, Station Place, 100 F Street, NE., Washington, DC 20549–0213.

X. Cost-Benefit Analysis

Congress has required the Commission to implement rules under Section 765 of the Dodd-Frank Act to mitigate conflicts of interest in the security-based swaps market. The proposed rules under Regulation MC are designed to enhance, through mitigation of conflicts of interest, the benefits of having security-based swaps cleared through a security-based swap clearing agency and traded on a SB SEF or SBS exchange. The proposed rules, however, are also likely to impose costs on security-based swap clearing agencies, SB SEFs, and SBS exchanges. The Commission is sensitive to the costs and benefits that would result from the proposed rules and has identified certain costs and benefits of these proposals, as described below.

A. Background

The proposed governance and ownership and voting rules are intended to reduce conflicts of interest in security-based swap clearing agencies, SB SEFs, and SBS exchanges. Ownership and voting limitations and other governance rules are designed to limit the influence of any single market participant or a group of participants in the operation of security-based swap clearing agencies, SB SEFs, and SBS exchanges and thus reduce the risk that conflicts of interest would negatively affect the operation of these entities and the security-based swaps market.[203] However, since the OTC swaps marketplace regulated under Title VII likely would change significantly after the effective date of the Dodd-Frank Act and the Commission's rules promulgated thereunder, it is difficult to quantify the costs and benefits that the proposed rules may create. These issues are discussed more fully below.

B. Security-Based Swap Clearing Agencies

The Commission has granted exemptions from Section 17A of the Exchange Act to five entities to act as clearing agencies for security-based swaps.[204] The first cleared CDS transaction pursuant to the exemptive orders was cleared on March 9, 2009. Security-based swap clearing is, therefore, in an emergent stage and empirical evidence on how the security-based swaps market will develop following the effective date of the Dodd-Frank Act and rules thereunder is scarce. However, the number of security-based swap clearing agencies may converge in the long run to a very small number or even a single security-based swap clearing agency.[205] This is

[203] The Commission pursuant to Section 36 of the Exchange Act may grant an exemption from any rule or any provision of any rule under Regulation MC. Any such exemption could be subject to conditions and could be revoked by the Commission at any time. *See supra* Section VI for a discussion of the Commission's exemptive authority under Section 36 of the Exchange Act.

[204] *See* CDS Clearing Exemption Orders, *supra* note 17.

[205] *See, e.g.,* Darrell Duffie and Haoxiang Zhu, "Does a Central Clearing Counterparty Reduce Counterparty Risk?" Stanford University Working Paper, March 2010; Craig Pirrong, 2009, "The

because of the potential for efficiency gains through convergence given that central clearing of securities is characterized by large fixed costs and benefits to participants associated with consolidating portfolios. Alternatively, competitive forces may result in use of a larger number of security-based swap clearing agencies, particularly if the security-based swap clearing agencies specialize in clearing particular types of security-based swaps or if they clear security-based swaps only in certain jurisdictions.[206]

1. Costs and Benefits Related to Ownership Restrictions in Security-Based Swap Clearing Agencies

Restrictions on the voting interests held by clearing participants may affect the number of potential clearing participants and may also affect the level of their participation in clearing security-based swaps. The 20% individual voting limitation on security-based swap clearing agencies and the 40% aggregate voting limitation on security-based swap clearing agencies, under the proposed Voting Interest Focus Alternative, and the 5% individual voting limitation under the Governance Focus Alternative, are intended to keep participants from exercising undue influence over the security-based swap clearing agency and to lessen the likelihood of anti-competitive behavior. One particular concern is that without a limitation on voting interests, large dealers may control a security-based swap clearing agency and set standards—such as a heightened capital threshold for participation or a requirement that participants have execution capabilities—to limit participation by non-owner dealers or brokers and increase or protect their market share and potentially influence market prices. Hence, a potential benefit of voting limitations may be the preservation of non-owner dealers' access to central clearing and promotion of competition that results in lower costs to market participants. The proposed limitations in both the Voting Interest Focus Alternative and the Governance Focus Alternative are designed to achieve this result.

Another potential benefit of the imposition of a limitation on voting interests is the chance that a broader group of participants would have the ability to reduce their risk exposure as greater levels of central clearing is encouraged if the risks at the clearing agency are managed appropriately. Clearing agencies decrease systemic risk by mutualizing losses[207] and netting otherwise bilateral obligations. There may, however, at times be a trade-off between a clearing agency's risk management and its participation standards. It likely would be beneficial if the voting restrictions proposed by Rules 701(a) and (b) under Regulation MC in each of the Voting Interest Focus Alternative and the Governance Focus Alternative lead to increased market participation. Conversely though, to the extent that such market participation goes beyond prudent levels, it may create more systemic risk at the security-based swap clearing agency. For example, lessening capital requirements to increase participation beyond a prudent level may increase the overall risk of clearing operations, while increasing capital requirements for clearing members without an adequate basis may needlessly exclude some smaller dealers or other firms from participation and thereby create market inefficiencies.[208]

Non-participant shareholders may also have an incentive to permit more clearing agency participation than clearing agency participant shareholders would. Non-participant shareholders benefit from increased membership to the extent that additional revenues are generated and therefore have an incentive to promote increased use of central clearing both in terms of number of participants and the scope of products cleared. This could potentially reduce systemic risk by making more OTC products eligible for central clearing. In addition, non-shareholder participants have an incentive to promote appropriate risk management because a financial loss to the clearing agency would devalue their investment. For example, security-based swap clearing agencies may put their own capital or surplus funds at risk in the event of a default. In addition, clearing agencies face reputational risk associated with a member default that would likely negatively affect the value of shareholders' shares. This aligns the interests of shareholders with appropriate risk management of a clearing agency. However, non-participant shareholders may not face the same potential of downside risk as clearing agency participants. For example, non-participant shareholders do not bear certain costs associated with increased risk since the clearing agency losses are shared by the clearing agency participants. To the extent that non-participant shareholders use their control to maximize revenues of the clearing agency without full consideration of the total clearing agency risks, the potential cost is that suboptimal clearing agency participation standards will be developed. All directors have a fiduciary duty to the security-based swap clearing agency and its shareholders, however, they also have a duty to oversee the security-based swap clearing agency's compliance with the requirements in the Exchange Act and the rules and regulations thereunder. In certain circumstances, independent directors could give greater emphasis to profit-maximizing initiatives and fail to give sufficient consideration to the related risk management issues.

Another potential cost of ownership and voting limitations, notwithstanding the fact that the market structure may converge in the long-run to a single security-based swap clearing agency, is the potential effect on competition among alternative security-based swap clearing agency venues. Under the Voting Interest Focus Alternative, a 20% individual participant voting limit and a 40% aggregate participant voting limit restricts the ability of any single dealer or small group of dealers to own a security-based swap clearing agency, but it may also reduce the potential number of investors that would be willing to devote resources to form a security-based swap clearing agency. This potentially diminishes the likelihood for a long-term market structure with multiple clearing agencies. Conversely, the Governance Focus Alternative would not impose an aggregate cap and would allow the voting interests in a security-based swap clearing agency to be owned entirely by participants. This would facilitate the formation of security-based swap clearing agencies by potential users and promote greater competition among security-based swap clearing agencies.

In addition, if a participant is subject to restrictions regarding the amount of voting interest it may own in a security-based swap clearing agency, then it may forgo a potential investment opportunity, unless it is willing to invest in non-voting shares of the security-based swap clearing agency. The effect of these restrictions is

Economics of Clearing in Derivatives Markets: Netting, Asymmetric Information, and the Sharing of Default Risks Through a Central Counterparty," Working paper, University of Houston.

[206] The central clearing of security-based swaps is still developing and the Commission has not made any determinations about the number of security-based swap clearing agencies that may be used by market participants. However, it is important that emerging security-based swap clearing agencies have the opportunity to compete with existing security-based swap clearing agencies.

[207] *See, e.g.,* Ice Trust Overview, p. 7 (available at *https://www.theice.com/publicdocs/clear_us/ICE_Trust_Overview.pdf*).

[208] *See supra* Section II.A.2.a.

different with respect to individual participants under the Governance Focus Alternative, which limits any one participant's voting interest in a security-based swap clearing agency to 5%, than it is under the Voting Interest Focus Alternative, which limits any one participant's voting interests to 20% and has an aggregate voting interest limit of 40%. In the case of an ownership position in excess of regulator's restrictions, the owner would have to divest a portion of its voting shares in order to meet the regulatory requirement. The potential foregone benefits include profits generated from clearing activities that are distributed to owners as well as any private ownership benefits from directing the clearing operations, which include activities discussed above with respect to conflicts of interest. While it is difficult to assess the value of these investment opportunities, the 2010 six-month data from consolidated reports of condition and income from the Federal Financial Institutions Examinations Council of the largest security-based swap clearing agency provides a snapshot of the magnitude of current profits being generated.[209]

Moreover, as previously discussed in the PRA section, proposed Rules 701(a) and (b) under Regulation MC would require a security-based swap clearing agency to have an effective mechanism to obtain information relating to voting interests in the security-based swap clearing agency by any participant in the security-based swap clearing agency. It was estimated that these obligations would result in a total annual burden for all security-based swap clearing agencies of 336 hours plus a total annual reporting and recordkeeping burden for all participants of 336 hours. It was also estimated that there would be a 90 hour one-time paperwork burden for security-based swap clearing agencies to establish rules to divest any ownership interest in excess of the limit and not to give effect to any portion of the voting interests in excess of the limit. Assuming an hourly cost of $291 for a compliance attorney[210] to meet these requirements, this would result in an overall estimated initial annual cost of $221,742 and an annual cost thereafter of $195,552 for participants and security-based swap clearing agencies collectively.[211]

Under the Voting Interest Focus Alternative, proposed Rule 701(a) in Regulation MC would require the security-based swap clearing agency to have rules requiring a participant to divest voting interest greater than the 20% threshold and rules reasonably designed not to give effect to a voting interest of a participant greater than the 20% threshold or voting interests of participants considered in the aggregate with any other participants greater than the 40% threshold. This proposed rule would impose a cost on the security-based swap clearing agency to initiate the divestiture or not give effect to the voting rights that surpass the stated threshold. Particularly in the case of the aggregate participant voting limitation, the security-based swap clearing agency would have to develop standards regarding how to allocate the voting interest for which it will give effect if the aggregate voting interest is above the 40 percent threshold.

Similarly, under the Governance Focus Alternative, proposed Rule 701(b) in Regulation MC would impose a cost on the security-based swap clearing agency to require the divestiture or not give effect to the voting rights that surpass the stated threshold of 5 percent. However, because there is not a proposed limit on participants' aggregate voting interests under the Governance Focus Alternative, the security-based swap clearing agency would not have to adopt rules for allocating voting interests in the case of a divestiture.

2. Costs and Benefits Related to Independence Requirements for Security-Based Swap Clearing Agencies

Potential conflicts of interest also exist between participants of a security-based swap clearing agency and the public interest. Even when the influence of any single dealer is limited through voting restrictions, economic incentives could align several dealer participants in a way that may be costly to investors. For instance, in order for a product to be required to trade through an SB SEF or SBS exchange, it must be deemed eligible for clearing at a clearing agency. A dealer-controlled security-based swap clearing agency may have an incentive to limit the products deemed eligible for clearing because then such a product would remain viable in the OTC markets, in which the dealers have a significant financial stake.[212] Products that are eligible for clearing that are not cleared do not have the price transparency or investor accessibility that they would otherwise have, increasing market participant costs paid by investors. As a result, there are potential incentives for security-based swap clearing agency participants to coordinate in ways that voting restrictions cannot address. Representation by independent directors would provide views and influence that by design are not subject to these conflicts.

Proposed Rule 701(b)(3) in Regulation MC of the Governance Focus Alternative would require that a majority of directors must be independent. As a result, participants could not directly control the Board regardless of their voting interests. To further the goal of majority independence on the Board, proposed Rule 701(b)(4) under Regulation MC in the Governance Focus Alternative would require a security-based swap clearing agency to establish a nominating committee composed solely of independent directors. Since many of the Board decisions come from committees and conflicts may be prevalent or even more pronounced in these situations, proposed Rule 701(b)(5) under Regulation MC in the Governance Focus Alternative would require that if any committee, including but not limited to a risk committee, has authority to act on behalf of the Board, that committee must also be composed of a majority of independent directors. This would help prevent important decisions from escaping the view of a majority of independent directors. To the extent that independent directors reduce the likelihood that one group of participants coordinate decision-making in such a way that is detrimental to the security-based swap clearing agency as a whole, it would serve to benefit the security-based swap clearing agency and the market generally.

The Voting Interest Focus Alternative would require 35%, rather than a majority, of the Board be composed of independent directors. While director independence is widely believed to be a catalyst for improved governance, there is no conclusive empirical evidence to support the view that a majority of independent directors benefits shareholder profits.[213] It also is often argued that the presence of inside

[209] ICE Trust's profits for the first six months of 2010 were $1,325,000, which would represent an annual profit of $2,650,000. FFIEC Central Data Repository's Public Data Distribution, *https://cdr.ffiec.gov/public/Default.aspx*.

[210] The hourly rate for the compliance attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2009,* modified by the Commission's staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[211] Overall initial annual cost for participants and clearing agencies information requirements = (336 hours + 336 hours + 90 hours) × $291 = $221,742. Overall subsequent annual cost for participants and clearing agencies information requirements = (336 hours + 336 hours) × $291 = $195,552.

[212] *See, generally,* Darrell Duffie, "How Should We Regulate Derivatives Markets?" Pew Financial Reform Project, Briefing Paper #5, 2009.

[213] However, the Commission recognizes that the industry widely accepts a majority of independent directors as "best practices." *See supra* note 122.

affiliated board members is important in facilitating the flow of material information to independent directors so that they may come to informed decisions.[214] This may be especially important for a security-based swap clearing agency because it provides highly specialized and technical services. The imposition of a Board structure that precludes the likely owners of a security-based swap clearing agency—dealers—from gaining a majority may have a negative effect on the operations of the security-based swap clearing agency if independent directors do not have commensurate qualifications or skills as participant directors. There could be significant costs associated with educating independent directors about the clearance and settlement process and the complex risk management issues that must be considered by the Board. This could slow the Board or committee processes, at least initially. Clearing and settlement is a highly specialized area and it may be difficult to find independent directors with relevant experience. As a result, independent directors may defer to industry directors or to the officials of the clearing agency, who have more knowledge and experience, thereby undermining the benefits of requiring independence.

In the context of wholly independent committees, such as a nominating committee, the independent directors may become reliant on executive directors and other employees of the security-based swap clearing agency to inform their decision-making due to their lack of expertise in clearing and settlement. If management fails to keep the directors on wholly independent committees fully informed, the independent directors on such committees fail to seek sufficient information from management to make informed decisions, or management fails to give independent directors adequate resources to make effective decisions, there could be costs to the security-based swap clearing agency. On the other hand, if management fully apprises the directors on wholly independent committees of necessary information and the independent directors have sufficient resources and are fully engaged with respect to their duties, there would be benefits to the security-based swap clearing agency.

In addition, the effectiveness of the Board can depend on the personalities and personal traits, as well as the qualifications, of the persons serving on the Board. Independent directors that take the time to understand the operations and programs of a security-based swap clearing agency and to ask probing questions of management are more likely to be effective independent directors. However, independent directors would unlikely be able to acquire the specific risk management expertise related to clearance and settlement if they do not have relevant experience prior to serving on the Board. In addition, because independent directors would not be employed by or participants in the security-based swap clearing agency, they may often need to rely on management or other directors to keep fully informed. There could be costs to the security-based swap clearing agency if one or more independent directors is ineffectual because he or she did not fully understand the operations or risk management procedures of the security-based swap clearing agency. Thus, imperfect decisions by independent directors could result in costs to the security-based swap clearing agency. This may potentially be more likely where the majority of the Board is required to be independent. On the other hand, independent directors who have relevant expertise, are engaged in carrying out their director duties, and who grasp the issues confronting the security-based swap clearing agency could be very beneficial to the security-based swap clearing agency because they could bring an outside perspective and fresh insights and ideas to the security-based swap clearing agency.

The proposed governance requirements under both the Voting Interest Focus Alternative and the Governance Focus Alternative could impose other costs on security-based swap clearing agencies. An entity that plans to register as a security-based swap clearing agency may need to revise the composition of its Board if the Board currently is not composed of 35% or a majority of independent directors. Moreover, security-based swap clearing agencies may have to restructure their nominating committees as well as other committees that are authorized to act for the Board. In this regard, security-based swap clearing agencies could face difficulties locating qualified individuals to serve as independent directors, particularly because security-based swaps trading is complex and the pool of qualified candidates may be limited. There also may be costs in educating independent directors to become familiar with the manner in which these security-based swaps are traded and the new regulatory structure governing security-based swaps, which could slow Board processes at least initially. These costs would be greater under the Governance Focus Alternative, which requires a higher percentage of independent directors on the Board and on the committees.

The proposed governance requirements could impose other costs on security-based swap clearing agencies. A security-based swap clearing agency may incur costs as a result of the requirement to include 35% or a majority of independent directors on its Board and a similar or heightened requirement with respect to committees authorized to act on behalf of the Board. Any such costs are likely to be incurred in connection with conducting a search for independent directors with the necessary qualifications and expertise to serve on the Board of a security-based swap clearing agency. The actual cost for each security-based swap clearing agency may vary based on the current governance arrangements and practices of the security-based swap clearing agencies. In addition, if a security-based swap clearing agency is required to conduct a search for independent directors, the costs incurred by the security-based swap clearing agency may vary based on whether it has the resources to conduct its own search or has to retain an outside consultant. The Commission preliminarily estimates that those security-based swap clearing agencies that must rely on a recruitment specialist to secure an independent director could incur a cost of approximately $68,000 per director.[215]

C. SB SEFs and SBS Exchanges

Currently, there are no trading venues that are registered with the Commission as SB SEFs, and no national securities exchanges that currently post or make available for trading security-based swaps. Based on the Dodd-Frank Act's definition, a SB SEF could include a trading platform with participating dealers.[216] SB SEFs are conceptually

[214] *See* M. Harris and A. Raviv, 2007, "A Theory of Board Control and Size," The Journal of Finance; R. Adams and D. Fererria, 2008, "A Theory of Friendly Boards," The Journal of Finance, vol. 62(1) pp. 217–250.

[215] The Commission is basing this estimate on a recent study noting that the retainer fee for outside directors is on average $67,624. *See http://www.hewittassociates.com/_MetaBasicCMAssetCache_/Assets/Articles/2010/2010_Outside_Director_Compensation.pdf.* The Commission believes that this amount could serve as a proxy for the amount of any fee to be charged by a recruitment firm that would conduct a national search for an independent director.

[216] Section 763(c) of the Dodd-Frank Act sets forth 14 core principles that SB SEFs must satisfy and provides the Commission with rulemaking authority with respect to implementation of these core principles. The Commission expects to address the issue of what is a SB SEF in a separate rulemaking under Section 763(c) of the Dodd-Frank

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similar to alternative trading systems and national securities exchanges in the equity and options markets and designated contract markets in the futures markets in that they will provide a centralized trading facility for the trading of security-based swaps. To the extent that SB SEFs would organize and form in a similar manner to these structures, the Commission preliminarily anticipates that SB SEFs and SBS exchanges would be significantly more competitive than security-based swap clearing agencies. In particular, barriers to entry in terms of capital are likely to be lower, and many existing dealers, national securities exchanges and other entities of various sizes currently have electronic trading capabilities that could allow them to enter this market readily.

1. Costs and Benefits Related to Ownership Requirements of SB SEFs and SBS Exchanges

The 20% ownership and voting limits contained in proposed Rule 702(b) under Regulation MC would prohibit any SB SEF participant or SBS exchange member or small group thereof from owning or otherwise controlling any class of voting securities or other interests of a SB SEF, SBS exchange or SBS exchange facility, as applicable. The intent of this requirement, as with security-based swap clearing agencies, is to limit the influence of any single dealer or a small group of dealers in a single SB SEF, SBS exchange or SBS exchange facility and thus reduce the likelihood that smaller non-owner dealers would be unfavorably treated and the ability of dealer-owners to influence market prices of security-based swaps. It is hard to predict, however, what entities will be SB SEFs or SBS exchanges or whether there will be any market power from owning or controlling a SB SEF or SBS exchange as discussed above. If the concern, as with central clearing, is that a single SB SEF or SBS exchange emerges as the dominant trading platform, then ownership and voting restrictions may be an important consideration. For example, the NYSE was the dominant exchange for trading equity securities for a long period, and even today U.S. futures markets are characterized by a dominant exchange connected to a single clearing agency.

However, evidence from the current cash equity and options markets shows that several trading platforms with different business models and clienteles often emerge.[217] Hence, SB SEFs, SBS exchanges, and SBS exchange facilities that are controlled by a single dealer may not necessarily result in unfair trading practices if market participants have alternative comparable venues to execute the same security-based swaps and those venues are able to compete effectively with single dealer platforms. Allowing SB SEFs, SBS exchanges and SBS exchange facilities that are controlled by a single dealer may in fact increase the level of competition, which would benefit investors. A 20% restriction on ownership of voting securities could require a dealer to partner with either other dealers or a non-dealer majority owner, or to hold a non-voting ownership interest, which could reduce incentives to start up a new venue, potentially limiting innovative alternatives to security-based swap execution and security-based swap products.[218]

The Commission anticipates that the proposed ownership and voting limitations may impose costs on SB SEFs, SBS exchanges and SBS exchange facilities. Entities planning to register as SB SEFs and SBS exchanges would have to ensure that they are in compliance with the proposed ownership and voting limitations and thus would need to spend time and incur costs to design or modify their ownership structure and internal processes, as well as take the necessary steps to draft or amend their governing documents and rules to comply with such ownership and voting limitations. Designing or modifying internal processes and drafting or revising governing documents and rules would impose costs on SB SEFs, SBS exchanges and SBS exchange facilities. The Commission estimates that it would take a compliance attorney approximately 15 hours to revise the relevant governing documents and to file them with the appropriate authorities. Assuming an hourly cost of $291 for a compliance attorney,[219] these requirements would result in an overall annual cost per SB SEF, SBS exchange or SBS exchange facility of $4,365, or $152,775 in the aggregate for all SB SEFs, SBS exchanges, and SBS exchange facilities.[220]

As previously discussed in the PRA section, proposed Rule 702(c) would require SB SEFs, SBS exchanges, or SBS exchange facilities, as applicable, to have an effective mechanism to obtain information relating to ownership and voting interest in the SB SEF, SBS exchange, or SBS exchange facility, by any participant or member of the SB SEF, SBS exchange or SBS exchange facility.[221] It was estimated that these obligations would result in a total annual burden for all SB SEFs, SBS exchanges, and SBS exchange facilities of 1,960 hours. It was also estimated that there would be a total annual reporting and recordkeeping burden for all participants or members of 2,800 hours. Assuming an hourly cost of $291 for a compliance attorney [222] to meet these requirements, this would result in an overall annual cost of $1,385,160 for participants or members and SB SEFs, SBS exchanges, and SBS exchange facilities collectively.[223] To the extent that certain participants or members may be required to file ownership or voting information with a domestic or international government authority pursuant to securities laws, and such information is made available to the SB SEF, SBS exchange, or SBS exchange facility, this cost would be reduced.

Proposed Rule 702(c) under Regulation MC also would require a SB SEF, SBS exchange or SBS exchange facility to have rules to divest a participant or member of an ownership interest that violates the proposed ownership limits, and to not give effect to a voting interest of a participant or member that violates the proposed voting limits. As previously discussed in the PRA section, this requirement is estimated to result in an initial paperwork burden for all SB SEFs, SBS exchanges, or SBS exchange facilities of 525 hours. Assuming an hourly cost of $291 for a compliance attorney [224] to meet these requirements, this would

Act. *See* Section 763(c) of the Dodd-Frank Act, Public Law 111–203, Section 763(c).

[217] For example, there are currently 15 registered national securities exchanges with varying platforms and business models that compete for clients and order flow in the equities and/or options markets.

[218] As noted above, Section 763(c) of the Dodd-Frank Act sets forth 14 core principles that SB SEFs must satisfy, including one relating to conflicts of interest, and provides the Commission with rulemaking authority with respect to implementation of these core principles. The Commission may determine that it is appropriate to propose additional rules to mitigate conflicts of interest with respect to SB SEFs, including incorporating ownership and/or voting limits and other requirements with respect to ownership of a SB SEF by persons other than SB SEF participants. The Commission also may consider proposals such as providing for the fair representation of SB SEF participants in the selection of the SB SEF's directors and the administration of its affairs as part of its broader rulemaking relating to SB SEFs.

[219] *See supra* note 210.

[220] Overall annual cost per SB SEF, SBS exchange, or SBS exchange facility = 15 hours × $291 = $4,365; aggregate annual cost for all SB SEFs, SBS exchanges, and SBS exchange facilities = $4,365 × 35 = $152,775.

[221] *See supra* Section IX.

[222] *See supra* note 210.

[223] Overall annual cost for participants or members and SB SEFs, SBS exchanges and SBS exchange facilities = (1,960 hours + 2,800 hours) × $291 = $1,385,160.

[224] *See supra* note 210.

result in an initial cost of $152,775 for all SB SEFs, SBS exchanges, and SBS exchange facilities.[225]

This proposed rule also would impose costs on SB SEFs, SBS exchanges, or SBS exchange facilities to initiate the divestiture or not give effect to the voting rights that surpass the stated threshold. For example, a SB SEF, SBS exchange, or SBS exchange facility could incur costs involved with redeeming shares held in excess of the proposed limits if such entity chooses to provide in its rules that any such excess shares would be purchased by the entity. A SB SEF, SBS exchange, or SBS exchange facility also could adopt rules to limit voting by any participant or member that owns more than 20% of outstanding interests. Thus, a SB SEF, SBS exchange, or SBS exchange facility also could incur costs associated with monitoring votes cast at any shareholder meeting to determine that no SB SEF participant or SBS exchange member and its related persons subject to the voting limits exceeds those limits.

The Commission recognizes that entities that are currently in existence and plan to become SB SEFs, SBS exchanges or SBS exchange facilities could incur costs if they do not meet the proposed ownership and voting limitations. For example, if a single or small group of market participants that would be direct participant(s) in a SB SEF plans to register a platform as a SB SEF, it or they potentially would need to secure additional owners to meet the 20% limitation on ownership of voting securities of a SB SEF. This could impose costs on an entity that has a single owner-participant or a small number of owner-participants and that plans to register a platform as a SB SEF, from the costs of finding other owners or the sharing of potential profits with a larger group of owners. As noted above, currently there are no trading venues that are registered with the Commission as SB SEFs. Based on initial discussions with market participants that have indicated an interest in registering as a SB SEF, the Commission preliminarily believes that few entities that may register as a SB SEF currently have ownership structures that would conflict with the proposed ownership and voting limitations for SB SEFs. In addition, as discussed above, national securities exchanges that may potentially register as SBS exchanges or create a facility that will be a SBS exchange facility should already be in compliance with the proposed ownership and voting limitations. Based on these factors, the Commission preliminarily believes that the aggregate costs imposed by the ownership and voting limitations on entities initially seeking to register as SB SEFs, SBS exchanges or SBS exchange facilities would not be significant.

2. Costs and Benefits Related to Independence Requirements in SB SEFs and SBS Exchanges

Proposed Rule 702(d) under Regulation MC would require the Boards of SB SEFs and SBS exchanges or SBS exchange facilities to be composed of at least a majority of independent directors to mitigate conflicts of interest and help ensure that the entity does not advance the interests of its owners, some of which may be dealer-participants or their affiliates. By mandating a structure that would require a majority of Board members to be independent, the governance of SB SEFs, SBS exchanges and SBS exchange facilities should be less susceptible to promoting the self-interests of such participants. The majority independent directors should help foster a greater degree of independent decision-making consistent with the objectives of the Dodd-Frank Act and the Exchange Act. Further, a Board whose independent directors constitute at least a majority of the Board should help ensure that the views of independent directors are taken into account and should help strengthen the hand of independent directors when dealing with management. In the Commission's preliminary view, requiring the Boards of SB SEFs, SBS exchanges and SBS exchange facilities to have a majority of independent directors should help reduce the possibility of damaging conflicts of interest that otherwise might arise when persons who do not meet the definition of independent director at the SB SEF, SBS exchange or SBS exchange facility are involved in key decisions, such as which products will be made available for trading and the access levels of potential market participants. To the extent that independent directors would reduce the likelihood that one group of participants could coordinate decision-making in such a way that would be detrimental to the SB SEF, SBS exchange or SBS exchange facility as a whole, this would be a benefit.

In addition, proposed Rule 702(f) under Regulation MC would require that the nominating committee of a SB SEF, SBS exchange or SBS exchange facility be composed solely of independent directors. This proposed requirement should foster a process for nominating independent directors that would help to assure that such directors are independent and not likely to be unduly influenced by an owner of the SB SEF, SBS exchange or SBS exchange facility who is possibly a SB SEF participant-dealer or SBS exchange member or affiliate thereof. In addition, the requirement in proposed Rule 702(g) under Regulation MC that any committee that would have the authority to act on behalf of the Board be composed of a majority of independent directors is designed to prevent important decisions from escaping the view of a majority of independent directors. Many Board decisions come from committees and conflicts may be similarly prevalent or even more pronounced in these situations.

Proposed Rule 702(e) under Regulation MC also would require the Board of any SB SEF and SBS exchange to establish a ROC consisting solely of independent directors to oversee the entity's regulatory obligations.[226] The Commission preliminarily believes that this requirement should be effective in managing the conflicts of interest inherent in the Board's oversight of whether a SB SEF or SBS exchange satisfies its regulatory obligations. The proposed provision relating to the establishment of an independent ROC should help promote greater accountability on the part of SB SEFs and SBS exchanges with respect to the obligations placed on them by the Exchange Act, including as amended by the Dodd-Frank Act, and strengthen their ability to meet those obligations. A ROC composed solely of independent directors should result in a greater degree of objective decision-making with respect to the SB SEF's or SBS exchange's regulatory obligations. Vigilant and informed oversight by a strong, effective and independent ROC may increase investor confidence in the operation of SB SEFs and SBS exchanges, and the security-based swaps market generally. National securities exchanges that currently have a ROC composed of independent directors have noted the benefits of such a governance mechanism.[227] In

[225] This initial cost is estimated as follows: 15 hours × 35 respondents × $291 per hour = $152,775.

[226] Proposed Rule 702(e) under Regulation MC does not explicitly include SBS exchange facilities because the exchange whose facility posts or makes available for trading a security-based swap must itself establish the requisite ROC. *See supra* note 173.

[227] *See* CBOE Comment Letter, *supra* note 165 ("CBOE also implemented other changes that are similar to the proposals contained in the Release, for example establishing a Regulatory Oversight Committee, composed solely of public directors * * *. As a result, CBOE believes that its existing governance structure and practices serve not only to protect investors and the public interest and

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addition, requiring the Board to report promptly to the Commission any recommendation of the ROC that the Board does not implement should provide the Commission with information on a timely basis regarding the Board's decision not to take certain actions.

The governance proposals for SB SEFs, SBS exchanges and SBS exchange facilities would complement the proposed ownership and voting limits for these entities. Five or more dealer-participants or members could still own 100% of the voting securities of a SB SEF, SBS exchange or SBS exchange facility, as applicable, under the proposed voting and ownership limits. In addition, even when the influence of any single dealer is limited through ownership and voting restrictions, economic incentives can align several dealer participants in a way that may be costly to investors. As a result, there are potential incentives for SB SEF participant-dealers and SBS exchange member-dealers to coordinate in ways that ownership and voting restrictions could not address. Requiring independence on the Board and certain key Board committees should further reduce the ability of the participant-owners of the SB SEF or member-owners of the SBS exchange or SBS exchange facility to unduly influence decision-making at the Board level in a way that advances their interests. Representation by independent directors would provide views and influence that by design are not subject to these conflicts.

As noted in the discussion relating to security-based swap clearing agencies, while director independence is widely believed to be a catalyst for improved governance and the Commission recognizes that the industry widely accepts a majority of independent directors as "best practices," [228] there is no conclusive empirical evidence to support the view that a majority of independent directors benefits shareholder profits. However, the Model Business Corporation Act recognizes the important role of independent directors.[229]

The proposed governance requirements could impose costs on SB SEFs, SBS exchanges and SBS exchange facilities. Entities planning to register as SB SEFs and SBS exchanges may need to draft or amend their governing documents and design or modify their governance processes to comply with the proposed governance requirements, which would impose costs on SB SEFs, SBS exchanges and SBS exchange facilities. The Commission estimates that it would take a compliance attorney approximately 15 hours to revise the relevant governing documents and to file them with the appropriate authorities, for a total estimated cost per SB SEF, SBS exchange or SBS exchange facility of $4,365, or $152,775 in the aggregate for all SB SEFs or SBS exchanges, and SBS exchange facilities.[230]

An entity that plans to register as a SB SEF or a SBS exchange may need to revise the composition of its Board (or that of its SBS exchange facility, in the case of an exchange that posts or makes available for trading security-based swaps through a facility with a separate governance structure), if the Board currently is not composed of a majority of independent directors. SB SEFs and SBS exchanges or SBS exchange facilities also would need to establish wholly independent nominating committees, and SB SEFs and SBS exchanges would need to establish wholly independent ROCs. In this regard, SB SEFs, SBS exchanges and SBS exchange facilities could face difficulties in locating qualified individuals to serve as independent directors, particularly because security-based swaps trading is complex and some potential candidates may decline to serve as a director if they believe that they lack sufficient expertise.

The Commission preliminarily believes that the cost of securing independent directors to serve on the Board of the SB SEF, SBS exchange or SBS exchange facility could range from a relatively low cost for those entities that have the contacts and resources to be able to search for one or more independent directors on their own; to a moderate cost for those entities that can undertake the search on their own but would incur some expenditures, such as placing advertisements in national media; to a higher cost for those entities that must secure the services of a recruitment firm that specializes in the placement of independent directors. The Commission preliminarily estimates that those SB SEFs, SBS exchanges or SBS exchange facilities that must rely on a recruitment specialist to secure an independent director could incur a cost of approximately $68,000 per director.[231] The Commission preliminarily estimates that 10–20 entities could seek to register as SB SEFs and notes that there are 15 national securities exchanges; however, the number of Board members could vary widely among SB SEFs, SBS exchanges and SBS exchange facilities. Therefore, the Commission provides an estimate of a maximum recruitment cost of $68,000 per independent director.[232]

The imposition of a Board structure that precludes the likely participants in SB SEFs, SBS exchanges or SBS exchange facilities—dealers—from gaining a majority or having representation on certain Board committees may have a negative effect on the operations of the SB SEF, SBS exchange or SBS exchange facility if independent directors do not have commensurate qualifications or skills as affiliated directors or do not engage actively in their Board or committee duties. There could be costs in educating independent directors to become familiar with the manner in which security-based swaps are traded and in the new regulatory structure that would govern them, which could slow Board or committee processes at least initially. In addition, independent directors may yield to industry directors who have more knowledge and experience, thereby undermining the benefits of requiring independence. In the context of wholly independent committees, such as a nominating

assure the integrity of CBOE's regulatory activities, but also to enhance the ability of CBOE to develop and implement sound business strategies"); NYSE Comment Letter, *supra* note 165 ("As an important part of the reform process of 2003, the NYSE formalized the effective functional separation of regulatory programs from the competitive business functions, under a Chief Regulatory Officer ("CRO") reporting to a Regulatory Oversight Committee ("ROC") of the Board of Directors consisting of all independent directors * * *. We agree with the Commission that this structure, with a separate regulatory executive reporting to an empowered, qualified and independent board, amply funded and professionally staffed, assures the integrity of the regulatory process.")

[228] *See supra* note 122.

[229] MODEL BUS. CORP. ACT § 8.01(c) (4th ed. 2008).

[230] Assuming an hourly cost of $291 for a compliance attorney, the overall annual cost per SB SEF, SBS exchange or SBS exchange facility and aggregate cost for all SB SEFs, SBS exchanges, and SBS exchange facilities was calculated as follows: per entity annual cost = 15 hours × $291 = $4,365; aggregate annual cost = $4,365 × 35 = $152,775. *See supra* note 210.

[231] The Commission is basing this estimate on a recent study noting that the retainer fee for outside directors is on average $67,624. *See http://www.hewittassociates.com/_MetaBasicCMAssetCache_/Assets/Articles/2010/2010_Outside_Director_Compensation.pdf.* The Commission believes that this amount could serve as a proxy for the amount of any fee to be charged by a recruitment firm that would conduct a national search for an independent director.

[232] As discussed above, since 2004 when the Commission proposed rules to promote the fair administration and governance of, and to impose ownership and voting limitations on, national securities exchanges, a number of exchanges have adopted governance structures which meet many of the requirements of proposed Rule 702. Thus, the costs for complying with the proposed governance rules would be decreased for some SBS exchanges.

committee or ROC, the independent directors may become reliant on executive officers and other employees of the SB SEF or SBS exchange to inform their decision-making due to their lack of expertise in the industry. If management fails to keep the directors on wholly independent committees fully-informed, if the independent directors on such committees fail to seek sufficient information from management to make informed decisions or if management fails to give independent directors adequate resources to make effective decisions, there could be costs to the SB SEF, SBS exchange or SBS exchange facility. On the other hand, if management fully apprises the directors on wholly independent committees of necessary information and the independent directors have sufficient resources and are fully engaged with respect to their duties, there would be benefits to the SB SEF, SBS exchange or SBS exchange facility.

In addition, the effectiveness of majority independent Boards can depend on the personalities and personal traits, as well as the qualifications, of the persons serving on the Board. Independent directors that take the time to understand the operations and programs of a SB SEF, SBS exchange or SBS exchange facility and to ask probing questions of management are more likely to be effective independent directors. However, because independent directors would not be employed by the SB SEF, SBS exchange, or SBS exchange facility or be participants or members of such entity, they often may need to rely on management or other directors to keep them fully informed. There could be costs to the SB SEF, SBS exchange, or SBS exchange facility if one or more independent directors is ineffectual because he or she did not fully understand the operations of the SB SEF or SBS exchange, either because the independent directors did not take the necessary initiative or management failed to keep the independent directors fully apprised of information that would lead to their effective decision-making. Thus, imperfect decisions by independent directors could result in costs to the SB SEF, SBS exchange, or SBS exchange facility. On the other hand, independent directors who have expertise in areas that could be helpful to the SB SEF, SBS exchange or SBS exchange facility, who are engaged in carrying out their director duties, and who grasp the issues confronting the SB SEF, SBS exchange or SBS exchange facility could be very beneficial to the SB SEF, SBS exchange or SBS exchange facility because they could bring fresh insights and ideas to these entities.

Finally, under the proposed Rule 702(e)(2) under Regulation MC, SB SEFs and SBS exchanges would need to report promptly to the Commission any recommendation of the ROC that the Board does not adopt or implement, which would result in costs to SB SEFs and SBS exchanges. As discussed above, the Commission preliminarily estimates that the annual information collection burden for each SB SEF or SBS exchange under this provision of the proposed rules would be 12 hours.[233] Accordingly, the Commission's staff estimates that it would cost each SB SEF or SBS exchange $3,492 annually to comply with this provision of the proposed rules.[234]

D. Request for Comments

The Commission requests that commenters provide views and supporting information regarding the costs and benefits associated with the proposals. The Commission seeks estimates of these costs and benefits, as well as any costs and benefits not already identified. The Commission also requests comment regarding the relative costs and benefits of pursuing alternative regulatory approaches that are consistent with Section 765 of the Dodd-Frank Act. In addition, the Commission requests comment on whether other provisions of the Dodd-Frank Act for which Commission rulemaking is required are likely to have an effect on the costs and benefits of the proposed rules.

XI. Consideration of Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act[235] requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act[236] requires the Commission, when adopting rules under the Exchange Act, to consider the effect such rules would have on competition. Section 23(a)(2) of the Exchange Act also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Security-based swaps are currently executed and traded in the OTC market, with five large commercial banks representing 97% of the total U.S. banking industry national amounts outstanding of derivatives.[237] The gross notional amount of CDS as of the end of 2009 was approximately $30 trillion.[238]

As discussed above, the Commission has granted exemptions to five entities to act as security-based swap clearing agencies for CDS.[239] Four of the exemptions are currently active. SB SEFs and SBS exchanges are expected to register to trade security-based swaps in connection with the implementation of rules under Title VII of the Dodd-Frank Act.

As discussed above, the intent of the ownership and voting limitations and governance proposed rules is to mitigate potential conflicts of interests of market participants in the clearing and trading of security-based swaps. These proposed rules may have a significant effect on the level of competition within the marketplace.

The voting restrictions on security-based swap clearing agencies that limit the influence of any single participant or group of participants could increase the level of competition at the participant level if they preserve access to central clearing and trading by other participants. Without these voting restrictions, it may be possible for a dominant participant owner to use its voting interest to set rules, fees, or capital requirements that engender an uncompetitive environment. For instance, a heightened capital threshold for participation might prevent some firms from qualifying as participants and thus deny them access to clearing. However, the proposed voting limitations among participants may also impede competition at the security-based swap clearing agency level, since

[233] *See supra* Section IX.D.

[234] 12 hours (estimated annual information collection burden for each SB SEF and SBS exchange) × $291 (hourly cost for a compliance attorney) = $3,492. The hourly rate for the compliance attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2009,* modified by the Commission's staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[235] 15 U.S.C. 78c(f).

[236] 15 U.S.C. 78w(a)(2).

[237] *See* Office of the Comptroller of the Currency, Quarterly Report on Bank Trading and Derivatives Activities, First Quarter 2010.

[238] Data available at *http://www.isda.org/statistics/pdf/ISDA-Market-Survey-results1987-present.xls.*

[239] *See* CDS Clearing Exemption Orders, *supra* note 17.

there are likely a limited number of firms with the expertise, resources and desire to have an ownership interest in a security-based swap clearing agency.[240]

As previously noted, evidence from the securities markets suggests that clearing agencies over the long-run tend to converge to a small number of entities or even a single entity. Clearing activities are characterized by high start-up costs and low marginal costs such that there are large economies of scale. For example, all trades executed on the eight U.S. based options exchanges are cleared at the Options Clearing Corporation, and trades executed on the U.S. equity markets, composed of exchanges, alternative trading platforms, and OTC trading, are cleared at the National Securities Clearing Corporation, a wholly-owned subsidiary of the Depository Trust and Clearing Corporation.[241] A single security-based swap clearing agency may also be more efficient in that it would facilitate the fungibility of contracts across multiple execution facilities and exchanges.

Whether the differences in the Voting Interest Focus Alternative and the Governance Focus Alternative would result in substantially different effects on efficiency, capital formation, and competition remains uncertain. Preliminarily, the Commission believes that the aggregate cap on participant voting interests may limit the formation of new clearing agencies and, consequently, limit the opportunity for competition among security-based swap clearing agencies. However, the aggregate cap under the Voting Interest Focus Alternative may also be more effective at mitigating conflicts of interest than the rules proposed under the Governance Focus Alternative, and could result in greater access to central clearing and a higher volume of security-based swap products made eligible for clearing. As discussed previously, central clearing would facilitate improved transparency, risk management, and competition in the security-based swaps market. This in turn should have a positive effect on efficiency, capital formation, and competition.

The Commission preliminarily believes that the start-up costs for a SB SEF, SBS exchange or SBS exchange facility, or for an existing national securities exchange to post or make available for trading security-based swaps, will be low. If a SB SEF, SBS exchange or SBS exchange facility would not provide the desired level of access to a market participant, and the start-up costs of setting up a competing SB SEF, SBS exchange or SBS exchange facility are low, then this would encourage the entrance of alternate trading venues for market participants and allow competition to discipline harmful practices by any single SB SEF, SBS exchange, or SBS exchange facility. However, if ownership restrictions are such that dealers must coordinate ownership among a group, then there may be fewer potential owners available, and thus there could be less incentive to form competing SB SEFs, SBS exchanges, or SBS exchange facilities. In this case, ownership limitations would impede competition.[242]

The proposed rules under Regulation MC relating to Board and committee independence may also increase the level of participant competition by making it more difficult for a small group of dealer-owners to influence a security-based swap clearing agency, SB SEF or SBS exchange even in light of the proposed ownership and voting restrictions. This is necessary because economic incentives could align the interests of participants against the interest of the security-based swap clearing agency, SB SEF or SBS exchange as a whole irrespective of whether those participants are owners. For example, if the Board of a dealer-controlled security-based swap clearing agency determines to refuse to clear a proposed security-based swap product, then such a product would not be required to be traded on a SB SEF or SBS exchange and would likely trade OTC, reducing price transparency and likely resulting in higher revenue for the dealers in the OTC market than if the product was available through a SB SEF, SBS exchange or SBS exchange facility. Majority independence requirements for the Board and committees that have the authority to act on behalf of the Board are an additional tool to address this potential conflict of interest. Given the size of the security-based swaps market and its non-competitive tendencies, the benefits with respect to efficiency and competition that ownership, voting, and director representation requirements would provide are likely to be substantial.

The Commission requests comment on the possible effects of the proposed rules under Regulation MC on efficiency, competition, and capital formation. The Commission requests that commenters provide views and supporting information regarding any such effects. The Commission notes that such effects are difficult to quantify. The Commission seeks comment on possible anti-competitive effects of the proposed rules under Regulation MC not already identified. The Commission also requests comment regarding the competitive effects of pursuing alternative regulatory approaches that are consistent with Section 765 of the Dodd-Frank Act. In addition, the Commission requests comment on how the other provisions of the Dodd-Frank Act for which Commission rulemaking is required will interact with and influence the competitive effects of the proposed rules under Regulation MC.

XII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or "SBREFA,"[243] the Commission must advise the OMB as to whether proposed Regulation MC and the rules proposed thereunder constitute a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in: (1) An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effect on competition, investment or innovation.

The Commission requests comment on the potential impact of proposed Regulation MC and the rules proposed thereunder on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

XIII. Regulatory Flexibility Act Certification

Section 603(a) of the Regulatory Flexibility Act[244] ("RFA") requires the Commission to undertake an initial regulatory flexibility analysis of the proposed rules under Regulation MC on small entities, unless the Commission certifies that the proposed rules, if adopted, would not have a significant economic impact on a substantial number of small entities.[245]

[240] The Commission pursuant to Section 36 of the Exchange Act may grant an exemption from any rule or any provision of any rule under Regulation MC. *See supra* Section VI.

[241] The central clearing of security-based swaps is still developing and the Commission has not made any determinations about the number of security-based swap clearing agencies that may be used by market participants.

[242] *See supra* note 240.

[243] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[244] 5 U.S.C. 603(a).

[245] 5 U.S.C. 605(b).

A. Security-Based Swap Clearing Agencies

Proposed Rule 701 under Regulation MC would apply to all security-based swap clearing agencies. Four entities are currently exempt from registration as a clearing agency under section 17A of the Exchange Act to provide central clearing services for CDS, a class of security-based swaps.[246] The Commission believes, based on its understanding of the market, that likely no more than six security-based swap clearing agencies could be subject to the requirements of proposed Rule 701.

For purposes of Commission rulemaking in connection with the RFA, an issuer or person, other than an investment company, is a small business if its total assets on the last day of its most recent fiscal year were $5 million or less.[247] The Commission believes that the entities likely to register as security-based swap clearing agencies will not be small entities, but rather part of large business entities that have assets in excess of $5 million and total capital in excess of $500,000.[248]

B. SB SEFs

Proposed Rule 702 under Regulation MC would apply to all SB SEFs. In the Dodd-Frank Act, Congress defined for the first time what activity would constitute a SB SEF and mandated the registration of these new facilities. The Commission preliminarily believes that approximately 10 to 20 SB SEFs could be subject to the requirements of proposed Rule 702.

For purposes of Commission rulemaking in connection with the RFA, an issuer or person, other than an investment company, is a small business if its total assets on the last day of its most recent fiscal year were $5 million or less.[249] The Commission preliminarily believes that the entities likely to register as SB SEFs will not be considered small entities because most, if not all, of the SB SEFs will be part of large business entities, and that all SB SEFs will have assets in excess of $5 million.[250]

C. SBS Exchanges

Proposed Rule 702 under Regulation MC would apply to all SBS exchanges. All of the 15 currently registered national securities exchanges could become SBS exchanges, and therefore, subject to the requirements of Rule 702.[251]

For purposes of Commission rulemaking in connection with the RFA, a national securities exchange is a small business if it has been exempted from the reporting requirements of Rule 601 of Regulation NMS[252] (Dissemination of Transaction Reports and Last Sale Data with Respect to Transactions in NMS Stocks) and is not affiliated with any person (other than a natural person) that is not a "small business."[253] None of the currently registered national securities exchanges is a small entity. Therefore, the Commission preliminarily believes that none of the SBS exchanges will be considered small entities.

D. Certification

For the reasons stated above, the Commission certifies that the proposed rules under Regulation MC would not have a significant economic impact on a substantial number of small entities. The Commission requests comments regarding this certification. The Commission requests that commenters describe the nature of any impact on small entities, including national securities exchanges, clearing agencies or other small businesses or small organizations that may register as SB SEFs, SBS exchanges or security-based swap clearing agencies, and provide empirical data to support the extent of the impact.

XIV. Statutory Basis and Rule Text

Pursuant to the Exchange Act, 15 U.S.C. 78a *et seq.,* and particularly, Sections 3, 3D, 6, 11A, 17A, 19, and 23(a) thereof, and Section 765 of the Dodd-Frank Act, the Commission is proposing to adopt Regulation MC under the Exchange Act.

List of Subjects in 17 CFR Part 242

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule Amendments

For the reasons stated in the preamble, the Commission is proposing to amend Title 17, Chapter II of the Code of the Federal Regulations as follows:

[246] *See* CDS Clearing Exemptions, *supra* note 17.

[247] 17 CFR 230.157. *See also* 17 CFR 240.0–10(a).

[248] Commission staff based this determination on its review of various public sources of financial information about the current registered clearing agencies and entities currently exempt from clearing agency registration under Section 17A of the Exchange Act.

[249] 17 CFR 230.157. *See also* 17 CFR 240.0–10(a).

[250] Commission staff based this determination on its review of various public sources of financial information about the entities likely to register as SB SEFs.

[251] *See supra* note 194.

[252] 17 CFR 242.601.

[253] 17 CFR 240.0–10(e).

PART 242—REGULATIONS M, SHO, ATS, AC, NMS, AND MC AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

1. The authority citation for part 242 is amended by adding authorities for Sections 242.700, 242.701 and 242.702 to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78f, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78*l,* 78m, 78n, 78o(b), 78o(c), 78o(g), 78q–1, 78q(a), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37.

* * * * *

Section 242.700 is also issued under sec. 943, Public Law 111–203, Section 765.

Section 242.701 is also issued under sec. 943, Public Law 111–203, Section 765.

Section 242.702 is also issued under sec. 943, Public Law 111–203, Sections 763 and 765.

2. The part heading for part 242 is revised to read as set forth above.

3. Sections 242.700, 242.701 and 242.702 are added to read as follows:

§ 242.700 Definitions.

(a) The term *affiliate* means any person that, directly or indirectly, controls, is controlled by, or is under common control with, the person.

(b) The terms *beneficial ownership, beneficially owns* or any derivative thereof shall have the same meaning, with respect to any security or other ownership interest, as set forth in § 240.13d–3, as if (and whether or not) such security or other ownership interest were a voting equity security registered under section 12 of the Exchange Act (15 U.S.C. 78*l*); *provided that* to the extent any person beneficially owns any security or other ownership interest solely because such person is a member of a group within the meaning of section 13(d)(3) of the Exchange Act (15 U.S.C. 78m(d)(3)), such person shall not be deemed to beneficially own such security or other ownership interest for purposes of this section, unless such person has the power to direct the vote of such security or other ownership interest.

(c) The term *Board* means the Board of Directors or Board of Governors of the security-based swap execution facility or national securities exchange or facility thereof that posts or makes available for trading security-based swaps, or security-based swap clearing agency, as applicable, or any equivalent body.

(d) The term *clearing agency* has the same meaning as set forth in section 3(a)(23) of the Exchange Act (15 U.S.C. 78c(a)(23)).

(e) The term *control* means the possession, direct or indirect, of the

power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. A person is presumed to control another person if the person:

(1) Is a director, general partner or officer exercising executive responsibility (or having similar status or functions);

(2) Directly or indirectly has the right to vote 25 percent or more of a class of voting securities or has the power to sell or direct the sale of 25 percent or more of a class of voting securities; or

(3) In the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25 percent or more of the capital.

(f) The term *director* means any member of the Board.

(g) The term *Exchange Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

(h) The term *facility* has the same meaning as set forth in section 3(a)(2) of the Exchange Act (15 U.S.C. 78c(a)(2)).

(i) The term *immediate family member* means a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home.

(j) The term *independent director* means:

(1) A director who has no material relationship with:

(i) The security-based swap execution facility or national securities exchange or facility thereof that posts or makes available for trading security-based swaps, or security-based swap clearing agency, as applicable;

(ii) Any affiliate of the security-based swap execution facility or national securities exchange or facility thereof that posts or makes available for trading security-based swaps, or security-based swap clearing agency, as applicable;

(iii) A security-based swap execution facility participant, a member of a national securities exchange that posts or makes available for trading security-based swaps, or a participant in the security-based swap clearing agency, as applicable; or

(iv) Any affiliate of a security-based swap execution facility participant, a member of a national securities exchange that posts or makes available for trading security-based swaps, or a participant in the security-based swap clearing agency, as applicable.

(2) A director is not an independent director if any of the following circumstances exists:

(i) The director, or an immediate family member, is employed by or otherwise has a material relationship with the security-based swap execution facility or national securities exchange or facility thereof that posts or makes available for trading security-based swaps, or security-based swap clearing agency, as applicable, or any affiliate thereof, or within the past three years was employed by or otherwise had a material relationship with the security-based swap execution facility or national securities exchange or facility thereof that posts or makes available for trading security-based swaps, or security-based swap clearing agency, as applicable, or any affiliate thereof;

(ii) (A) The director is a security-based swap execution facility participant, a member of a national securities exchange that posts or makes available for trading security-based swaps, or a participant in the security-based swap clearing agency, as applicable, or within the past three years was employed by or affiliated with such participant or member or any affiliate thereof; or

(B) The director has an immediate family member that is, or within the past three years was, an executive officer of a security-based swap execution facility participant, a member of a national securities exchange that posts or makes available for trading security-based swaps, or a participant in the security-based swap clearing agency, as applicable, or any affiliate thereof;

(iii) The director, or an immediate family member, has received during any twelve month period within the past three years payments that reasonably could affect the independent judgment or decision-making of the director from the security-based swap execution facility or national securities exchange or facility thereof that posts or makes available for trading security-based swaps, or security-based swap clearing agency, as applicable, or any affiliate thereof or from a security-based swap execution facility participant, a member of a national securities exchange that posts or makes available for trading security-based swaps, or a participant in the security-based swap clearing agency, as applicable, or any affiliate thereof, other than the following:

(A) Compensation for Board or Board committee services;

(B) Compensation to an immediate family member who is not an executive officer of the security-based swap execution facility or national securities exchange or facility thereof that posts or makes available for trading security-based swaps, or security-based swap clearing agency, as applicable, or any affiliate thereof or of a security-based swap execution facility participant, a member of a national securities exchange that posts or makes available for trading security-based swaps, or a participant in the security-based swap clearing agency, as applicable, or any affiliate thereof; or

(C) Pension and other forms of deferred compensation for prior services, not contingent on continued service.

(iv) The director, or an immediate family member, is a partner in, or controlling shareholder or executive officer of, any organization to or from which the security-based swap execution facility or national securities exchange or facility thereof that posts or makes available for trading security-based swaps, or security-based swap clearing agency, as applicable, or any affiliate thereof made or received payments for property or services in the current or any of the past three full fiscal years that exceed two percent of the recipient's consolidated gross revenues for that year, other than the following:

(A) Payments arising solely from investments in the securities of the security-based swap execution facility or national securities exchange or facility thereof that posts or makes available for trading security-based swaps, or security-based swap clearing agency, as applicable, or affiliate thereof; or

(B) Payments under non-discretionary charitable contribution matching programs.

(v) The director, or an immediate family member, is, or within the past three years was, employed as an executive officer of another entity where any executive officers of the security-based swap execution facility or national securities exchange or facility thereof that posts or makes available for trading security-based swaps, or security-based swap clearing agency, as applicable, serve on that entity's compensation committee;

(vi) The director, or an immediate family member, is a current partner of the outside auditor of the security-based swap execution facility or national securities exchange or facility thereof that posts or makes available for trading security-based swaps, or security-based swap clearing agency, as applicable, or any affiliate thereof, or was a partner or employee of the outside auditor of security-based swap execution facility or national securities exchange or facility thereof that posts or makes available for trading security-based swaps, or security-based swap clearing agency, as applicable, or any affiliate thereof who worked on the audit of the security-based swap execution facility or national securities exchange or facility thereof that posts or makes

available for trading security-based swaps, or security-based swap clearing agency, as applicable, or any affiliate thereof, at any time within the past three years; or

(vii) In the case of a director that is a member of the audit committee, such director (other than in his or her capacity as a member of the audit committee, the Board, or any other Board committee), accepts, directly or indirectly, any consulting, advisory, or other compensatory fee from the security-based swap execution facility or national securities exchange or facility thereof that posts or makes available for trading security-based swaps, or security-based swap clearing agency, as applicable, or any affiliate thereof or a security-based swap execution facility participant, a member of a national securities exchange that posts or makes available for trading security-based swaps, or a participant in the security-based swap clearing agency, as applicable, or any affiliate thereof, other than fixed amounts of pension and other forms of deferred compensation for prior service, provided such compensation is not contingent in any way on continued service.

(k) The term *major security-based swap participant* has the same meaning as set forth in section 3(a)(65) of the Exchange Act (15 U.S.C. 78c(a)(65)) or any rules or regulations thereunder.

(l) The term *material relationship* means a relationship, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision-making of the director.

(m) The term *member* has the same meaning as set forth in section 3(a)(3) of the Exchange Act (15 U.S.C. 78c(a)(30)).

(n) The term *national securities exchange* means any exchange registered pursuant to section 6 of the Exchange Act (15 U.S.C. 78f).

(o) The term *participant* when used with respect to a clearing agency has the same meaning set forth in section 3(a)(24) of the Exchange Act (15 U.S.C 78c(a)).

(p) The term *person* has the same meaning as set forth in section 3(a)(9) of the Exchange Act (15 U.S.C. 78c(a)(9)).

(q) The term *person associated with a member* has the same meaning as set forth in section 3(a)(21) of the Exchange Act (15 U.S.C. 78c(a)(21)).

(r) The term *person associated with a participant in a security-based swap clearing agency* means:

(1) Any partner, officer, director, or branch manager of such security-based swap dealer or major security-based swap participant (or any person occupying a similar status or performing similar functions);

(2) Any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant; or

(3) Any employee of such security-based swap dealer or major security-based swap participant. This term does not include any person associated with a participant in a security-based swap clearing agency whose functions are solely clerical or ministerial.

(s) The term *person associated with a security-based swap dealer or major security-based swap participant* has the same meaning as set forth in section 3(a)(70) of the Exchange Act (15 U.S.C. 78c(a)(70)) or any rules or regulations thereunder.

(t) The term *person associated with a security-based swap execution facility participant* means any partner, officer, director, or branch manager of such security-based swap execution facility participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such security-based swap execution facility participant, or any employee of such security-based swap execution facility participant.

(u) The term *related person* means:

(1) When used with respect to a security-based swap clearing agency:

(i) Any affiliate of a security-based swap clearing agency participant;

(ii) Any person associated with a security-based swap clearing participant;

(iii) Any immediate family member of a security-based swap clearing agency participant that is a natural person or any immediate family member of the spouse of such person, who, in each case, has the same home as the security-based swap clearing agency participant or who is a director or officer of the security-based swap clearing agency or any of its parents or subsidiaries; or

(iv) Any immediate family member of a person associated with a security-based swap clearing agency participant that is a natural person or any immediate family member of the spouse of such person, who, in each case, has the same home as the person associated with the security-based swap clearing agency participant or who is a director or officer of the security-based swap clearing agency or any of its parents or subsidiaries;

(2) When used with respect to a security-based swap execution facility:

(i) Any affiliate of a security-based swap execution facility participant;

(ii) Any person associated with a security-based swap execution facility participant;

(iii) Any immediate family member of a security-based swap execution facility participant or any immediate family member of the spouse of such person, who, in each case, has the same home as the security-based swap execution facility participant or who is a director or officer of the security-based swap execution facility or any of its parents or subsidiaries; or

(iv) Any immediate family member of a person associated with a security-based swap execution facility participant or any immediate family member of the spouse of such person, who, in each case, has the same home as the person associated with the security-based swap execution facility participant or who is a director or officer of the security-based swap execution facility or any of its parents or subsidiaries; and

(3) When used with respect to a national securities exchange or facility thereof that posts or makes available for trading security-based swaps:

(i) Any affiliate of a member of the national securities exchange that posts or makes available for trading security-based swaps;

(ii) Any person associated with a member of the national securities exchange that posts or makes available for trading security-based swaps;

(iii) Any immediate family member of a member of the national securities exchange that posts or makes available for trading security-based swaps or any immediate family member of the spouse of such person, who, in each case, has the same home as the member of the national securities exchange that posts or makes available for trading security-based swaps or who is a director or officer of the national securities exchange or facility thereof that posts or makes available for trading security-based swaps, or any of its parents or subsidiaries; or

(iv) Any immediate family member of a person associated a member of the national securities exchange that posts or makes available for trading security-based swaps or any immediate family member of the spouse of such person, who, in each case, has the same home as the person associated with the national securities exchange that posts or makes available for trading security-based swaps or who is a director or officer of the national securities exchange or facility thereof that posts or makes available for trading security-based swaps or any of its parents or subsidiaries.

(v) The term *security-based swap* has the same meaning as set forth in section 3(a)(68) of the Exchange Act (15 U.S.C. 78c(a)(68)) or any rules or regulations thereunder.

(w) The term *security-based swap dealer* has the same meaning as set forth in section 3(a)(71) of the Exchange Act (15 U.S.C. 78c(a)(71)) or any rules or regulations thereunder.

(x) The term *security-based swap clearing agency* means a clearing agency that clears security-based swaps.

(y) The term *security-based swap execution facility* has the same meaning as set forth in section 3(a)(77) of the Exchange Act (15 U.S.C. 78c(a)(77)) or any rules or regulations thereunder.

(z) The term *security-based swap execution facility participant* means a person permitted to directly effect transactions on the security-based swap execution facility.

§ 242.701 Mitigation of conflicts of interest of security-based swap clearing agencies.

Each security-based swap clearing agency must comply with the provisions of either paragraphs (a) or (b) this section, and must have the capacity to carry out the purposes of paragraphs (a) or (b) of this section, respectively.

(a)(1) *Limits on voting interest.* A security-based swap clearing agency shall not permit any security-based swap clearing agency participant, either alone or together with its related persons, to:

(i) Beneficially own, directly or indirectly, any interest in the security-based swap clearing agency that exceeds 20 percent of any class of securities, or other ownership interest, entitled to vote of such security-based swap clearing agency;

(ii) Directly or indirectly vote, cause the voting of, or give any consent or proxy with respect to the voting of, any interest in the security-based swap clearing agency that exceeds 20 percent of the voting power of any class of securities or other ownership interest of such security-based swap clearing agency;

(iii) In the aggregate with any other security-based swap clearing agency participants and their related persons, beneficially own, directly or indirectly, any interest in the security-based swap clearing agency that exceeds 40 percent of any class of securities, or other ownership interest, entitled to vote of such security-based swap clearing agency; or

(iv) In the aggregate with any other security-based swap clearing agency participants and their related persons, directly or indirectly vote, cause the voting of, or give any consent or proxy with respect to the voting of, any interest in the security-based swap clearing agency that exceeds 40 percent of the voting power of any class of securities or other ownership interest of such security-based swap clearing agency.

(2) *Divestiture.* (i) The rules of the security-based swap clearing agency must provide an effective mechanism to divest any participant of any voting interest owned in excess of the limitation in paragraph (a)(1) of this section.

(ii) The rules of the security-based swap clearing agency must be reasonably designed not to give effect to the portion of any voting interest held by one or more participants in excess of the limitations in paragraph (a)(1) of this section.

(iii) The rules of the security-based swap clearing agency must provide an effective mechanism for it to obtain information relating to voting interests in the security-based swap clearing agency by any participant in the security-based swap clearing agency and its related persons.

(3) *Board.* (i) The Board of each security-based swap clearing agency must be composed of at least 35 percent independent directors.

(ii) No director may qualify as an independent director unless the Board affirmatively determines that the director does not have a material relationship with the security-based swap clearing agency or any affiliate of the security-based swap clearing agency, or a participant in the security-based swap clearing agency, or any affiliate of a participant in the security-based swap clearing agency.

(iii) The security-based swap clearing agency must establish policies and procedures to require each director, on his or her own initiative or upon request of the security-based swap clearing agency, to inform the security-based swap clearing agency of the existence of any relationship or interest that may reasonably be considered to bear on whether such director is an independent director.

(4) *Nominating committee.* (i) A Board of any security-based swap clearing agency shall establish a nominating committee composed of a majority of independent directors.

(ii) The nominating committee of any security-based swap clearing agency must identify individuals qualified to become Board members through a consultative process with the participants of the security-based swap clearing agency consistent with criteria approved by the Board and consistent with the provisions of this section, and administer a process for the nomination of individuals to the Board.

(5) *Other committees of the Board.* A security-based swap clearing agency may establish such other committees of the Board, including a risk committee, as it deems appropriate. However, if such committee has the authority to act on behalf of the Board, the committee must be composed of at least 35 percent independent directors.

(6) *Disciplinary panels.* The disciplinary processes of a security-based swap clearing agency shall preclude any group or class of persons that is a participant from dominating or exercising disproportionate influence on the disciplinary process. Any disciplinary panel of a security-based swap clearing agency shall also include at least one person who would qualify as an independent director. If the security-based swap clearing agency provides for a process of an appeal to the Board, or to a committee of the Board, then that appellate body also shall include at least one person who would qualify as an independent director.

(b)(1) *Limits on voting interests.* A security-based swap clearing agency shall not permit any security-based swap clearing agency participant, either alone or together with its related persons, to:

(i) Beneficially own, directly or indirectly, any interest in the security-based swap execution facility that exceeds 5 percent of any class of securities, or other ownership interest, entitled to vote of such security-based swap clearing agency; or

(ii) Directly or indirectly vote, cause the voting of, or give any consent or proxy with respect to the voting of, any interest in the security-based swap clearing agency that exceeds 5 percent of the voting power of any class of securities or other ownership interest of such security-based swap clearing agency.

(2) *Divestiture.* (i) The rules of the security-based swap clearing agency must provide an effective mechanism to divest any participant of any voting interest owned in excess of the limitation in paragraph (b)(1) of this section.

(ii) The rules of the security-based swap clearing agency must be reasonably designed not to give effect to the portion of any voting interest held by one or more participants in excess of the limitations in paragraph (b)(1) of this section.

(iii) The rules of the security-based swap clearing agency must provide an effective mechanism for it to obtain information relating to voting interests

in the security-based swap clearing agency or its holding company by any participant in the security-based swap clearing agency.

(3) *Board.* (i) The Board of each security-based swap clearing agency must be composed of a majority of independent directors.

(ii) No director may qualify as an independent director unless the Board affirmatively determines that the director does not have a material relationship with the security-based swap clearing agency or any affiliate of the security-based swap clearing agency, or a participant in the security-based swap clearing agency, or any affiliate of a participant in the security-based swap clearing agency.

(iii) The security-based swap clearing agency must establish policies and procedures to require each director, on his or her own initiative or upon request of the security-based swap clearing agency, to inform the security-based swap clearing agency of the existence of any relationship or interest that may reasonably be considered to bear on whether such director is an independent director.

(4) *Nominating committee.* (i) A Board of any security-based swap clearing agency shall establish a nominating committee composed solely of independent directors.

(ii) The nominating committee of any security-based swap clearing agency must identify individuals qualified to become Board members through a consultative process with the participants of the security-based swap clearing agency consistent with criteria approved by the Board and consistent with the provisions of this section, and administer a process for the nomination of individuals to the Board.

(5) *Other committees of the Board.* A security-based swap clearing agency may establish such other committees of the Board, including a risk committee, as it deems appropriate. However, if such committee has the authority to act on behalf of the Board, the committee must be composed of a majority of independent directors.

(6) *Disciplinary panels.* The disciplinary processes of a security-based swap clearing agency shall preclude any group or class of persons that is a participant from dominating or exercising disproportionate influence on the disciplinary process. Any disciplinary panel of a security-based swap clearing agency shall also include at least one person who would qualify as an independent director. If the security-based swap clearing agency provides for a process of an appeal to the Board, or to a committee of the Board, then that appellate body also shall include at least one person who would qualify as an independent director.

§ 242.702 Mitigation of conflicts of interest of security-based swap execution facilities and national securities exchanges that post or make available for trading security-based swaps.

(a) *General.* Each security-based swap execution facility and national securities exchange or facility thereof that posts or makes available for trading security-based swaps must comply with the provisions of this section and must have the capacity to carry out the purposes of this section.

(b) *Limits on ownership and voting.* (1) A security-based swap execution facility shall not permit any security-based swap execution facility participant, either alone or together with its related persons, to:

(i) Beneficially own, directly or indirectly, any interest in the security-based swap execution facility that exceeds 20 percent of any class of securities, or other ownership interest, entitled to vote of such security-based swap execution facility; or

(ii) Directly or indirectly vote, cause the voting of, or give any consent or proxy with respect to the voting of, any interest in the security-based swap execution facility that exceeds 20 percent of the voting power of any class of securities or other ownership interest of such security-based swap execution facility.

(2) A national securities exchange or facility thereof that posts or makes available for trading security-based swaps shall not permit any member, either alone or together with its related persons, to:

(i) Beneficially own, directly or indirectly, any interest in the national securities exchange or facility thereof that posts or makes available for trading security-based swaps that exceeds 20 percent of any class of securities, or other ownership interest, entitled to vote of such national securities exchange or facility thereof that posts or makes available for trading security-based swaps; or

(ii) Directly or indirectly vote, cause the voting of, or give any consent or proxy with respect to the voting of, any interest in the national securities exchange or facility thereof that posts or makes available for trading security-based swaps that exceeds 20 percent of the voting power of any class of securities or other ownership interest of such national securities exchange or facility thereof that posts or makes available for trading security-based swaps.

(c) *Divestiture.* (1) The rules of a security-based swap execution facility or national securities exchange or facility thereof that posts or makes available for trading security-based swaps must provide an effective mechanism to divest any security-based swap execution facility participant or member, as applicable, of any interest owned in excess of the ownership limitations in paragraphs (b)(1)(i) and (2)(i) of this section.

(2) The rules of a security-based swap execution facility or national securities exchange or facility thereof that posts or makes available for trading security-based swaps must be reasonably designed not to give effect to the portion of any voting interest held by one or more security-based swap execution facility participant or member, as applicable, in excess of the limitations in paragraphs (b)(1)(ii) and (b)(2)(ii) of this section.

(3) The rules of a security-based swap execution facility or national securities exchange or facility thereof that posts or makes available for trading security-based swaps must provide an effective mechanism for it to obtain information relating to ownership and voting interests in the security-based swap execution facility or national securities exchange or facility thereof that posts or makes available for trading security-based swaps by any security-based swap execution facility participant or member, as applicable.

(d) *Board.* (1) The Board of any security-based swap execution facility or national securities exchange or facility thereof that posts or makes available for trading security-based swaps must be composed of a majority of independent directors.

(2) No director may qualify as an independent director of a security-based swap execution facility unless the Board affirmatively determines that the director does not have a material relationship with the security-based swap execution facility, any affiliate of the security-based swap execution facility, a security-based swap execution facility participant, or any affiliate of a security-based swap execution facility participant.

(3) No director may qualify as an independent director of a national securities exchange or facility thereof that posts or makes available for trading security-based swaps unless the Board affirmatively determines that the director does not have a material relationship with the national securities exchange or facility thereof, any affiliate of the national securities exchange or

facility thereof, a member of the national securities exchange, or any affiliate of such member.

(e) *Regulatory oversight committee.* (1) A Board of any security-based swap execution facility or national securities exchange that posts or makes available for trading security-based swaps shall establish a regulatory oversight committee, composed solely of independent directors, to assist it in minimizing actual and potential conflicts of interest. The regulatory oversight committee shall oversee the security-based swap execution facility's obligations under section 3D of the Exchange Act or the national securities exchange's obligation under section 6 of the Exchange Act (15 U.S.C. 78f), as applicable, on behalf of the Board. The Board shall delegate sufficient authority, dedicate sufficient resources, and allow sufficient time for the regulatory oversight committee to fulfill its mandate.

(2) The Board shall promptly report to the Commission any recommendations of the Regulatory Oversight Committee that the Board does not adopt or implement.

(f) *Nominating committee.* (1) The nominating committee of a security-based swap execution facility or national securities exchange or facility thereof that posts or makes available for trading security-based swaps must be composed solely of independent directors.

(2) The nominating committee of a security-based swap execution facility or national securities exchange or facility thereof that posts or makes available for trading security-based swaps must identify individuals qualified to become directors, consistent with criteria approved by the Board and consistent with the provisions of this section, and administer a process for the nomination of individuals to the Board.

(g) *Other committees of the Board.* A security-based swap execution facility or national securities exchange or facility thereof that posts or makes available for trading security-based swaps may establish such other committees of the Board, including an executive committee, as it deems appropriate. However, if such committee has the authority to act on behalf of the Board, the committee must be composed of a majority of independent directors.

(h) *Disciplinary panels.* The disciplinary processes of a security-based swap execution facility or national securities exchange that posts or makes available for trading security-based swaps shall preclude any group or class of security-based swap execution facility participants or group or class of members of the national securities exchange that posts or makes available for trading security-based swaps, as applicable, from dominating or exercising disproportionate influence on the disciplinary process. Any disciplinary panel of a security-based swap execution facility or national securities exchange that posts or makes available for trading security-based swaps shall also include at least one person who would qualify as an independent director. If the security-based swap execution facility or national securities exchange that posts or makes available for trading security-based swaps provides for a process of an appeal to the Board, or to a committee of the Board, then that appellate body also shall include at least one person who would qualify as an independent director.

Dated: October 14, 2010.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–26315 Filed 10–25–10; 8:45 am]

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Federal Register

Tuesday,
October 26, 2010

Part V

The President

Notice of October 22, 2010—Continuation of the National Emergency With Respect to the Situation in or in Relation to the Democratic Republic of the Congo

Federal Register
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Presidential Documents

Title 3—

The President

Notice of October 22, 2010

Continuation of the National Emergency With Respect to the Situation in or in Relation to the Democratic Republic of the Congo

On October 27, 2006, by Executive Order 13413, the President declared a national emergency with respect to the situation in or in relation to the Democratic Republic of the Congo and, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), ordered related measures blocking the property of certain persons contributing to the conflict in that country. The President took this action to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the situation in or in relation to the Democratic Republic of the Congo, which has been marked by widespread violence and atrocities that continue to threaten regional stability.

Because this situation continues to pose an unusual and extraordinary threat to the foreign policy of the United States, the national emergency declared on October 27, 2006, and the measures adopted on that date to deal with that emergency, must continue in effect beyond October 27, 2010. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13413.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
October 22, 2010.

[FR Doc. 2010–27246
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