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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, January 25, 2011
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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Thursday, December 16, 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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2008–0083]

Gypsy Moth Generally Infested Areas; Illinois, Indiana, Maine, Ohio, and Virginia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with several changes, an interim rule that amended the regulations to add areas in Illinois, Indiana, Maine, Ohio, and Virginia to the list of generally infested areas based on the detection of infestations of gypsy moth in those areas. This document corrects errors in the listing of generally infested areas in Maine in the interim rule. The interim rule was necessary to prevent the artificial spread of the gypsy moth to noninfested areas of the United States.

DATES: *Effective Date:* December 16, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Julie S. Spaulding, Forest Pest Programs Manager, Emergency and Domestic Programs, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737; (301) 734–5332.

SUPPLEMENTARY INFORMATION:

Background

The gypsy moth (*Lymantria dispar*) is a destructive pest of forest and shade trees. The gypsy moth regulations (contained in 7 CFR 301.45 through 301.45–12 and referred to below as the regulations) restrict the interstate movement of regulated articles from generally infested areas to prevent the artificial spread of the gypsy moth.

In accordance with § 301.45–2 of the regulations, generally infested areas are, with certain exceptions, those States or portions of States in which a gypsy moth general infestation has been found by an inspector, or each portion of a State that the Administrator deems necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. Less than an entire State will be designated as a generally infested area only if: (1) The State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of such articles; and (2) the designation of less than the entire State as a generally infested area will be adequate to prevent the artificial interstate spread of infestations of the gypsy moth. Section 301.45–3 of the regulations lists generally infested areas.

In an interim rule [1] effective and published in the **Federal Register** on September 21, 2009 (74 FR 48001–48002, Docket No. APHIS–2008–0083), we amended § 301.45–3(a) by adding 3 counties in Illinois, 1 county in Indiana, 32 townships in Maine, 1 county in Ohio, and 1 county in Virginia to the list of generally infested areas. We took that action because, in cooperation with the States of Illinois, Indiana, Maine, Ohio, and Virginia, the United States Department of Agriculture conducted surveys that detected multiple life stages of the gypsy moth in Cook, Du Page, and McHenry Counties, IL; St. Joseph County, IN; several townships in Aroostook, Franklin, Penobscot, Piscataquis, and Somerset Counties, ME; Morrow County, OH; and Montgomery County, VA.

Comments on the interim rule were required to be received on or before November 20, 2009. We did not receive any comments.

However, a drafting error in the amendatory instructions in the interim rule caused the areas previously designated as generally infested in the five counties in Maine to be removed from § 301.45–3. We are correcting this error in this final rule and adding the areas back into the listing of generally infested areas in Maine. In addition, there were several typographical errors in the listing of the townships. The complete list of generally infested areas in Aroostook, Franklin, Penobscot, Piscataquis, and Somerset Counties, ME, can be found in the regulatory text at the end of this document.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the changes discussed in this document.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action the Office of Management and Budget has waived its review under Executive Order 12866.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register.** The interim rule adopted as final by this rule became effective on September 21, 2009. This rule corrects the descriptions of generally infested areas in Maine that were incorrectly set out in the interim rule. Immediate action is necessary to correct those errors in order to prevent the artificial spread of gypsy moth to noninfested areas of the United States. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, the interim rule amending 7 CFR part 301 that was published at 74 FR 48001–48002 on September 21, 2009, is adopted as a final rule with the following changes:

PART 301—DOMESTIC QUARANTINE NOTICES

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

[1] To view the interim rule and its supporting economic analysis, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2008–0083.*

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.45–3, paragraph (a), under the heading Maine, the entries for Aroostook County, Franklin County, Penobscot County, Piscataquis County, and Somerset County are revised to read as follows:

§ 301.45–3 Generally infested areas.

(a) * * *

Maine

* * * * *

Aroostook County. The townships of Amity, Bancroft, Benedicta, Cary Plantation, Crystal, Dyer Brook, Forkstown, Glenwood Plantation, Haynesville, Hodgdon, Houlton, Island Falls, Linneus, Macwahoc Plantation, Molunkus, New Limerick, North Yarmouth Academy Grant, Oakfield, Orient, Reed Plantation, Sherman, Silver Ridge, Upper Molunkus, Weston, T1 R5 WELS, T2 R4 WELS, T3 R3 WELS, T4 R3 WELS, and TA R2 WELS.

* * * * *

Franklin County. The townships of Avon, Carthage, Chesterville, Coplin Plantation, Crockertown, Dallas Plantation, Davis, Farmington, Freeman, Industry, Jay, Jerusalem, Kingfield, Lang, Madrid, Mount Abraham, New Sharon, New Vineyard, Perkins, Phillips, Rangeley, Rangeley Plantation, Redington, Salem, Sandy River Plantation, Strong, Temple, Washington, Weld, Wilton, Wyman, Township 6 north of Weld, Township D and Township E; and the Eustis area.

* * * * *

Penobscot County. The townships of Alton, Argyle, Bangor City, Bradford, Bradley, Brewer City, Burlington, Carmel, Carroll Plantation, Charleston, Chester, Clifton, Corinna, Corinth, Dexter, Dixmont, Drew Plantation, E. Millinocket, Eddington, Edinburg, Enfield, Etna, Exeter, Garland, Glenburn, Grand Falls Plantation, Greenbush, Greenfield, Grindstone, Hampden, Hermon, Hersey Town, Holden, Hopkins Academy Grant, Howland, Hudson, Indian Purchase, Kenduskeag, Kingman, Lagrange, Lakeville, Lee, Levant, Lincoln, Long A, Lowell, Mattamiscontis, Mattawamkeag, Maxfield, Medway, Milford, Millinocket, Newburgh, Newport, Old Town City, Orono, Orrington, Passadumkeag, Plymouth, Prentiss Plantation, Seboesis Plantation, Soldiertown, Springfield, Stacyville, Stetson, Summit, Veazie, Webster Plantation, Winn, Woodville, T1 ND, T1 R6 WELS, T1 R8 WELS, T2 R8 NWP, T2 R8 WELS, T2 R9 NWP, T3 R1 NBPP, T3 R9 NWP, T5 R1 NBPP, TA R7, TA R8, and TA R9; and the Patten area.

Piscataquis County. The townships of Abbot, Atkinson, Barnard, Blanchard Plantation, Bowerbank, Brownville, Dover-Foxcroft, Elliotsville, Greenville, Guilford, Katahdin Iron Works, Kingsbury Plantation, Lakeview Plantation, Medford, Milo, Monson, Orneville, Parkman, Sangerville, Sebec, Shirley, Veazie Gore, Williamsburg, Willimantic, Willington, T1 R9 WELS, T2 R9 WELS, T4 R9 NWP, T5 R9 NWP, T1 R10 WELS, T1 R11 WELS, T7 R9 NWP, TA R10 WELS, TA R11 WELS, TB R10 WELS, TB R11 WELS, and T2 R10 WELS.

* * * * *

Somerset County. The townships of Anson, Athens, Bald Mountain, Bingham, Bowtown, Brighton Plantation, Cambridge, Canaan, Caratunk, Carrying Place, Carrying Place Town, Concord Plantation, Cornville, Dead River, Detroit, East Moxie, Embden, Fairfield, Harmony, Hartland, Highland Plantation, Lexington Plantation, Madison, Mayfield, Mercer, Moscow, Moxie Gore, New Portland, Norridgewock, Palmyra, Pittsfield, Pleasant Ridge Plantation, Ripley, Skowhegan, Smithfield, Solon, St. Albans, Starks, The Forks Plantation, and West Forks Plantation.

* * * * *

Done in Washington, DC, this 9th day of December 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–31460 Filed 12–15–10; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27042; Directorate Identifier 2006–NM–225–AD; Amendment 39–16531; AD 2010–24–12]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 777–200, –300, and –300ER Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Model 777–200, –300, and –300ER series airplanes. This AD requires installing Teflon sleeving under the clamps of certain wire bundles routed along the fuel tank boundary structure, and cap sealing certain penetrating fasteners of the main and center fuel tanks. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent electrical arcing on the fuel tank boundary structure or inside the fuel tanks, which could result in a fire or explosion.

DATES: This AD is effective January 20, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 20, 2011.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6500; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Model 777–200, –300, and –300ER series airplanes. That supplemental NPRM was published in the **Federal Register** on June 18, 2010 (75 FR 34663). The original NPRM (72 FR 3956, January 29, 2007) proposed to require installing Teflon sleeving under

the clamps of certain wire bundles routed along the fuel tank boundary structure, and cap sealing certain penetrating fasteners of the main and center fuel tanks. The supplemental NPRM proposed to revise the original NPRM by adding airplanes and adding and removing certain requirements.

Comments

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

Support for Supplemental NPRM

Boeing concurred with the content of the supplemental NPRM. American Airlines has a program in place to address the actions in the proposed rule and had no objection to the supplemental NPRM.

Request To Extend Compliance Time

Air Transport Association (ATA), on behalf of its member Delta Air Lines Inc. (Delta), asked that the 60-month compliance time in the supplemental NPRM be extended to better align with industry standard tank entry intervals. Delta stated that the required modifications will require entry into the main and center fuel tanks, and Delta opens those fuel tanks at 8- and 4-year intervals, respectively. Delta added that the compliance time of 60 months to accomplish the corrective action will be acceptable for work in the center fuel tank but will force main tank entry earlier than normally scheduled.

We do not agree to extend the compliance time. In developing an appropriate compliance time for this action, we considered the urgency associated with the subject unsafe condition and the practical aspect of accomplishing the required modification within a period of time that corresponds to the normal scheduled maintenance for most affected operators. In consideration of these items, in addition to the unsafe condition being electrical arcing in the fuel tank, we have determined that a 60-month interval will ensure an acceptable level of safety. However, according to the provisions of paragraph (j)(1) of this AD, we may approve requests to adjust the compliance time if the request includes data proving that the requested compliance time would provide an acceptable level of safety. We have not changed the AD in this regard.

Request To Include Revision 3 of the Referenced Service Bulletin

Continental Airlines (CAL) asked that the supplemental NPRM be changed to include Revision 3 of Boeing Service Bulletin 777–57A0050, instead of Revision 2, dated May 14, 2009 (referred to for the applicability and for accomplishing certain actions in the supplemental NPRM). CAL stated that including Revision 3 may be necessary to avoid the alternative methods of compliance approval process because technical errors still exist in Revision 2 of Boeing Service Bulletin 777–57A0050.

We do not agree to include Revision 3 of the referenced service bulletin in this AD, since Revision 3 of Boeing Service Bulletin 777–57A0050 has not yet been issued. Since Revision 2 of Boeing Service Bulletin 777–57A0050 is expected to be revised after issuance of this AD to correct the discrepancies, we might consider approving the revised service bulletin as an alternative method of compliance (AMOC), according to the provisions of paragraph (j)(1) of this AD. We have not changed the AD in this regard.

Clarify Instructions for Continued Airworthiness (ICA)

CAL stated that proper ICA must be provided in order to prevent inadvertent reversal of implemented changes that can lead to violation requirements in the final rule. CAL added that it requested a copy of the ICA from Boeing to review and better understand the approach being taken to support the Special Federal Aviation Regulation No. 88 ("SFAR 88") program; however, the ICA has not been received yet.

We acknowledge the commenter's concern. However, no new ICAs have been developed for the design change required by this AD. Operators and owners are responsible for ensuring that the configuration mandated by this AD is maintained in accordance with section 39.7 of the Federal Aviation Regulations (14 CFR 39.7).

If any new airworthiness limitations (AWLs) related to any of the design features mandated by this AD are developed, we may consider additional rulemaking to mandate incorporations of those AWLs into operators' maintenance programs. We have not changed the AD in regard to this issue.

The FAA is working with industry to evaluate potential changes to the AD process that are intended to more clearly identify how to maintain configurations that are required for AD compliance.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are 694 airplanes of the affected design in the worldwide fleet. This AD affects about 129 airplanes of U.S. registry. We estimate that it will take between 278 and 358 work-hours per product to comply with the basic requirements of this AD. Required parts cost about $2,241 per product. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of these actions to the U.S. operators to be between $3,337,359 and $4,214,559, or $25,871 and $32,671 per product, depending on airplane configuration.

Currently, there are no affected Group 3 airplanes on the U.S. Register. However, if a Group 3 airplane is imported and placed on the U.S. Register in the future, the required actions will take about 480 work hours, at an average labor rate of $85 per work hour. Required parts cost about $2,241 per product. Based on these figures, we estimate the cost of this AD for Group 3 airplanes to be $43,041 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–24–12 The Boeing Company: Amendment 39–16531. Docket No. FAA–2007–27042; Directorate Identifier 2006–NM–225–AD.

Effective Date

(a) This airworthiness directive (AD) is effective January 20, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company airplanes, certificated in any category, as identified in the applicable service information specified in Table 1 of this AD.

TABLE 1—SERVICE INFORMATION

For Model—	Boeing—
777–200, –300, and –300ER airplanes.	Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009.
777–200 and –300 airplanes.	Alert Service Bulletin 777–57A0051, dated May 15, 2006.
777–200, –300, and –300ER airplanes.	Alert Service Bulletin 777–57A0057, Revision 1, dated August 2, 2007.
777–200, –300, and –300ER airplanes.	Alert Service Bulletin 777–57A0059, dated October 30, 2008.

Note 1: Although Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009, refers to "Model 777–200ER" airplanes, this is a European designation that does not apply to airplanes of U.S. registry. Therefore, the applicability of this AD will not specify Model 777–200ER airplanes. However, U.S. operators should consider any reference to Model 777–200ER airplanes in Boeing Service Bulletin 777–57A0050, Revision 2, as applicable to Model 777–200 airplanes as designated by the type certificate data sheet.

Subject

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

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer. The Federal Aviation Administration is issuing this AD to prevent electrical arcing on the fuel tank boundary structure or inside the main and center fuel tanks, which could result in a fire or explosion.

Compliance

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

Corrective Actions (Installing Teflon Sleeving, Cap Sealing, One-Time Inspection)

(g) Within 60 months after the effective date of this AD, do the applicable actions specified in paragraph (g)(1), (g)(2), (g)(3), or (g)(4) of this AD.

(1) For airplanes identified in Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009: Install Teflon sleeving under the clamps of certain wire bundles routed along the fuel tank boundary structure and cap seal certain penetrating fasteners of the fuel tanks, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009.

(2) For airplanes identified in Boeing Alert Service Bulletin 777–57A0051, dated May 15, 2006: Cap seal certain penetrating fasteners of the fuel tanks, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0051, dated May 15, 2006.

(3) For airplanes identified in Boeing Alert Service Bulletin 777–57A0057, Revision 1, dated August 2, 2007: Do a general visual inspection to determine if certain fasteners are cap sealed and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0057, Revision 1, dated August 2, 2007. Do all applicable corrective actions before further flight.

(4) For airplanes identified in Boeing Alert Service Bulletin 777–57A0059, dated October 30, 2008: Cap seal the fasteners in the center fuel tanks that were not sealed during production, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0059, dated October 30, 2008.

Credit for Actions Done Using Previous Issues of the Service Bulletins

(h) Actions done before the effective date of this AD in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0050, dated January 26, 2006; or Revision 1, dated August 2, 2007; are acceptable for compliance with the corresponding actions required by paragraph (g)(1) of this AD, provided that the applicable additional work specified in Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009, is done within the compliance time specified in paragraph (g) of this AD. The additional work must be done in accordance with Boeing Service Bulletin 777–57A0050, Revision 2, dated May 14, 2009.

(i) Actions done before the effective date of this AD in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0057, dated August 7, 2006, are acceptable for compliance with the actions required by paragraph (g)(3) of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6500; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

Material Incorporated by Reference

(k) You must use the applicable service information contained in Table 2 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 2—MATERIAL INCORPORATED BY REFERENCE

Document—	Revision—	Date—
Boeing Alert Service Bulletin 777–57A0051	Original	May 15, 2006
Boeing Alert Service Bulletin 777–57A0057	1	August 2, 2007
Boeing Alert Service Bulletin 777-57A0059	Original	October 30, 2008
Boeing Service Bulletin 777–57A0050	2	May 14, 2009

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

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

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

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

Issued in Renton, Washington, on November 18, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–30606 Filed 12–15–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1098; Directorate Identifier 2008–NM–108–AD; Amendment 39–16532; AD 2010–24–13]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires adding two new indicator lights on a certain panel to inform the captain and first officer of a low pressure condition in the left and right override/jettison pumps of the center wing tanks. This AD also requires replacing the left and right override/jettison switches on the M154 fuel control module on the P4 panel with improved switches and doing the associated wiring changes. This AD also requires, for certain airplanes, installation of a mounting bracket for the new indicator lights. This AD also requires a revision to the maintenance program to incorporate airworthiness limitation No. 28–AWL–22. This AD also requires a revision to the airplane flight manual to advise the flightcrew what to do in the event that the pump low pressure light on the flight engineer's panel does not illuminate when the pump is selected off. This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent uncommanded operation of the override/jettison pumps of the center wing tanks, and failure to manually shut off the override/jettison pumps at the correct time, either of which could lead to an ignition source inside the center wing tank. This condition, in combination with flammable fuel vapors, could result in a center fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective January 20, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 20, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of June 12, 2008 (73 FR 25977, May 8, 2008).

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Douglas Bryant, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6505; fax (425) 917–6590; *e-mail: douglas.n.bryant@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That supplemental NPRM published in the **Federal Register** on October 1, 2010 (75 FR 60661). That supplemental NPRM proposed to require adding two new indicator lights on the P10 panel to inform the captain and first officer of a low pressure condition in the left and right override/jettison pumps of the center wing tanks. That supplemental NPRM also proposed to require replacing the left and right override/jettison switches on the M154 fuel control module on the P4 panel with improved switches and doing the associated wiring changes. That supplemental NPRM also proposed to require, for certain airplanes, installation of a mounting bracket for the new indicator lights. That supplemental NPRM also proposed to require a revision to the maintenance program to incorporate airworthiness

limitation No. 28–AWL–22. That supplemental NPRM also proposed to require a revision to the airplane flight manual to advise the flightcrew what to do in the event that the pump low pressure light on the flight engineer's panel does not illuminate when the pump is selected off.

Comments

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

Clarification

In our response in the supplemental NPRM to Northwest Airline's Request to Reference Later Revision of Service Bulletin Cited in Original NPRM, we described some of the changes in Boeing Service Bulletin 747–28A2288, Revision 1, dated January 21, 2010. That service bulletin was described as having installation instructions for the LOW PRESS indicator lights for airplanes that did not have the warning panel (*i.e.,* the P10 panel) installed. We also described the changes to paragraph (g) of the Supplemental NPRM. We have revised the Summary and paragraph (g) of this AD to clarify that both groups of airplanes, with or without the warning panel installed, must install the two new indicator lights on certain panels (either the P10 panel, or for those airplanes without the P10 panel installed, the Autopilot Flight Director panel).

Conclusion

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

Costs of Compliance

We estimate that this AD affects 185 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Boeing Service Bulletin 747-28A2288, Revision 1.	Between 30 and 32 work-hours × $85 per hour = Between $2,550 and $2,720.	Between $2,768 and $2,868.	Between $5,318 and $5,588.	Between $983,830 and $1,033,780.
AFM revision	1 work-hour × $85 per hour = $85	None	$85	$15,725

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–24–13 The Boeing Company: Amendment 39–16532; Docket No. FAA–2008–1098; Directorate Identifier 2008–NM–108–AD.

Effective Date

(a) This AD is effective January 20, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes, certificated in any category; as identified in Boeing Service Bulletin 747–28A2288, Revision 1, dated January 21, 2010.

Note 1: This AD requires revisions to certain operator maintenance documents to include a new inspection. Compliance with this inspection is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this inspection, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (l) of this AD. The request should include a description of changes to the required inspection that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer. The Federal Aviation Administration is issuing this AD to prevent uncommanded operation of the override/jettison pumps of the center wing tanks, and failure to manually shut off

the override/jettison pumps at the correct time, either of which could lead to an ignition source inside the center wing tank. This condition, in combination with flammable fuel vapors, could result in a center fuel tank explosion and consequent loss of the airplane.

Compliance

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

Installation of Indicator Lights and Replacement of Switches

(g) Within 36 months after the effective date of this AD: For airplanes with a P10 panel installed, add two new indicator lights on the P10 panel to inform the captain and first officer of a low pressure condition in the left and right override/jettison pumps of the center wing tanks, and, for airplanes that do not have the warning panel (P10 panel) installed, add a mounting bracket and two new indicator lights to the Autopilot Flight Director panel; and replace the left and right override/jettison switches on the M154 fuel control module on the P4 panel with improved switches; and do the associated wiring changes. Accomplish these actions by doing all of the applicable actions specified in the Accomplishment Instructions of Boeing Service Bulletin 747–28A2288, Revision 1, dated January 21, 2010, except where that service bulletin states "20–60–00," the correct sub-section number is "28–60–06," and except as described in Table 1 of this AD.

TABLE 1—PART NUMBER CORRECTION

Part name	Part number specified in Figures 22 through 32 of Boeing Service Bulletin 747-28A2288, Revision 1, dated January 21, 2010	Part name of correct part	Correct part number
Nut	BACN10JC06CD	Nut	BACN10NW1
Bolt	BACS12HN06–10	Screw	BACS12HN04–6
Washer	NAS1149D0632J	Washer	NAS1149DN416J

Note 2: For airplanes equipped with certain M154 fuel control modules, paragraph 2.C.2 of Boeing Service Bulletin 747–28A2288, Revision 1, dated January 21, 2010, refers to the BAE Systems service bulletins identified in Table 2 of this AD, as applicable, as additional sources of guidance for replacing the switches.

TABLE 2—ADDITIONAL SOURCES OF GUIDANCE

Service bulletin	Date
BAE Systems Service Bulletin 65B46124-28-01.	February 16, 2006.
BAE Systems Service Bulletin 65B46124-28-02.	March 28, 2007.
BAE Systems Service Bulletin 65B46124-28-03.	March 28, 2007.
BAE Systems Service Bulletin 65B46214-28-01.	February 16, 2006.
BAE Systems Service Bulletin 65B46214-28-02.	March 28, 2007.
BAE Systems Service Bulletin 65B46214-28-03.	March 28, 2007.

Maintenance Program Revision

(h) Concurrently with accomplishing the actions required by paragraph (g) of this AD, revise the maintenance program by incorporating Airworthiness Limitation (AWL) No. 28–AWL–22 of Section D of the Boeing 747–100/200/300/SP Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–13747–CMR, Revision March 2008. Where the AWL states "28–31–00," the correct section number is "28–42–00."

Airplane Flight Manual (AFM) Revision

(i) Concurrently with accomplishing the actions required by paragraph (g) of this AD, revise Section 1, "Certificate Limitations," of the applicable Boeing 747 AFM to include the following statement. This may be done by inserting a copy of this AD into the AFM. "When the center tank override jettison pumps are selected off, the amber pump low pressure lights on the Flight Engineer's panel should illuminate and remain on. If a pump low pressure light on the Flight Engineer's panel does not illuminate, open the associated pump circuit breaker."

Note 3: When a statement identical to that in paragraph (i) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

No Alternative Inspections or Inspection Intervals

(j) After accomplishing the action specified in paragraph (h) of this AD, no alternative inspections or inspection intervals may be used unless the inspections or inspection intervals are approved as an AMOC in accordance with the procedures specified in paragraph (l) of this AD.

Terminating Action for Maintenance Program Revision

(k) Incorporating AWL No. 28–AWL–22 into the maintenance program in accordance with paragraph (g) of AD 2008–10–07, Amendment 39–15513, or AD 2008–10–07 R1, Amendment 39–16070, terminates the action required by paragraph (h) of this AD.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Douglas Bryant, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6505; fax (425) 917–6590. Information may be e-mailed to: *9–ANM–Seattle-ACO–AMOC–Requests@faa.gov*.

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

Related Information

(m) For more information about this AD, contact Douglas Bryant, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6505; fax (425) 917–6590; *e-mail*: *douglas.n.bryant@faa.gov.*

Material Incorporated by Reference

(n) You must use Boeing Service Bulletin 747–28A2288, Revision 1, dated January 21, 2010; and Boeing 747–100/200/300/SP Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–13747–CMR, Revision March 2008; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference Boeing Service Bulletin 747–28A2288, Revision 1, dated January 21, 2010, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Boeing 747–100/200/300/SP Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–13747–CMR, Revision March 2008, on June 12, 2008 (73 FR 25977, May 8, 2008).

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–

5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet*.com.

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

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

Issued in Renton, Washington, on November 18, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–30612 Filed 12–15–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0430; Directorate Identifier 2008–NM–148–AD; Amendment 39–16540; AD 2010–26–01]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 777–200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Model 777–200 series airplanes. This AD requires installing a new insulation blanket on the latch beam firewall of each thrust reverser (T/R) half. This AD results from an in-flight shutdown due to an engine fire indication; an under-cowl engine fire was extinguished after landing. The cause of the fire was uncontained failure of the starter in the engine core compartment; the fire progressed into the latch beam cavity and was fueled by oil from a damaged integrated drive generator oil line. We are issuing this AD to prevent a fire from entering the cowl or strut area, which could weaken T/R parts and result in reduced structural integrity of the T/R, possible separation of T/R parts during flight, and consequent damage to the airplane and injury to people or damage to property on the ground.

DATES: This AD is effective January 20, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 20, 2011.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6500; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 777–200 series airplanes. That NPRM was published in the **Federal Register** on May 7, 2009 (74 FR 21284). That NPRM proposed to require installing a new insulation blanket on the latch beam firewall of each thrust reverser (T/R) half.

Relevant Service Information

Since we issued the NPRM, we have reviewed Boeing Alert Service Bulletin 777–78A0066, Revision 2, dated April 8, 2010. Boeing Service Bulletin 777–78A0066, Revision 1, dated March 12, 2009, was referred to in the original NPRM as the appropriate source of service information for accomplishing the proposed actions. No more work is necessary for airplanes on which Revision 1 of this service bulletin was used for doing the actions. Boeing Alert Service Bulletin 777–78A0066, Revision 2, dated April 8, 2010, moves certain airplanes to Group 1, and contains minor editorial changes.

We have revised paragraphs (c) and (g) of this AD to refer to Revision 2 of Boeing Alert Service Bulletin 777–78A0066, Revision 2, dated April 8, 2010, and paragraph (h) to add credit for accomplishing the specified actions in accordance with Boeing Service Bulletin 777–78A0066, Revision 1, dated March 12, 2009.

Comments

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

Request To Clarify Description of Unsafe Condition

Boeing asked that we clarify the description of the unsafe condition by removing the words "or strut" from the identified description. Boeing stated that the unsafe condition, as currently written, is not correct. Boeing did not provide the reason that the description is not correct.

We disagree that the description of the unsafe condition should be clarified by removing "or strut" from the description. A fire in the lower latch beam area that burns through an inadequate firewall may propagate into the strut. We have made no change to the AD in this regard.

Request To Clarify Applicability

Japan Airlines International (JALI) asked for clarification of the applicability specified in the NPRM. JALI stated that the applicability specifies Model 777–200 series airplanes identified in Boeing Service Bulletin 777–78A0066, Revision 1, dated March 12, 2009. JALI noted that the service bulletin specifies its effectivity as delivered condition, and the proposed rule is considered to be applicable to each T/R half that has been installed on airplanes with the applicable serial numbers. JALI added that the T/R half is a replaceable line unit and the installed airplane and/or engine position will be changed from the delivered condition in the future; the T/R half that is not necessary for doing the requirements in the NPRM may be installed on an airplane identified in the applicability.

JALI stated that, in light of these factors, it is not clear whether compliance with the specified actions has been met. JALI asked that we clarify the applicability either to note that the NPRM does not apply to airplanes on which a T/R is installed with a design change known as "Commonality T/R," which is common to Model 777–300 series airplanes, or to change the

airplane serial numbers to T/R part numbers or serial numbers.

We do not agree that the effectivity specified in Boeing Service Bulletin 777–78A0066, Revision 1, dated March 12, 2009, could apply to an airplane that has an incorrect T/R configuration because the T/R is a line replaceable unit and is not identified in the effectivity. The manufacturer has informed us that for airplanes not identified in Revision 1 or Revision 2 of this service bulletin, the specified T/R configuration is not an approved configuration. We have determined that it is not possible to install the T/R with the unsafe condition on airplanes that were manufactured after line number 413; therefore, the AD does not apply to those airplanes. We have made no change to the AD in this regard.

Request To Include Part Number and Compliance Status for T/R Halves

JALI asked that we include the applicable part numbers of each T/R half and add a procedure in the NPRM to reidentify the parts as the part numbers change. JALI added that this change to the NPRM would include indicating the service bulletin number or adding a suffix to the serial number on the ID plate for each T/R so operators can easily track the applicable part number and compliance status for each T/R half. JALI noted that there is nothing identified in the service bulletin, and the only way for operators to identify the applicable part number and compliance status of each T/R half is by reviewing the maintenance record. JALI added that this would be burdensome for operators.

We agree that the part numbers of each T/R half should be included in the service information and a procedure should be added to reidentify the parts as the part numbers change. Boeing Alert Service Bulletin 777–78A0066, Revision 2, dated April 8, 2010, includes the part marking provision. As stated previously, we have revised paragraph (c) of this AD (i.e., the AD applicability) to refer to Revision 2 of this service bulletin. Therefore, we have made no further change to the AD in this regard.

Explanation of Changes Made to This AD

We have revised this AD to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Conclusion

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

Explanation of Change to Costs of Compliance

Since issuance of the original NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

We estimate that this AD affects 25 airplanes of U.S. registry. We also estimate that it will take about 7 work-hours per product to comply with this AD. The average labor rate is $85 per work-hour. Required parts will cost between $3,546 and $5,253 per product. Based on these figures, we estimate the cost of this AD to the U.S. operators to be between $103,525 and $146,200, or between $4,141 and $5,848 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–26–01 The Boeing Company: Amendment 39–16540. Docket No. FAA–2009–0430; Directorate Identifier 2008–NM–148–AD.

Effective Date

(a) This airworthiness directive (AD) is effective January 20, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 777–200 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 777–78A0066, Revision 2, dated April 8, 2010.

Unsafe Condition

(d) This AD results from an in-flight shutdown due to an engine fire indication; an under-cowl engine fire was extinguished after landing. The cause of the fire was uncontained failure of the starter in the engine core compartment; the fire progressed into the latch beam cavity and was fueled by oil from a damaged integrated drive generator oil line. We are issuing this AD to prevent a fire from entering the cowl or strut area, which could weaken thrust reverser (T/R) parts and result in reduced structural integrity of the T/R, possible separation of T/R parts during flight, and consequent damage to the airplane and injury to people or damage to property on the ground.

Subject

(e) Air Transport Association (ATA) of America Code 78: Exhaust.

Compliance

(f) Comply with this AD within the compliance times specified, unless already done.

Installation of Insulation Blanket

(g) Within 60 months or 4,500 flight cycles after the effective date of this AD, whichever is first: Install a new insulation blanket on the latch beam firewall of each T/R half by doing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 777–78A0066, Revision 2, dated April 8, 2010.

Credit for Actions Accomplished in Accordance With Previous Service Information

(h) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 777–78A0066, dated June 5, 2008; or Boeing Service Bulletin 777–78A0066, Revision 1, dated March 12, 2009; are acceptable for compliance with the corresponding requirements of paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6500; fax (425) 917–6590. Or, e-mail information to *9–ANM–Seattle-ACO–AMOC–Requests@faa.gov.*

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

Material Incorporated by Reference

(j) You must use Boeing Alert Service Bulletin 777–78A0066, Revision 2, dated April 8, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

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

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

Issued in Renton, Washington, on December 3, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–31384 Filed 12–15–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1242; Directorate Identifier 2010–CE–062–AD; Amendment 39–16542; AD 2010–26–03]

RIN 2120–AA64

Airworthiness Directives; Hawker Beechcraft Corporation Models B200, B200GT, B300, and B300C Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the products listed above. That AD currently requires fabricating and installing a placard incorporating information that limits operation when there is known or forecast icing and requires replacing a section of the pneumatic supply tube for the tail deice system with a new tube of a different material. This AD requires fabricating and installing a placard incorporating information that limits operation when there is known or forecast icing and requires replacing the entire length of the pneumatic supply tube for the tail deice system with a new tube of a different material. This AD was prompted by reports of two failures of the pneumatic supply tube for the tail deice system outside the area covered by AD 2008–07–10. We are issuing this AD to prevent collapsed pneumatic supply tubes, which could result in failure of the tail deice boots to operate. This failure could lead to loss of control in icing conditions.

DATES: This AD is effective December 20, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 20, 2010.

We must receive any comments on this AD by January 31, 2011.

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

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

For service information identified in this AD, contact Hawker Beechcraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140; Internet: *www.hawkerbeechcraft.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust St., Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Don Ristow, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4120; fax: (316) 946–4107; e-mail: *donald.ristow@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On March 27, 2008, we issued AD 2008–07–10, Amendment 39–15451 (73 FR 18706, April 7, 2008), for certain Hawker Beechcraft Corporation Models B200, B200GT, B300, and B300C airplanes. That AD requires fabricating and installing a placard incorporating

information that limits operation when there is known or forecast icing and requires replacing a section of the pneumatic supply tube for the tail deice system with a new tube of a different material. That AD resulted from reports of collapsed tail deice boot pneumatic supply tubes. We issued that AD to prevent collapsed pneumatic supply tubes, which could result in failure of the tail deice boots to operate. This failure could lead to loss of control in icing conditions.

Actions Since AD Was Issued

Since we issued AD 2008–07–10, we received reports of two failures of the pneumatic supply tube for the tail deice system outside the area covered by AD 2008–07–10 on an affected Model B300 airplane and on an affected Model B300C airplane.

Relevant Service Information

We reviewed Hawker Beechcraft Mandatory Service Bulletin SB 30–3889, Rev. 1, dated October 2010. The service information describes procedures for replacing the entire length of the pneumatic supply tube for the tail deice system with a new tube of a different material.

FAA's Determination

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

AD Requirements

This AD requires accomplishing the actions specified in the service information described previously.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because this condition could result in failure of the tail deice boots to operate. This failure could lead to loss of control in icing conditions. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2010–1242 and directorate identifier 2010–CE–062–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD affects 90 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor Cost	Parts cost	Cost per product	Cost on U.S. operators
Fabricate placard (retained action from AD 2008–07–10).	1 work-hour × $85 per hour = $85.	Not applicable	$85	$7,650
Replace entire length of the pneumatic supply tube for the tail de-ice system.	15 work-hours × $85 per hour = $1,275.	$100	$1,375	$123,750

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2008–07–10, Amendment 39–15451 (73 FR 18706, April 7, 2008) and adding the following new AD:

2010–26–03 Hawker Beechcraft Corporation: Amendment 39–16542; Docket No. FAA–2010–1242; Directorate Identifier 2010–CE–062–AD.

Effective Date

(a) This AD is effective December 20, 2010.

Affected ADs

(b) This supersedes AD 2008–07–10; Amendment 39–15451.

Applicability

(c) This AD applies to the following Hawker Beechcraft Corporation airplanes that are certificated in any category:

TABLE 1—AFFECTED AIRPLANE MODELS AND SERIAL NUMBERS

Model	Serial numbers
B200	BB–1926, BB–1978, and BB–1988 through BB–2000.
B200GT	BY–1 through BY–26.
B300	FL–427, FL–493, and FL–500 through FL–573.
B300C (C–12W)	FM–14 through FM–18.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 30, Ice and Rain Protection.

Unsafe Condition

(e) This AD was prompted by reports of failures of the pneumatic supply tube for the tail deice system outside the area covered by AD 2008–07–10. We are issuing this AD to prevent collapsed pneumatic supply tubes, which could result in failure of the tail deice boots to operate. This failure could lead to loss of control in icing conditions.

Compliance

(f) Comply with this AD within the compliance times specified, unless already done.

TABLE 2—REQUIREMENTS OF THIS AD

Actions	Compliance	Procedures
(1) Fabricate a placard (using at least 1/8-inch letters) with the following words and install the placard on the instrument panel within the pilot's clear view: "THIS AIRPLANE IS PROHIBITED FROM FLIGHT IN KNOWN OR FORECAST ICING."	Before further flight in known or forecast icing conditions or within the next 3 days after December 20, 2010 (the effective of this AD), whichever occurs first.	Not applicable.
(2) *For Model B200 and Model B200GT airplanes:* Replace the pneumatic supply tubing from the rear spar at Fuselage Station (FS) 227.00 to the aft pressure bulkhead at FS 347.750 with Hytrel tubing part number (P/N) 131823VH10D–1210; and for *Model B300 and Model B300C airplanes:* Replace pneumatic supply tubing from the rear spar at FS 241.40 to the aft pressure bulkhead at FS 381.750 with Hytrel tubing P/N 131823VH10D–1406. The replacement of tail deice boot pneumatic supply tubes required by paragraph (f)(2) of this AD is terminating action for the placard required by paragraph (f)(1) of this AD.	Before further flight in known or forecast icing conditions, within 25 hours time-in-service (TIS) after December 20, 2010 (the effective date of this AD), or within 3 months after December 20, 2010 (the effective date of this AD), whichever occurs first.	Follow the Accomplishment Instructions in Hawker Beechcraft Mandatory Service Bulletin SB 30–3889, Rev 1, dated October 2010.
(3) Remove the placard required by paragraph (f)(1) of this AD.	Before further flight after the replacement of tail deice boot pneumatic supply tubes required by paragraph (f)(2) of this AD.	Not applicable.

Credit for Actions Accomplished in Accordance With Previous Service Information

(g) If Hawker Beechcraft Mandatory Service Bulletin SB 30–3889, Issued: March 2008, has already been complied with, you may splice new Hytrel tubing on the existing Hytrel tubing in the aft evaporator bay area before further flight in known or forecast icing conditions, within 25 hours TIS after December 20, 2010 (the effective date of this AD), or within 3 months after December 20, 2010 (the effective date of this AD), whichever occurs first.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your Principal Maintenance Inspector or Principal Avionics Inspector, as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

Related Information

(i) For more information about this AD, contact Don Ristow, Aerospace Engineer, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4120; fax: (316) 946–4107; email: *donald.ristow@faa.gov.*

Material Incorporated by Reference

(j) You must use Hawker Beechcraft Mandatory Service Bulletin SB 30–3889, Rev. 1, dated October 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Hawker Beechcraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140; Internet: *http://www.hawkerbeechcraft.com.*

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

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

Issued in Kansas City, Missouri, on December 9, 2010.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–31438 Filed 12–15–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1021; Directorate Identifier 2010–CE–053–AD; Amendment 39–16541; AD 2010–26–02]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Limited Model FU24–954 and FU24A–954 Airplanes

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

ACTION: Final rule.

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

To prevent possible in-flight failure of the vertical stabiliser, leading to loss of control of the aircraft * * *

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

DATES: This AD becomes effective January 20, 2011.

On January 20, 2011, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

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

For service information identified in this AD, contact Pacific Aerospace Limited, Hamilton Airport, Private Bag HN3027, Hamilton, New Zealand; *telephone:* +(64) 7–843–6144; fax +(64) 7–843–6134; *e-mail: pacific@aerospace.co.nz.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 13, 2010 (75 FR 62716), and proposed to supersede AD 2004–03–29, Amendment 39–13473 (69 FR 6553; February 11, 2004) and AD 2008–14–12, Amendment 39–15607 (73 FR 40951; July 17, 2008). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

To prevent possible in-flight failure of the vertical stabiliser, leading to loss of control of the aircraft * * *

Replace the vertical stabiliser with P/N 08–32005–2 by accomplishing modification PAC/FU/0345 in accordance with the instructions in Pacific Aerospace Limited Mandatory SB No. PACSB/FU/094 issue 1 dated 14 August 2008 * * *

The MCAI requires replacement of the vertical stabilizer with a new design that incorporates a forward spar and is a failsafe structure. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 3 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $255 or $85 per product.

In addition, we estimate that it would take about 10.5 work-hours and require parts costing $14,375 to comply with the replacement requirements of this proposed AD.

Based on these figures, we estimate the replacement cost of this AD to the U.S. operators to be $45,802.50, or $15,267.50 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendments 39–13473 (69 FR 6553; February 11, 2004) and 39–15607 (73 FR 40951; July 17, 2008), and adding the following new AD:

2010–26–02 Pacific Aerospace Limited: Amendment 39–16541; Docket No. FAA–2010–1021; Directorate Identifier 2010–CE–053–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 20, 2011.

Affected ADs

(b) This AD supersedes AD 2004–03–29, Amendment 39–13473 and AD 2008–14–12, Amendment 39–15607.

Applicability

(c) This AD applies to Pacific Aerospace Limited FU24–954 and FU24A–954 airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 55: Stabilizers.

Reason

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

To prevent possible in-flight failure of the vertical stabiliser, leading to loss of control of the aircraft * * *

Replace the vertical stabiliser with P/N 08–32005–2 by accomplishing modification PAC/FU/0345 in accordance with the instructions in Pacific Aerospace Limited Mandatory SB No. PACSB/FU/094 issue 1 dated 14 August 2008 * * *

The MCAI requires replacement of the vertical stabilizer with a new design that incorporates a forward spar and is a failsafe structure.

Actions and Compliance

(f) For airplanes that have not been modified by installation of vertical stabilizer part number (P/N) 08–32005–2, do the following actions:

(1) As of August 21, 2008 (the effective date retained from AD 2008–14–12), before the first flight of each day, visually inspect the vertical stabilizer leading edge skin and fin for any cracking, corrosion, scratches, dents, creases, and/or buckling and repair as necessary. All non-transparent protective coatings and their adhesive must be removed for this inspection.

(2) Within 100 hours time-in-service (TIS) after August 21, 2008 (the effective date retained from AD 2008–14–12), and repetitively thereafter at intervals not to exceed 100 hours TIS, perform a detailed inspection of the vertical stabilizer leading edge skin, leading edge, fin skin, and the fin forward attachment point for any cracking, corrosion, scratches, dents, creases, and/or buckling to include:

(i) Inspection of the entire leading edge down to the forward attach fitting and removal of dorsal fin extensions, if installed, to inspect the obscured areas of the fin.

(ii) Inspection of the fin skin for corrosion and cracks, paying particular attention to the center rib rivet holes and the skin joint at the fin base.

(iii) Inspection of the fin forward attachment point for corrosion, removal of the fin tip, and inspection of the top rib for cracks at the skin stiffener cut outs.

(3) If any damage is found during any inspection required in paragraph (f)(1) or (f)(2) of this AD, before further flight, obtain an FAA-approved repair scheme from the manufacturer and incorporate that repair. Contact the manufacturer for the repair scheme by one of the methods listed in the Related Information section of this AD.

(4) The following transparent polyurethane protective tapes have been assessed as suitable for use to re-protect the leading edge and may remain in situ for subsequent inspections, provided they are sound and in a condition to permit visual inspection of the skin beneath them:

Manufacturer	Product
(i) 3M	8591, or 8671, 8672 and 8681HS (aeronautical grade)
(ii) Scapa	Aeroshield P2604 (transparent)

Note 1: You may apply for an alternative method of compliance (AMOC) for an alternative to the transparent polyurethane protective tapes listed above.

(5) Within 6 months after January 20, 2011 (the effective date of this AD), replace the vertical stabilizer with P/N 08–32005–2 following Pacific Aerospace Limited Mandatory Service Bulletin PACSB/FU/094, Issue 1, dated August 14, 2008. Installation of vertical stabilizer P/N 08–32005–2 terminates the repetitive inspection requirements of paragraphs (f)(1) and (f)(2) of this AD.

(g) For airplanes that have been modified by installation of vertical stabilizer P/N 08–32005–2, do the following actions:

(1) Within 300 hours TIS after installation of vertical stabilizer P/N 08–32005–2 or within 50 hours TIS after January 20, 2011 (the effective date of this AD), whichever occurs later, and repetitively thereafter at intervals not to exceed 300 hours TIS, do a detailed visual inspection of the vertical stabilizer following paragraph 2.B.i) of Pacific Aerospace Limited Mandatory Service Bulletin PACSB/FU/094, Issue 1, dated August 14, 2008.

(2) Within 3,000 hours TIS after installation of vertical stabilizer P/N 08–32005–2 or within 50 hours TIS after January 20, 2011 (the effective date of this AD), whichever occurs later, and repetitively thereafter at intervals not to exceed 3,000 hours TIS, do an eddy current inspection following paragraph 2.B.ii) of Pacific Aerospace Limited Mandatory Service Bulletin PACSB/FU/094, Issue 1, dated August 14, 2008.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows:

(1) The inspections required in paragraph (f)(1) of this AD must be performed by a person authorized under 14 CFR part 43 to perform inspections, as opposed to the MCAI, which allows the holder of a pilot license to perform the inspections.

(2) The 50-hour inspection required in the MCAI is not applicable because the "before the first flight of the day" inspection captures the intent.

(3) The MCAI does not require the inspections listed in Pacific Aerospace Limited Mandatory Service Bulletin PACSB/FU/094, Issue 1, dated August 14, 2008. To require compliance with these inspections for U.S. owners and operators we are requiring the inspections through this AD action.

Other FAA AD Provisions

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

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

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

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

Related Information

(i) Refer to MCAI Civil Aviation Authority of New Zealand AD DCA/FU24/178, dated April 30, 2009; and Pacific Aerospace Limited Mandatory Service Bulletin PACSB/FU/094, Issue 1, dated August 14, 2008, for related information. For service information contact Pacific Aerospace Limited, Hamilton Airport, Private Bag HN3027, Hamilton, New Zealand; *telephone:* +(64) 7–843–6144; fax +(64) 7–843–6134; *e-mail: pacific@aerospace.co.nz.*

Material Incorporated by Reference

(j) You must use Pacific Aerospace Limited Mandatory Service Bulletin PACSB/FU/094, Issue 1, dated August 14, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Pacific Aerospace Limited, Hamilton Airport, Private Bag HN3027, Hamilton, New Zealand; *telephone:* +(64) 7–843–6144; fax +(64) 7–843–6134; *e-mail: pacific@aerospace.co.nz.*

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

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

Issued in Kansas City, Missouri, on December 8, 2010.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–31429 Filed 12–15–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–1052]

Drawbridge Operation Regulations; Hackensack River, Jersey City, NJ, Maintenance

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 Witt Penn Bridge at mile 3.1, across the Hackensack River, at Jersey City, New Jersey. Under this temporary deviation a two-hour advance notice for bridge opening will be required to facilitate bridge repairs.

DATES: This deviation is effective from January 22, 2011 through February 18, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–1052 and are available online at *http://www.regulations.gov,* inserting USCG–2010–1052 in the "Keyword" and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION: The Witt Penn Bridge, across the Hackensack River at mile 3.1 has a vertical clearance in the closed position of 35 feet at mean high water and 40 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.723.

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

The owner of the bridge, New Jersey Department of Transportation, requested a temporary deviation to facilitate the replacement of the AC drive motors.

Under this temporary deviation the Witt Penn Bridge, mile 3.1, across the Hackensack River may require a two-hour advance notice for bridge openings from January 22, 2011 through February 18, 2011. Vessels that can pass under the bridge without a bridge opening may do so at all times.

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

Dated: December 2, 2010.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2010–31556 Filed 12–15–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–0935]

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, New Orleans Harbor, Inner Harbor Navigation Canal, New Orleans, Orleans Parish, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the SR 39 (Judge Seeber/Claiborne Avenue)

vertical lift bridge across the Inner Harbor Navigational Canal, mile 0.9, (Gulf Intracoastal Waterway mile 6.7 East of Harvey Lock), at New Orleans, Orleans Parish, Louisiana. This deviation is necessary to adjust the counterweight wire ropes on the bridge. This deviation allows the bridge to remain closed for two (2) 72-hour time periods within a two-week period.

DATES: This deviation is effective from 12:01 a.m. on Friday, January 7, 2011 until 11:59 p.m. on Sunday, January 23, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–0935 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0935 in the "Keyword" box and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mrs. Donna Gagliano, Transportation Assistant, Eighth Coast Guard District Bridge Branch, US Coast Guard; telephone 504–671–2128 or e-mail *Donna.Gagliano@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Louisiana Department of Transportation and Development has requested a temporary deviation in order to perform maintenance from the published regulation for the SR 39 (Judge Seeber/Claiborne Avenue) vertical lift bridge across the Inner Harbor Navigational Canal, mile 0.9, (GIWW mile 6.7 EHL). The bridge provides 40 feet of vertical clearance when closed above mean high water, and 156 feet above MHW in the open-to-navigation position. Currently, according to 33 CFR 117.458(a), the draw of the bridge shall open on signal; except that, from 6:30 a.m. to 8:30 a.m. and 3:30 p.m. to 5:45 p.m. Monday through Friday, the draw need not be open for the passage of vessels. The draw shall open at any time for a vessel in distress.

This deviation allows the bridge to remain closed to navigation/for two (2) 72-hour periods within a two-week time between January 7, 2011 and January 23, 2011. As required by 33 CFR 117.40(a), the exact dates of the closures will be determined at a later date, allowing deep draft vessel movements just before and/or between the closure periods. Exact times and dates for the closures will be published in the Local Notice to Mariners and broadcast via the Coast Guard Broad Notice to Mariners system.

Navigation on the waterway consists mainly of tugs with tows and ships. The Coast Guard has coordinated the closure with waterway users, industry, and other Coast Guard units. These dates and this schedule were chosen to minimize the significant effects on vessel traffic; however, some vessels that can pass under the bridge in the closed-to-navigation position can do so any time. The bridge will not be able to open for emergencies.

In accordance with 33 CFR 117.35, this work will be performed with flexibility in order to return the bridge to normal operations as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 2, 2010.

David M. Frank,

Bridge Administrator.

[FR Doc. 2010–31557 Filed 12–15–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0449; FRL–9239–2]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a request submitted by the Minnesota Pollution Control Agency (MPCA) on May 7, 2010, to revise the Minnesota State Implementation Plan (SIP) for particulate matter less than 10 microns (PM_{10}). The approval revises the Minnesota SIP by updating information for the Metropolitan Council Environmental Services (MCES) Metropolitan Wastewater Treatment Plant located in St. Paul, Minnesota. The revision reflects changes at the facility which include the decommissioning of six multiple hearth incinerators and associated equipment and the addition of three fluidized bed incinerators and associated equipment. These revisions are included in a joint Title I/Title V document for the MCES Metropolitan Wastewater Treatment Plant, which replaces the document currently approved in the SIP for the facility. These revisions will result in reducing the PM_{10} emissions in the St. Paul area, and strengthen the existing PM_{10} SIP.

DATES: This direct final rule will be effective February 14, 2011 unless EPA receives adverse comments by January 18, 2011. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–0449, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: *aburano.douglas@epa.gov.*
3. Fax: (312) 408–2279.
4. Mail: Douglas Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Douglas Aburano, Chief, Control Strategies Section, 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–2010–0449. 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 www.regulations.gov or e-mail. The 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 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 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 Charles Hatten, Environmental Engineer, at (312) 886–6031 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@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. General Information
II. What revision did the State request be incorporated into the SIP?
III. What is EPA's analysis of the State submission?
IV. What action is EPA taking?
V. Statutory and Executive Order Reviews

I. General Information

A. Does this action apply to me?

This action applies only to the MCES Metropolitan Wastewater Treatment Plant located at 2400 Childs Road, St. Paul, Minnesota (Ramsey County).

B. Has public notice been provided?

Minnesota published a public notice of the revisions to the SIP on July 31, 2009. The comment period began on August 1, 2009, and ended on August 31, 2009. In the public notice, Minnesota stated it would hold a public hearing if one was requested during the comment period. This follows the alternative public participation process EPA approved on June 5, 2006 (71 FR 32274). For limited types of SIP revisions that are noncontroversial and for which the public has shown little or no interest, a public hearing is not automatically required. Because no one requested a public hearing, Minnesota did not hold a public hearing.

C. What is the background to this action?

The MCES Metropolitan Wastewater Treatment Plant was found to be a culpable source in the Childs Road area's nonattainment plan for the PM_{10} National Ambient Air Quality Standard (NAAQS). However, the area currently meets the NAAQS for PM_{10}, and was officially redesignated as attainment on September 24, 2002.

The MCES Metropolitan Wastewater Treatment Plant is an advanced secondary waste water treatment plant. This plant is the principal sewage treatment facility for the Minneapolis and St. Paul metropolitan area serving more than 80 percent of the area's sewered population, as well as commercial, institutional, and industrial wastewater generators. The plant has a permitted average wet weather design flow of 314 million gallons per day. Primary and secondary sludges from the waste water treatment process, as well as sludges from other MCES treatment facilities, are blended and thickened prior to incineration on-site.

The primary source of emissions at this plant is the incineration of sewage sludge, along with small amounts of spent activated carbon and scum generated on-site in three fluidized bed sludge reactors (FBRs). Each identical FBR is equipped with a pollution control train consisting of carbon injection, high temperature fabric filter baghouse, a venturi scrubber and a high efficiency wet electrostatic precipitator. Each FBR is capable of processing 130 dry tons of sewage sludge per day. The FBRs normally fire natural gas as an auxiliary fuel, but are capable of utilizing No. 2 fuel oil. Emissions also result from aeration of the wastewater during the treatment process, operation of two auxiliary steam boilers for plant heating, operation of emergency generators, ash and other material handling, fuel storage activities, and other routine maintenance activities.

II. What revision did the State request be incorporated into the SIP?

The State has requested that EPA approve, as a revision to the Minnesota SIP, a new joint Title I/Title V document, Air Permit No. 12300053–006, to replace the joint Title I/Title V document currently approved into the SIP. The new joint document incorporates changes to reflect current operating conditions and the applicable PM_{10} SIP conditions for MCES Metropolitan Wastewater Treatment Plant. The biggest change to the facility included replacing the six multiple hearth sludge incinerators, identified as emission units EU008 to EU013, with three FBRs, identified as emission units EU035 to EU037.

A. What prior SIP actions are pertinent to this action?

The MCES Metropolitan Wastewater Treatment Plant in St. Paul, Minnesota, has been subject to a federally enforceable permit incorporated into Minnesota's SIP as a joint Title I/Title V document, containing requirements for ensuring maintenance of the NAAQS for PM_{10}. In 2001, the joint Title I/Title V document, Air Permit No. 12300053–001, incorporated operating conditions and the applicable PM_{10} SIP conditions for the MCES Metropolitan Wastewater Treatment Plant. The 2001 joint document included in the SIP was based on plant operations using multiple hearth incinerators. The limited potential emissions of PM_{10} from the facility, considering all permit limitations, was 184.9 tons per year (tpy). Prior to the issuance of the 2001 joint document, EPA and the MCES Metropolitan Wastewater Treatment Plant had entered into a consent decree (65 FR 52787), which imposed compliance measures and called for the replacement of the multiple hearth incinerators with new FBRs. The new FBRs were permitted in 2002.

Other changes at MCES Metropolitan Wastewater Treatment Plant since 2001 include the decommissioning of ash handling systems (EU016–EU018), housekeeping vacuum system (EU033), multiple hearth auxiliary fuel feed systems (EU027–EU032), two auxiliary boilers (EU14–EU015), and rotating biological system contractors and sedimentation tanks (EU0005–EU007); and, the installation of sludge alkaline stabilization processing equipment (EU038–EU041), sludge centrifuge processing equipment (EU051–EU053), ash and other materials handling equipment (EU045–EU050), two replacement auxiliary boilers (EU042

and EU043), and an additional emergency back-up diesel generator.

The SIP requirements in the joint Title I/Title V document submitted by MPCA are designated as "Title I Condition: SIP for PM_{10} NAAQS" making it clear that the term is part of the SIP's source-specific requirements.

B. What are Title I conditions and joint Title I/Title V documents?

SIP control measures were contained in permits issued to culpable sources in Minnesota until 1990 when EPA determined that limits in state-issued permits are not federally enforceable because the permits expire. Minnesota then issued permanent Administrative Orders to culpable sources in nonattainment areas from 1991 to February of 1996.

Minnesota's consolidated permitting regulations, approved into its SIP on May 2, 1995 (60 FR 21447), include the term "Title I condition" which was written, in part, to satisfy EPA requirements that SIP control measures remain permanent. A "Title I condition" is defined as "any condition based on source-specific determination of ambient impacts imposed for the purposes of achieving or maintaining attainment with the national ambient air quality standard and which was part of the state implementation plan approved by EPA or submitted to the EPA pending approval under section 110 of the act * * *." The rule also states that "Title I conditions and the permittee's obligation to comply with them, shall not expire, regardless of the expiration of the other conditions of the permit." Further, "any title I condition shall remain in effect without regard to permit expiration or reissuance, and shall be restated in the reissued permit."

Minnesota has initiated using joint Title I/Title V documents as the enforceable document for imposing emission limitations and compliance requirements in SIPs. The SIP requirements in joint Title I/Title V documents submitted by MPCA are cited as "Title I conditions," therefore ensuring that SIP requirements remain permanent and enforceable. EPA reviewed the State's procedure for using joint Title I/Title V documents to implement site-specific SIP requirements and found it to be acceptable under both Titles I and V of the Clean Air Act (CAA) (July 3, 1997 letter from David Kee, EPA, to Michael J. Sandusky, MPCA). Further, a June 15, 2006, letter from EPA to MPCA clarifies procedures to transfer requirements from Administrative Orders to joint Title I/Title V documents.

III. What is EPA's analysis of the State submission?

This SIP revision replaces the joint Title I/Title V document currently approved into the SIP for MCES Metropolitan Wastewater Treatment Plant with a new joint Title I/Title V document, Air Permit No.12300053–006. This document reflects current operating conditions and applicable PM_{10} SIP conditions for the MCES Metropolitan Wastewater Treatment Plant. The facility now operates three FBRs, replacing the six multiple hearth sludge incinerators, two new auxiliary boilers, new alkaline stabilization process equipment, new sludge centrifuge processing equipment, new ash handling equipment, and an additional emergency back-up diesel generator.

The facility remains subject to several ongoing SIP conditions, and some new or more stringent SIP conditions have been added; these conditions limit PM_{10} emissions that ensure that the NAAQS for PM_{10} are maintained. Conditions for recordkeeping, performance testing, and reporting of deviations from SIP conditions have been maintained.

Reduced PM_{10} Limits

The six multiple hearth incinerators, replaced with three FBRs, were previously limited to 1.20 pounds of PM_{10} per ton of dry sludge charged. Each unit generally charged 90 dry tons of sludge per day, resulting in total emissions of 19.7 tpy of PM_{10} per unit, and a total of 118.3 tpy of PM_{10}. The three new FBRs are each limited to 2.01 pounds of PM_{10} per hour. If these units were to operate 8,760 hours in a year, that would result in 8.8 tpy of PM_{10} per unit or 26.4 tpy for all three FBRs combined.

The auxiliary boilers were previously each subject to a PM_{10} limit of 0.10 pounds of PM_{10} per million Btu heat input; this resulted in 5.7 tpy of PM_{10} per unit. The replacement boilers are subject to a limit of 15.37 pounds per million pounds of steam. For these boilers, this equals about 1.23 pounds per hour per boiler (or 5.4 tpy).

The new alkaline stabilization process and the ash handling system PM_{10} emissions are limited to 0.005 grains/dry standard cubic feet (grains/dscf), respectively. The prior alkaline stabilization process and ash handling system each had a SIP emission limit for PM_{10} of 0.05 grains/dscf.

Overall, the changes noted in this SIP revision do not increase total PM_{10} emission limits. Instead, the potential emissions of PM_{10} for the MCES Metropolitan Wastewater Treatment Plant, considering all permit limitations, are reduced from 184.9 tpy to 47.8 tpy.

Air Quality Analysis

Because some of the changes being made to the facility may affect the release and dispersion of PM_{10} emissions, MCES Metropolitan Wastewater Treatment Plant provided an air quality analysis to address the facility's impact on the PM_{10} NAAQS. All the changes to the facility were completed in 2002. Air quality modeling was performed in 2001 and 2002 using the ISCST3 dispersion model. The modeling used five years of surface meteorological data from the Minneapolis/St. Paul airport and upper air data from St. Cloud, 1987–1991. The model was run with urban dispersion coefficients and regulatory default options. The high, sixth high 24-hour PM_{10} modeled concentration for the MCES Metropolitan Wastewater Treatment Plant, plus a conservative background concentration, was 107.1 micrograms per cubic meter ($\mu g/m^3$). This value is below the 24-hour PM_{10} standard of 150 $\mu g/m^3$. The modeled result for the annual standard, including background, was 32.5 $\mu g/m^3$, which was below the annual PM_{10} standard of 50 $\mu g/m^3$. The annual PM_{10} standard was revoked in 2006.

IV. What action is EPA taking?

EPA is approving the revision to Minnesota's SIP to replace the joint Title I/Title V document currently approved into the SIP for MCES Metropolitan Wastewater Treatment Plant with a new joint Title I/Title V document, Air Permit No. 12300053–006. The updated information in the new joint document will incorporate changes to reflect current operating conditions and the applicable PM_{10} SIP conditions for MCES Metropolitan Wastewater Treatment Plant. In approving this joint Title I/Title V document, EPA is incorporating into the SIP only those requirements in the joint document labeled as "Title I Condition: SIP for PM_{10} NAAQS."

Since this SIP revision will decrease PM_{10} impacts in the St. Paul area, MCES Metropolitan Wastewater Treatment Plant revision will strengthen the existing PM_{10} 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 February 14, 2011 without further notice unless we receive relevant adverse written comments by January 18, 2011. 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. If we do not receive any comments, this action will be effective February 14, 2011.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely 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 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 February 14, 2011. 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. 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: December 3, 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 Y—Minnesota

■ 2. In § 52.1220 the table in paragraph (d) is amended by revising the entry for "Metropolitan Council Environmental Services Metropolitan Wastewater Treatment Plant North Star Steel" to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED MINNESOTA SOURCE-SPECIFIC PERMITS

Name of source	Permit No.	State effective date	EPA Approval date	Comments
* *	*	*	* *	*
Metropolitan Council Environmental Services Metropolitan Wastewater Treatment Plant.	12300053–006	02/25/10	12/16/10, [Insert page number where the document begins].	Only conditions cited as "Title I condition: SIP for PM_{10} NAAQS."
* *	*	*	* *	*

* * * * *

[FR Doc. 2010–31345 Filed 12–15–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1160]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

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

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Maricopa	City of Tempe ..... (10–09–2035P)	September 16, 2010, September 23, 2010, *Arizona Business Gazette.*	The Honorable Hugh Hallman, Mayor, City of Tempe, 31 East 5th Street, Tempe, AZ 85281.	January 21, 2011	040054
Arizona: Mojave ...	Fort Mojave Indian Reservation. (10–09–1826P)	September 10, 2010, September 17, 2010, *The Kingman Daily Miner.*	Mr. Timothy Williams, Chairman, Fort Mojave Indian Reservation, 500 Merriman Avenue, Needles, CA 92363.	August 31, 2010 ..	040133
Arizona: Pinal	Town of Florence (10–09–1057P)	September 24, 2010, October 1, 2010, *Casa Grande Dispatch.*	The Honorable Vikki Kilvinger, Mayor, Town of Florence, 775 North Main Street, Florence, AZ 85232.	January 31, 2011	040084
Arizona: Yavapai ..	Unincorporated areas of Yavapai County. (10–09–0965P)	August 27, 2010, September 3, 2010, *The Daily Courier.*	Mr. Chip Davis, Chairman, Yavapai County Board of Supervisors, 10 South 6th Street, Cottonwood, AZ 86326.	January 3, 2011 ...	040093

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Riverside.	City of Riverside ... (10–09–0680P)	September 3, 2010, September 10, 2010, *The Press-Enterprise*.	The Honorable Ronald O. Loveridge, Mayor, City of Riverside, 3900 Main Street, Riverside, CA 92522.	August 27, 2010 ..	060260
Colorado: Jefferson.	Unincorporated areas of Jefferson County. (10–08–0546P)	September 16, 2010, September 23, 2010, *Westminster Window*.	Ms. Kathy Hartman, Chair, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, CO 80419.	January 21, 2011	080087
Colorado: Jefferson.	City of Westminster. (10–08–0546P)	September 16, 2010, September 23, 2010, *Westminster Window*.	The Honorable Nancy McNally, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, CO 80031.	January 21, 2011	080008
Colorado: Pueblo	City of Pueblo ..... (10–08–0862P)	September 3, 2010, September 10, 2010, *The Pueblo Chieftain*.	Mr. Lawrence Atencio, President, Pueblo City Council, 1 City Hall Place, Pueblo, CO 81003.	January 10, 2011	085077
Florida: Lake	City of Clermont ... (10–04–4299P)	September 3, 2010, September 10, 2010, *Daily Commercial*.	The Honorable Harold Turville, Jr., Mayor, City of Clermont, 685 West Montrose Street, Clermont, FL 34711.	January 10, 2011	120133
Florida: Lake	Unincorporated areas of Lake County. (10–04–4299P)	September 3, 2010, September 10, 2010, *Daily Commercial*.	Mr. Welton G. Caldwell, Chairman, Lake County Board of Commissioners, Lake County, P.O. Box 7800, Tavares, FL 32778.	January 10, 2011	120421
Florida: Monroe	Unincorporated areas of Monroe County. (10–04–5258P)	September 17, 2010, September 24, 2010, *Key West Citizen*.	The Honorable Sylvia Murphy, Mayor, Monroe County, 1100 Simonton Street, Key West, FL 33040.	September 10, 2010.	125129
Georgia: DeKalb ..	Unincorporated areas of DeKalb County. (10–04–4217P)	September 9, 2010, September 16, 2010, *The Champion Newspaper*.	Mr. W. Burrell Ellis, Jr., Chief Executive Officer, DeKalb County, 330 West Ponce De Leon Avenue, Decatur, GA 30030.	October 4, 2010 ...	130065
Hawaii: Maui	Unincorporated areas of Maui County. (10–09–1230P)	September 10, 2010, September 17, 2010, *The Maui News*.	The Honorable Charmaine Tavares, Mayor, Maui County, 200 South High Street, 9th Floor, Wailuku, HI 96793.	January 18, 2011	150003
Kansas: Johnson	City of Leawood ... (10–07–2021P)	September 15, 2010, September 22, 2010, *The Johnson County Sun*.	The Honorable Peggy J. Dunn, Mayor, City of Leawood, 4800 Town Center Drive, Leawood, KS 66211.	January 20, 2011	200167
North Carolina: Chatham.	Unincorporated areas of Chatham County. (10–04–0659P)	September 9, 2010, September 16, 2010, *The Chatham News*.	Mr. Charlie Horne, Manager, Chatham County, P.O. Box 1809, 12 East Street, Pittsboro, NC 27312.	January 14, 2011	370299
North Carolina: Wake.	Unincorporated areas of Wake County. (09–04–2504P)	September 7, 2010, September 14, 2010, *The News & Observer*.	Mr. David Cooke, Manager, Wake County, P.O. Box 550, Raleigh, NC 27602.	January 12, 2011	370368
Utah: Weber	City of Ogden ..... (10–08–0035P)	September 3, 2010, September 10, 2010, *Standard Examiner*.	The Honorable Matthew R. Godfrey, Mayor, City of Ogden, 2549 Washington Boulevard, Suite 910, Ogden, UT 84401.	January 10, 2011	490189

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

Dated: December 3, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–31505 Filed 12–15–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1156]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any

person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

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

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Cochise ..	City of Sierra Vista (10–09–2513P)	August 11, 2010, August 18, 2010, *Sierra Vista Herald.*	The Honorable Bob Strain, Mayor, City of Sierra Vista, 1011 North Coronado Drive, Sierra Vista, AZ 85635.	August 30, 2010 ..	040017
Arizona: Maricopa	Town of Gilbert .... (10–09–0572P)	August 12, 2010, August 19, 2010, *Arizona Business Gazette.*	The Honorable John Lewis, Mayor, Town of Gilbert, 50 East Civic Center Drive, Gilbert, AZ 85296.	July 30, 2010	040044
Arizona: Maricopa	City of Goodyear .. (10–09–1335P)	August 5, 2010, August 12, 2010, *Arizona Business Gazette.*	The Honorable James M. Cavanaugh, Mayor, City of Goodyear, P.O. Box 5100, Goodyear, AZ 85338.	July 30, 2010	040046
Arizona: Pima	City of Tucson ..... (10–09–1751P)	July 23, 2010, July 30, 2010, *Arizona Daily Star.*	The Honorable Bob Walkup, Mayor, City of Tucson, City Hall, 255 West Alameda, Tucson, AZ 85701.	July 13, 2010	040076
Arizona: Pinal	City of Casa Grande. (10–09–1348P)	July 23, 2010, July 30, 2010, *Casa Grande Dispatch.*	The Honorable Robert M. Jackson, Mayor, City of Casa Grande, 510 East Florence Boulevard, Casa Grande, AZ 85122.	August 11, 2010 ..	040080
Arizona: Pinal	Town of Mammoth (10–09–1056P)	July 31, 2010, August 7, 2010, *Casa Grande Dispatch.*	The Honorable Craig Williams, Mayor, Town of Mammoth, P.O. Box 404, Mammoth, AZ 85618.	December 6, 2010	040086
Arizona: Pinal	Unincorporated areas of Pinal County. (10–09–1056P)	July 31, 2010, August 7, 2010, *Casa Grande Dispatch.*	The Honorable Pete Rios, Chairman, Pinal County Board of Supervisors, P.O. Box 827, Florence, AZ 85132.	December 6, 2010	040077
California: Sacramento.	Unincorporated areas of Sacramento County. (10–09–1947P)	August 11, 2010, August 18, 2010, *The Sacramento Bee.*	The Honorable Roger Dickinson, Chairman, Sacramento County Board of Supervisors, 700 H Street, Suite 2450, Sacramento, CA 95814.	December 16, 2010.	060262

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: San Diego.	City of Oceanside (10–09–1317P)	August 2, 2010, August 9, 2010, *North County Times*.	The Honorable Jim Wood, Mayor, City of Oceanside, 300 North Coast Highway, Oceanside, CA 92054.	July 26, 2010	060294
Colorado: Eagle ...	Unincorporated areas of Eagle County. (10–08–0478P)	September 2, 2010, September 9, 2010, *The Eagle Valley Enterprise*.	The Honorable Sara Fisher, Chairman, Eagle County Board of Commissioners, P.O. Box 850, Eagle, CO 81631.	August 25, 2010 ..	080051
Colorado: Summit	Unincorporated areas of Summit County. (10–08–0513P)	August 6, 2010, August 13, 2010, *Summit County Journal*.	The Honorable Bob French, Chairman, Summit County Board of Commissioners, P.O. Box 68, Breckenridge, CO 80424.	July 30, 2010	080290
Florida: Hillsborough.	Unincorporated areas of Hillsborough County. (10–04–4807P)	August 2, 2010, August 9, 2010, *The Tampa Tribune*.	The Honorable Ken Hagan, Chairman, Hillsborough County Board of Commissioners, P.O. Box 1110, Tampa, FL 36601.	July 22, 2010	120112
Florida: Lee	City of Cape Coral (10–04–0289P)	August 27, 2010, September 3, 2010, *Fort Myers News-Press*.	The Honorable John Sullivan, Mayor, City of Cape Coral, P.O. Box 150027, Cape Coral, FL 33915.	January 3, 2011 ...	125095
Florida: Lee	Unincorporated areas of Lee County. (10–04–0289P)	August 27, 2010, September 3, 2010, *Fort Myers News-Press*.	Ms. Tammy Hall, Chair, Lee County Board of County, Commissioners, P.O. Box 398, Ft. Myers, FL 33902.	January 3, 2011 ...	125124
Florida: Polk	City of Lakeland ... (10–04–4064P)	August 11, 2010, August 18, 2010, *The Ledger*.	The Honorable Gow Fields, Mayor, City of Lakeland, 228 South Massachusetts Avenue, Lakeland, FL 33801.	July 30, 2010	120267
Florida: St. Johns	Unincorporated areas of St. Johns County. (10–04–2018P)	July 26, 2010, August 2, 2010, *St. Augustine Record*.	Mr. Michael Wanchick, County Administrator, St. Johns County, 500 San Sebastian View, St. Augustine, FL 32084.	July 21, 2010	125147
Mississippi: Rankin	City of Flowood .... (10–04–5433P)	August 20, 2010, August 27, 2010, *The Clarion-Ledger*.	The Honorable Gary Rhoads, Mayor, City of Flowood, P.O. Box 320069, Flowood, MS 39232.	August 10, 2010 ..	280289
Montana: Cascade	Unincorporated areas of Cascade County. (10–08–0429P)	August 10, 2010, August 17, 2010, *Great Falls Tribune*.	The Honorable Joe Briggs, Chairman, Cascade County Board of Commissioners, 325 2nd Avenue North, Great Falls, MT 59401.	December 15, 2010.	300008
North Carolina: Cumberland.	Town of Hope Mills. (10–04–0445P)	July 26, 2010, August 2, 2010, *Fayetteville Observer*.	The Honorable Eddie Dees, Mayor, Town of Hope Mills, 5770 Rockfish Road, Hope Mills, NC 28348.	November 30, 2010.	370312
North Carolina: Cumberland.	Unincorporated areas of Cumberland County. (10–04–0445P)	July 26, 2010, August 2, 2010, *Fayetteville Observer*.	Mr. James E. Martin, Manager, Cumberland County, 117 Dick Street, Room 512, Fayetteville, NC 28301.	November 30, 2010.	370076
North Carolina: Pitt	City of Greenville (10–04–3020P)	August 23, 2010, August 30, 2010, *The Daily Reflector*.	The Honorable Patricia C. Dunn, Mayor, City of Greenville, P.O. Box 7207, Greenville, NC 27835.	December 28, 2010.	370191
North Carolina: Pitt	City of Greenville (10–04–3296P)	August 19, 2010, August 26, 2010, *The Daily Reflector*.	The Honorable Patricia C. Dunn, Mayor, City of Greenville, P.O. Box 7207, Greenville, NC 27835.	August 12, 2010 ..	370191
North Carolina: Wake.	Unincorporated areas of Wake County, (09–04–7036P).	July 29, 2010, August 5, 2010, *The News & Observer*.	Mr. David Cooke, Manager, Wake County, P.O. Box 550, Greenville, NC 27602.	December 3, 2010	370368
South Carolina: Chester.	Unincorporated areas of Chester County. (10–04–4509P)	August 20, 2010, August 27, 2010, *News & Reporter*.	The Honorable R. Carlisle Roddey, Chairman, Chester County Council, P.O. Box 580, Chester, SC 29706.	December 27, 2010.	450047
South Carolina: Dorchester.	City of North Charleston. (10–04–1595P)	August 19, 2010, August 26, 2010, *The Post and Courier*.	The Honorable R. Keith Summey, Mayor, City of North Charleston, 2500 City Hall Lane, North Charleston, SC 29406.	September 10, 2010.	450042
South Dakota: Lincoln.	Unincorporated areas of Lincoln County. (10–08–0327P)	August 19, 2010, August 26, 2010, *Lennox Independent*.	The Honorable Jim Schmidt, Chairman, Lincoln County Board of Commissioners, 104 North Main Street, Canton, SD 57013.	December 24, 2010.	460277
Texas: Wichita	City of Wichita Falls. (10–06–1225P)	August 20, 2010, August 27, 2010, *Wichita Falls Times Record News*.	The Honorable Glenn Barham, Mayor, City of Wichita Falls, P.O. Box 1431, Wichita Falls, TX 76307.	December 27, 2010.	480662

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Utah: Washington	City of LaVerkin ... (10–08–0578P)	August 20, 2010, August 27, 2010, *The Spectrum.*	The Honorable Karl Wilson, Mayor, City of LaVerkin, 111 South Main Street, LaVerkin, UT 84745.	August 11, 2010 ..	490174
Utah: Washington	Town of Toquerville. (10–08–0578P)	August 20, 2010, August 27, 2010, *The Spectrum.*	The Honorable Darrin LeFevre, Mayor, Town of Toquerville, P.O. Box 27, Toquerville, UT 84774.	August 11, 2010 ..	490180

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

Dated: December 3, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–31509 Filed 12–15–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1135]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

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

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Maricopa	City of Phoenix ..... (09–09–1059P)	May 7, 2010, May 14, 2010, *Arizona Republic*.	The Honorable Phil Gordon, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, AZ 85003.	April 30, 2010	040051
Arizona: Maricopa	City of Phoenix ..... (10–09–0146P)	May 6, 2010, May 13, 2010, *Arizona Republic*.	The Honorable Phil Gordon, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, AZ 85003.	April 28, 2010	040051
Arizona: Yavapai ..	City of Prescott .... (09–09–0658P)	May 10, 2010, May 17, 2010, *Prescott Daily Courier*.	The Honorable Marlin Kuykendall, Mayor, City of Prescott, 201 South Cortez Street, Prescott, AZ 86303.	April 30, 2010	040098
Arizona: Yavapai ..	Unincorporated areas of Yavapai County. (09–09–0658P)	May 10, 2010, May 17, 2010, *Prescott Daily Courier*.	The Honorable Chip Davis, Chairman, Yavapai County Board of Supervisors, 1015 Fair Street, Prescott, AZ 86305.	April 30, 2010	040093
California: San Diego.	City of Poway ..... (10–09–1118P)	May 13, 2010, May 20, 2010, *Poway News Chieftain*.	The Honorable Don Higginson, Mayor, City of Poway, 13325 Civic Center Drive, Poway, CA 92064.	September 17, 2010.	060702
California: Ventura	City of Simi Valley (09–09–2409P)	May 28, 2010, June 4, 2010, *Ventura County Star*.	The Honorable Paul Miller, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	October 4, 2010 ...	060421
Florida: Leon	City of Tallahassee. (09–04–3114P)	May 11, 2010, May 18, 2010, *Tallahassee Democrat*.	The Honorable John Marks, Mayor, City of Tallahassee, 300 South Adams Street, B–28, Tallahassee, FL 32301.	September 15, 2010.	120144
Florida: Orange	City of Ocee ..... (10–04–4198P)	May 28, 2010, June 4, 2010, *Orlando Sentinel*.	The Honorable S. Scott Vandergrift, Mayor, City of Ocoee, 150 North Lakeshore Drive, Ocoee, FL 34761.	May 21, 2010	120185
Florida: Pinellas ...	City of Clearwater (10–04–4136P)	May 7, 2010, May 14, 2010, *St. Petersburg Times*.	The Honorable Frank V. Hibbard, Mayor, City of Clearwater, P.O. Box 4748, Clearwater, FL 33758.	April 28, 2010	125096
Georgia: Whitfield	City of Dalton ..... (09–04–1965P)	March 26, 2010, April 2, 2010, *The Daily Citizen*.	The Honorable David Pennington, Mayor, City of Dalton, P.O. Box 1205, Dalton, GA 30720.	April 14, 2010	130194
Georgia: Whitfield	Unincorporated areas of Whitfield County. (09–04–1965P)	March 26, 2010, April 2, 2010, *The Daily Citizen*.	The Honorable Mike Babb, Chairman, Whitfield County, 1407 Burleyson Drive, Dalton, GA 30720.	April 14, 2010	130193
Hawaii: Hawaii	Unincorporated areas of Hawaii County. (09–09–1789P)	April 30, 2010, May 7, 2010, *Hawaii Tribune-Herald*.	The Honorable William P. Kenoi, Mayor, County of Hawaii, 25 Aupuni Street, Hilo, HI 96720.	September 7, 2010.	155166
Idaho: Ada	Unincorporated areas of Ada County. (07–10–0642P)	May 13, 2010, May 20, 2010, *The Idaho Statesman*.	The Honorable Fred Tilman, Chairman, Ada County Board of Commissioners, 200 West Front Street, 3rd Floor, Boise, ID 83702.	September 17, 2010.	160001
Idaho: Teton	Unincorporated areas of Teton County. (09–10–0227P)	May 13, 2010, May 20, 2010, *Teton Valley News*.	The Honorable Larry Young, Chairman, Teton County Board of Commissioners, 150 Courthouse Drive, Room 109, Driggs, ID 83422.	September 17, 2010.	160230
Idaho: Teton	City of Victor ..... (09–10–0365P)	May 13, 2010, May 20, 2010, *Teton Valley News*.	The Honorable Scott Fitzgerald, Mayor, City of Victor, P.O. Box 122, Victor, ID 83455.	September 17, 2010.	060119
Iowa: Hamilton	City of Webster City. (09–07–1058P)	April 30, 2010, May 7, 2010, *The Daily Freeman-Journal*.	The Honorable Janet Adams, Mayor, City of Webster City, P.O. Box 217, Webster City, IA 50595.	September 7, 2010.	190137
Kansas: Sedgwick	City of Derby ..... (09–07–1398P)	May 12, 2010, May 19, 2010, *The Derby Informer*.	The Honorable Dion Avello, Mayor, City of Derby, 611 Mulberry Road, Derby, KS 67037.	September 16, 2010.	200323
Mississippi: Lee	City of Tupelo ..... (09–04–4664P)	May 21, 2010, May 28, 2010, *Northeast Mississippi Daily Journal*.	The Honorable Jack Reed, Jr., Mayor, City of Tupelo, P.O. Box 1485, Tupelo, MS 38802.	September 27, 2010.	280100
Mississippi: Lee	Unincorporated areas of Lee County. (09–04–4664P)	May 21, 2010, May 28, 2010, *Northeast Mississippi Daily Journal*.	The Honorable Sean Thompson, President, Lee County, P.O. Box 1785, Tupelo, MS 38801.	September 27, 2010.	280227
Missouri: Jackson	City of Lee's Summit. (09–07–1328P)	May 7, 2010, May 14, 2010, *Lee's Summit Journal*.	The Honorable Karen R. Messerli, Mayor, City of Lee's Summit, 220 Southeast Green Street, Lee's Summit, MO 64063.	September 13, 2010.	290174

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Nevada: City of Carson City.	City of Carson City (08–09–1740P)	May 12, 2010, May 19, 2010, *Nevada Appeal*.	The Honorable Robert L. Crowell, Mayor, City of Carson City, 201 North Carson Street, Suite 2, Carson City, NV 89701.	April 30, 2010	320001
New Mexico: Dona Ana.	City of Las Cruces (08–06–2997P)	*May 7, 2010*, *May 14, 2010*, *Las Cruces Sun-News*.	The Honorable Ken Miyagishima, Mayor, City of Las Cruces, 200 North Church Street, Las Cruces, NM 88001.	September 13, 2010.	355332
North Carolina: Orange.	Town of Chapel Hill. (10–04–0448P)	April 16, 2010, April 23, 2010, *Chapel Hill Herald*.	The Honorable Kevin Foy, Mayor, Town of Chapel Hill, 405 Martin Luther King Jr. Boulevard, Chapel Hill, NC 27514.	August 23, 2010 ..	370180
South Carolina: Jasper.	City of Hardeeville (09–04–5183P)	*May 5, 2010*, May 12, 2010, *Jasper County Sun*.	The Honorable A. Brooks Willis, Mayor, City of Hardeeville, 205 East Main Street, Hardeeville, SC 29927.	September 9, 2010.	450113
South Carolina: Jasper.	Unincorporated areas of Jasper County. (09–04–5183P)	*May 5, 2010*, May 12, 2010, *Jasper County Sun*.	The Honorable Dr. George Hood, Chairman, Jasper County Council, P.O. Box 1618, Ridgeland, SC 29936.	September 9, 2010.	450112
South Carolina: York.	City of Rock Hill ... (09–04–3659P)	*May 20, 2010*, *May 27, 2010, The Herald*.	The Honorable Doug Echols, Mayor, City of Rock Hill, P.O. Box 11706, Rock Hill, SC 29731.	June 14, 2010	450196
South Carolina: York.	Unincorporated areas of York County. (09–04–3659P)	*May 20, 2010*, *May 27, 2010, The Herald*.	The Honorable Houston "Buddy" Motz, Chairman, York County Board of Commissioners, 2047 Poinsett Drive, Rock Hill, SC 29732.	June 14, 2010	450193
South Dakota: Pennington.	Unincorporated areas of Pennington County. (09–08–0639P)	*May 13, 2010*, May 20, 2010, *Rapid City Journal*.	The Honorable Ethan Schmidt, Chairman, Pennington County Board of Commissioners, 315 Saint Joseph Street, Suite 156, Rapid City, SD 57701.	June 2, 2010	460064
Texas: Bexar	City of San Antonio. (09–06–3107P)	April 23, 2010, April 30, 2010, *San Antonio Express-News*.	The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	April 26, 2010	480045
Texas: Denton	Unincorporated areas of Denton County. (10–06–1747P)	May 13, 2010, May 20, 2010, *Denton Record-Chronicle*.	The Honorable Mary Horn, Denton County Judge, 110 West Hickory Street, 2nd Floor, Denton, TX 76201.	September 17, 2010.	480774
Texas: Midland	City of Midland ..... (08–06–2854P)	May 21, 2010, May 28, 2010, *Midland Reporter-Telegram*.	The Honorable Wes Perry, Mayor, City of Midland, 300 North Loraine Street, Midland, TX 79701.	September 27, 2010.	480477
Texas: Midland	Unincorporated areas of Midland County. (08–06–2854P)	May 21, 2010, May 28, 2010, *Midland Reporter-Telegram*.	The Honorable Michael R. Bradford, Midland County Judge, 200 West Wall Street, Suite 104, Midland, TX 79701.	September 27, 2010.	481239
Wisconsin: Richland.	City of Richland Center. (09–05–1012P)	March 11, 2010, March 18, 2010, *The Richland Observer*.	The Honorable Larry D. Fowler, Mayor, City of Richland Center, 450 South Main Street, Richland Center, WI 53581.	July 9, 2010	555576
Wisconsin: Richland.	Unincorporated areas of Richland County. (09–05–1012P)	March 11, 2010, March 18, 2010, *The Richland Observer*.	The Honorable Ann Greenheck, Chairman, Richland County Board, 31709 State Highway 130, Lone Rock, WI 53556.	July 9, 2010	550356

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

Dated: December 3, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–31512 Filed 12–15–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1165]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

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

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Calhoun	City of Oxford ..... (10–04–2692P)	October 22, 2010, October 29, 2010, *The Anniston Star.*	The Honorable Leon Smith, Mayor, City of Oxford, P.O. Box 3383, Oxford, AL 36203.	February 28, 2011	010023
Alabama: Calhoun	Unincorporated areas of Calhoun County. (10–04–2692P)	October 22, 2010, October 29, 2010, *The Anniston Star.*	Mr. Robert W. Downing, Calhoun County Commissioner, 1702 Noble Street, Suite 103, Anniston, AL 36201.	February 28, 2011	010013
Arizona: Maricopa	Unincorporated areas of Maricopa County. (10–09–1720P)	September 30, 2010, October 7, 2010, *Arizona Business Gazette.*	Mr. Don Stapley, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, Phoenix, AZ 85003.	February 4, 2011	040037

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Yavapai ..	City of Prescott .... (10–09–0220P)	October 8, 2010, October 15, 2010, *The Daily Courier*.	The Honorable Marlin Kuykendall, Mayor, City of Prescott, 201 South Cortez Street, Prescott, AZ 86303.	February 14, 2011	040098
Arizona: Yavapai ..	Unincorporated areas of Yavapai County. (10–09–0220P)	October 8, 2010, October 15, 2010, *The Daily Courier*.	Mr. Chip Davis, Chairman, Yavapai County Board of Supervisors, 10 South 6th Street, Cottonwood, AZ 86326.	February 14, 2011	040093
California: Placer ..	City of Rocklin ..... 09–09–2897P)	October 7, 2010, October 14, 2010, *The Placer Herald*.	The Honorable Scott Yuill, Mayor, City of Rocklin, 3970 Rocklin Road, Rocklin, CA 95677.	February 11, 2011	060242
California: San Diego.	Unincorporated areas of San Diego County. (10–09–2166P)	October 22, 2010, October 29, 2010, *San Diego Transcript*.	Ms. Pam Slater-Price, Chairwoman, San Diego County Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, CA 92101.	November 18, 2010.	060284
California: Santa Clara.	City of Milpitas ..... (10–09–1254P)	October 12, 2010, October 19, 2010, *San Jose Mercury News*.	The Honorable Robert Livengood, Mayor, City of Milpitas, 455 East Calaveras Boulevard, Milpitas, CA 95035.	September 30, 2010.	060344
California: Shasta	City of Anderson .. (10–09–1399P)	October 13, 2010, October 20, 2010, *Anderson Valley Post*.	The Honorable Norma Comnick, Mayor, City of Anderson, 1887 Howard Street, Anderson, CA 96007.	September 30, 2010.	060359
California: Shasta	Unincorporated areas of Shasta County. (10–09–1399P)	October 13, 2010, October 20, 2010, *Anderson Valley Post*.	Mr. David A. Kehoe, Chairman, Shasta County Board of Supervisors, 1450 Court Street, Suite 308B, Redding, CA 96001.	September 30, 2010.	060358
Colorado: Arapahoe.	City of Aurora ..... (10–08–0276P)	September 9, 2010, September 16, 2010, *Aurora Sentinel*.	The Honorable Ed Tauer, Mayor, City of Aurora, 15151 East Alameda Parkway, Aurora, CO 80012.	January 14, 2011	080002
Colorado: Douglas	Town of Parker .... (10–08–0768P)	October 7, 2010, October 14, 2010, *Douglas County News-Press*.	The Honorable David Casiano, Mayor, Town of Parker, 20120 East Mainstreet, Parker, CO 80138.	October 29, 2010	080310
Colorado: Douglas	Unincorporated areas of Douglas County. (10–08–0768P)	October 7, 2010, October 14, 2010, *Douglas County News-Press*.	Mr. Jack Hilbert, Chairman, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	October 29, 2010	080049
Florida: Charlotte	Unincorporated areas of Charlotte County. (10–04–4920P)	October 22, 2010, October 29, 2010, *Charlotte Sun*.	Mr. Bob Starr, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Port Charlotte, FL 33948.	October 15, 2010	120061
Florida: Miami-Dade.	City of Miami ..... (10–08–5593P)	October 12, 2010, October 19, 2010, *Miami Daily Business Review*.	The Honorable Tomás P. Regalado, Mayor, City of Miami, 3500 Pan American Drive, Miami, FL 33133.	September 30, 2010.	120650
Florida: Orange	City of Orlando ..... (10–04–0788P)	August 12, 2010, August 19, 2010, *Orlando Weekly*.	The Honorable Buddy Dyer, Mayor, City of Orlando, P.O. Box 4990, Orlando, FL 32802.	December 17, 2010.	120186
Georgia: Barrow ...	Unincorporated areas of Barrow County. (10–04–4322P)	October 20, 2010, October 27, 2010, *The Barrow County News*.	Mr. Daniel Yearwood, Jr., Chairman, Barrow County Board of Commissioners, 233 East Broad Street, Winder, GA 30680.	February 24, 2011	130497
Kentucky: Hopkins	City of Madisonville. (10–04–3232P)	September 10, 2010, September 17, 2010, *The Messenger*.	The Honorable William Cox, Jr., Mayor, City of Madisonville, 67 North Main Street, Madisonville, KY 42431.	January 17, 2011	210115
Kentucky: Hopkins	Unincorporated areas of Hopkins County. (10–04–3232P)	September 10, 2010, September 17, 2010, *The Messenger*.	The Honorable Donald E. Carroll, Hopkins County Judge, 56 North Main Street, Madisonville, KY 42431.	January 17, 2011	210112
South Carolina: Dorchester.	Unincorporated areas of Dorchester County. (10–04–6791P)	October 8, 2010, October 15, 2010, *The Post and Courier*.	Mr. Jamie Feltner, Chairman, Dorchester County Council, 500 North Main Street, Suite 2, Summerville, SC 29483.	February 14, 2011	450068
South Dakota: Minnehaha.	City of Hartford ..... (10–08–0469P)	October 8, 2010, October 15, 2010, *Argus Leader*.	The Honorable Paul Zimmer, Mayor, City of Hartford, 125 North Main Avenue, Hartford, SD 57033.	February 14, 2011	460180
South Dakota: Minnehaha.	Unincorporated areas of Minnehaha County. (10–08–0469P)	October 8, 2010, October 15, 2010, *Argus Leader*.	Ms. Anne Hajek, Chair, Minnehaha County Board of Commissioners, P.O. Box 1779, Sioux Falls, SD 57101.	February 14, 2011	460057

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

Dated: December 3, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–31508 Filed 12–15–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1141]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

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

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes BFEs are in accordance with 44 CFR 65.4.

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Maricopa	Unincorporated areas of Maricopa County. (09–09–1387P)	June 10, 2010, June 17, 2010, *Arizona Business Gazette.*	The Honorable Don Stapley, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	October 15, 2010	040037
Colorado: Arapahoe.	City of Aurora ..... (10–08–0421P)	June 3, 2010, June 10, 2010, *Aurora Sentinel.*	The Honorable Ed Tauer, Mayor, City of Aurora, 15151 East Alameda Parkway, Aurora, CO 80012.	October 8, 2010 ...	080002
Colorado: Boulder	City of Boulder ..... (10–08–0267P)	June 10, 2010, June 17, 2010, *The Daily Camera.*	The Honorable Susan Osborne, Mayor, City of Boulder, P.O. Box 791, Boulder, CO 80306.	October 15, 2010	080024

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Colorado: Boulder	Unincorporated areas of Boulder County. (10–08–0267P)	June 10, 2010, June 17, 2010, *The Daily Camera*.	The Honorable Cindy Domenico, Chair, Boulder County Board of Commissioners, P.O. Box 471, Boulder, CO 80306.	October 15, 2010	080023
Florida: Charlotte	Unincorporated areas of Charlotte County. (10–04–1461P)	May 28, 2010, June 4, 2010, *Charlotte Sun*.	The Honorable Bob Starr, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Port Charlotte, FL 33948.	October 4, 2010 ...	120061
Florida: Collier	City of Naples ..... (10–04–3471P)	June 4, 2010, June 11, 2010, *Naples Daily News*.	The Honorable Bill Barnett, Mayor, City of Naples, 735 8th Street South, Naples, FL 34102.	May 21, 2010	125130
Florida: Sarasota ..	City of Sarasota ... (10–04–3887P)	June 4, 2010, June 11, 2010, *Sarasota Herald-Tribune*.	The Honorable Kelly M. Kirschner, Mayor, City of Sarasota, 1565 1st Street, Sarasota, FL 34236.	May 26, 2010	125150
Georgia: Polk	City of Cedartown (09–04–0250P)	April 22, 2010, April 29, 2010, *The Cedartown Standard*.	The Honorable Larry Odom, Chairman, City of Cedartown Board of Commissioners, 201 East Avenue, Cedartown, GA 30125.	August 27, 2010 ..	130153
Hawaii: Hawaii	Unincorporated areas of Hawaii County. (09–09–2120P)	June 10, 2010, June 17, 2010, *Hawaii Tribune-Herald*.	The Honorable William P. Kenoi, Mayor, Hawaii County, 25 Aupuni Street, Hilo, HI 96720.	October 15, 2010	155166
Kansas: Johnson	City of Fairway ..... (09–07–1447P)	June 9, 2010, June 16, 2010, *The Johnson County Sun*.	The Honorable Jerry Wiley, Mayor, City of Fairway, 4210 Shawnee Mission Parkway, Suite 100, Fairway, KS 66205.	May 28, 2010	205185
Louisiana: Tangipahoa.	Unincorporated areas of Tangipahoa Parish. (09–06–2518P)	June 4, 2010, June 11, 2010, *Hammond Daily Star*.	The Honorable Gordon Burgess, President, Tangipahoa Parish, 206 East Mulberry Street, Amite, LA 70422.	July 23, 2010	220206
Missouri: St. Louis	City of Des Peres (09–07–0141P)	June 10, 2010, June 17, 2010, *The Countian*.	The Honorable Richard G. Lahr, Mayor, City of Des Peres, 12325 Manchester Road, Des Peres, MO 63131.	October 15, 2010	290347
New Mexico: Bernalillo.	Unincorporated areas of Bernalillo County. (10–06–1078P)	May 26, 2010, June 2, 2010, *Albuquerque Journal*.	The Honorable Deanna A. Archuleta, Chair, Bernalillo County Board of Commissioners, One Civic Plaza Northwest, 10th Floor, Albuquerque, NM 87102.	September 30, 2010.	350001
New York: Westchester.	Village of Mamaroneck. (10–02–0098P)	April 26, 2010, May 3, 2010, *The Journal News*.	The Honorable Norman S. Rosenblum, Mayor, Village of Mamaroneck, 123 Mamaroneck Avenue, Mamaroneck, NY 10543.	October 19, 2010	360916
North Carolina: Guilford.	City of Greensboro (09–04–4869P)	May 27, 2010, June 3, 2010, *Greensboro News and Record*.	The Honorable William H. Knight, Mayor, City of Greensboro, P.O. Box 3136, Greensboro, NC 27402.	October 1, 2010 ...	375351
North Carolina: Orange.	Town of Carrboro (09–04–5619P)	June 4, 2010, June 11, 2010, *Chapel Hill Herald*.	The Honorable Mark Chilton, Mayor, Town of Carrboro, 301 West Main Street, Carrboro, NC 27510.	October 12, 2010	370275
Texas: Collin	City of Dallas ..... (10–06–1626P)	May 25, 2010, June 1, 2010, *Dallas Morning News*.	The Honorable Tom Leppert, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, TX 75201.	May 17, 2010	480171
Texas: Harris	City of Houston .... (09–06–3048P)	May 25, 2010, June 1, 2010, *The Houston Chronicle*.	The Honorable Annise D. Parker, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	September 29, 2010.	480296
Texas: Jefferson ..	City of Beaumont (09–06–2516P)	June 10, 2010, June 17, 2010, *Beaumont Enterprise*.	The Honorable Becky Ames, Mayor, City of Beaumont, 801 Main Street, Suite 205, Beaumont, TX 77704.	October 15, 2010	485457
Virginia: Frederick	City of Winchester (10–03–0692P)	April 29, 2010, May 6, 2010, *The Winchester Star*.	The Honorable Elizabeth Minor, Mayor, City of Winchester, 15 North Cameron Street, Winchester, VA 22601.	April 22, 2010	510173

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

Dated: December 3, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–31516 Filed 12–15–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

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

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

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
Hot Spring County, Arkansas, and Incorporated Areas Docket No.: FEMA–B–1091			
Chatman Creek	Approximately 900 feet downstream of Grigsby Ford Road	+254	Unincorporated Areas of Hot Spring County.
	Just upstream of State Highway 9	+307	
Rockport Creek	Approximately 2,300 feet downstream of Martin Luther King Boulevard.	+260	Unincorporated Areas of Hot Spring County.
	Approximately 1,300 feet downstream of Martin Luther King Boulevard.	+263	
Town Creek	Approximately 2,300 feet downstream of Walco Road	+253	Unincorporated Areas of Hot Spring County.
	Just downstream of Mount Willow Road	+298	

* National Geodetic Vertical Datum.

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

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

ADDRESSES

Unincorporated Areas of Hot Spring County

Maps are available for inspection at 210 Locust Street, Malvern, AR 72104.

Vernon Parish, Louisiana, and Incorporated Areas
Docket No.: FEMA–B–1080

Bayou Castor	Approximately 1 mile downstream of Slagle Road	+225	City of Leesville, Unincorporated Areas of Vernon Parish.
	Approximately 700 feet upstream of the confluence with Stream No. 1.	+231	
Sabine River	Approximately 2.67 miles downstream of Neal Loop	+85	Unincorporated Areas of Vernon Parish.
	Approximately 2.3 miles upstream of Parish Road 113	+115	
Stream No. 1	At the confluence with Stream No. 2	+231	City of Leesville, Unincorporated Areas of Vernon Parish.
	Just downstream of Herring Street	+237	
Stream No. 2	At the confluence with Stream No. 1	+231	City of Leesville.
	Just downstream of 5th Street	+244	
Stream No. 3	Approximately 780 feet upstream of Franklin Avenue	+224	City of Leesville.
	Just downstream of West Texas Street	+253	

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

ADDRESSES

City of Leesville

Maps are available for inspection at City Hall, 101 West Lee Street, Leesville, LA 71446.

Unincorporated Areas of Vernon Parish

Maps are available for inspection at the Police Jury, 602 Alexandria Highway, Leesville, LA 71446.

Abbeville County, South Carolina, and Incorporated Areas
Docket No.: FEMA–B–1085

Blue Hill Creek	Approximately 1,546 feet downstream of South Main Street.	+462	City of Abbeville.
	Approximately 1,484 feet upstream of Vienna Street	+501	
Blue Hill Creek Tributary	Approximately 315 feet upstream of the confluence with Blue Hill Creek.	+494	City of Abbeville.
	Approximately 100 feet upstream of Haigler Street Extended.	+559	

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

ADDRESSES

City of Abbeville

Maps are available for inspection at the Fire Department, 102 South Main Street, Abbeville, SC 29620.

Edgefield County, South Carolina, and Incorporated Areas
Docket No.: FEMA–B–1085

Stevens Creek	Approximately 200 feet downstream of Woodland Road	+191	Unincorporated Areas of Edgefield County.
	At the confluence with the Savannah River	+191	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.

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

Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Edgefield County

Maps are available for inspection at the Edgefield County Courthouse, 124 Courthouse Square, Edgefield, SC 29824.

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

Dated: December 7, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–31547 Filed 12–15–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 216 and 237

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to set forth references to supplementary information and procedures pertaining to specific categories of DoD acquisitions.

DATES: *Effective Date:* December 16, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Ynette R. Shelkin, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 703–602–8384; facsimile 703–602–0350.

SUPPLEMENTARY INFORMATION: This final rule revises subpart 216.4 to add references at 216.401 to additional information and mandatory procedures to follow when planning to award an award fee contract. It also provides the location of procedures to follow for collection of relevant data on award and incentive fees paid to contractors and to evaluate such data on a regular basis, in accordance with section 814 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364). Additionally, this technical amendment revises subpart 237.1 to add language at 237.102–74 that provides the location of a taxonomy for acquisition of services to facilitate strategic sourcing within DoD.

List of Subjects in 48 CFR Parts 216 and 237

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 216 and 237 are amended as follows:

■ 1. The authority citation for 48 CFR parts 216 and 237 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 216—TYPES OF CONTRACTS

■ 2. Add sections 216.401 and 216.401–70 to subpart 216.4 to read as follows:

216.401 General.

(c) See PGI 216.401(c) for information on the Defense Acquisition University Award and Incentive Fees Community of Practice.

(e) Follow the procedures at PGI 216.401(e) when planning to award an award-fee contract.

216.401–70 Data collection.

Section 814 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364) requires DoD to collect relevant data on award and incentive fees paid to contractors and have mechanisms in place to evaluate such data on a regular basis. In order to comply with this statutory requirement, follow the procedures at PGI 216.401–70.

PART 237—SERVICE CONTRACTING

■ 3. Add section 237.102–74 to read as follows:

237.102–74 Taxonomy for the acquisition of services.

See PGI 237.102–74 for OUSD(AT&L) DPAP memorandum, "Taxonomy for the Acquisition of Services," dated November 23, 2010.

[FR Doc. 2010–31620 Filed 12–15–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 253

[Docket No. 0908061221–0533–02]

RIN 0648–AY16

Shipping Act, Merchant Marine, and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Provisions; Fishing Vessel, Fishing Facility and Individual Fishing Quota Lending Program

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

ACTION: Final rule.

SUMMARY: NMFS issues these regulations pursuant to its authority under Chapter 537 of the Shipping Act, (formerly known as Title XI of the Merchant Marine Act of 1936, as amended and codified), as well as the Magnuson-Stevens Act. These regulations revise the operating rules of the Fisheries Finance Program (FFP or Program) and set forth procedures, eligibility criteria, loan terms, and other requirements related to FFP lending to the commercial fishing and aquaculture industries. FFP assistance includes

loans for fishing vessels, fish processing facilities, aquaculture facilities, individual fishing quota (IFQ) permits, and participants in community development quota (CDQ) programs.

DATES: This final rule is effective January 18, 2011.

ADDRESSES: Copies of supporting documents that were prepared for this final rule, as well as the proposed rule, are available via the Federal e-Rulemaking portal, at *http://www.regulations.gov.* Those documents are also available from the NMFS, MB5, 1315 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Earl Bennett, NMFS, Fisheries Finance Program, 301–713–2390.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is also accessible at *http://www.gpoaccess.gov/fr.*

Background

On May 5, 2010, NMFS published a proposed rule to revise the FFP's lending regulations, as found in subpart B of 50 CFR Part 253, and requested public comment (75 FR 24549). This final rule strikes and replaces the current Subpart B with new regulations reflecting the 2006 revision of Chapter 537 of the Shipping Act (referenced as "Title XI"), the amended Magnuson-Stevens Act, Section 211(e) of the American Fisheries Act (AFA), Public Law 105–277, Div. C, Title II, Subtitle II, and the Coast Guard and Maritime Transportation Act of 2006, Public Law 109–241. In addition to revising definitions and updating general lending requirements, this final rule provides detail and clarity to the term "Actual Cost;" establishes procedures for refusing to approve, close or disburse a loan to borrowers with unresolved fisheries enforcement violations; and sets forth specialized terms and requirements for halibut and sablefish quota share (HSQS) loans, Bering Sea and Aleutian Island (BSAI) crab IFQ loans, and loans to North Pacific CDQ program participants.

Comment and Responses

Between May 5, 2010, and June 4, 2010, NMFS solicited comments on the proposed rule. On August 25, 2010, NMFS reopened the comment period for an additional two weeks when it discovered that a misprint in the preamble to the proposed rule could have hindered submission of comments on *http://www.regulations.gov* (75 FR [page 52300]).

Public comments on the proposed rule are summarized below, with responses from NMFS. NMFS received comments from four separate commenters. Overall, the comments about the Program and the proposed rule were favorable. Only one commenter had negative comments. The negative comments did not pertain to the specifics of the proposed rule, but addressed general NMFS policy.

Comment 1: The FFP has proved enormously beneficial to its participants. The proposed rule conforms to the intent of Congress, the North Pacific Fishery Management Council, and the Secretary of Commerce. The Crab IFQ loan program is the only step of crab rationalization that has yet to be implemented, so the proposed rule should be made final promptly.

Response: NMFS notes the comment.

Comment 2: The FFP is based on 1936 law and is outdated. The FFP should be a private sector lending operation, and there is no reason for American taxpayers to lend money to build boats or help commercial fishermen become profitable. There is much graft and corruption in the FFP; it should be defunded, and NMFS should be shut down.

Response: NMFS notes that the most recent version of the FFP's primary statutory authorization was enacted in 2006, so the FFP is in fact not outdated. Additionally, NMFS disagrees with the sentiments the commenter expressed about the fishing industry and the purpose of the FFP. Commercial fishing is an important industry and many Americans make their livelihood fishing. Maintaining a vibrant fishing sector is important to the National economy, as well as to coastal communities. NMFS notes that the FFP does not lend money to finance the construction of new vessels or improvements that increase harvest capacity. Moreover, NMFS disagrees with the commenter's characterization of the FFP. The FFP is audited annually by KPMG, an independent auditing company, and from time to time has been reviewed by NOAA auditors and the Department of Commerce's Office of the Inspector General. No allegations of graft or corruption have resulted from any of these reviews.

Comment 3: When NMFS funds a boat, it is likely to grant that boat too much quota to catch.

Response: FFP lending decisions and fishery management decisions are unrelated. Whether a vessel has an FFP loan has no bearing on whether it receives any authorization to harvest, process, or sell fish or fishery resources. Moreover, the FFP will not lend money for a fishing vessel unless the owner can demonstrate that it and the vessel possess all necessary harvest authorizations and permits and fully complies with all applicable law.

Comment 4: Americans do not want to fund aquaculture. Aquaculture pollutes horribly and spending on it is stupid and graft personified.

Response: NMFS disagrees. NMFS believes that sustainable aquaculture will create employment and business opportunities in coastal communities; provide safe, sustainable seafood; and complement NOAA's comprehensive strategy for maintaining healthy and productive marine populations, species, and ecosystems. All Program lending for aquaculture facilities require that such facilities are in compliance with all Federal, state and local environmental statutes and regulations. Additionally, they must possess all required licenses and permits.

Comment 5: A requirement for a preferred ship mortgage when financing a fishing vessel is not set forth in the proposed rule.

Response: NMFS notes the comment. Taken together, 46 U.S.C. 53709(b)(1) and (b)(4) limit FFP loans to 80 percent of the actual cost or depreciated actual cost of collateral pledged as security. NMFS acknowledges that the statutory provisions require the FFP to take a security interest in project property; otherwise the statutory terms would be rendered meaningless. Although the FFP's past practice has always been to take a security interest in project property, NMFS has clarified that it will take security interest in project property in this final rule in response to this comment. Such security interest may consist of, for example, a preferred ship mortgage for vessel financings, a real property deed of trust, mortgage, assignment of lease or other adequate collateral interest for aquaculture and shoreside facilities, etc. The final rule retains the Program's discretion to require additional collateral, as the FFP deems necessary, to protect the Program's credit interest.

Comment 6: Subject to a few exceptions, the proposed rule expresses a clear policy against financing the construction of new vessels or vessel improvements that increase harvest capacity. This policy, which has the effect of precluding the use of FFP loans to construct new vessels, should not apply in rationalized quota fisheries where total allowable catch is allocated to quota holders. In such fisheries, increasing a vessel's harvest capacity is irrelevant because each quota holder is limited to harvesting only a specific

amount of fish. In addition, replacing existing vessels would reduce fuel consumption and vessel traffic as older platforms are replaced with larger, more efficient ones. Section 253.26(d)(1) should be amended to allow the FFP to lend for, "Activities that assist in the transition to reduced fishing capacity or where such activities will not adversely increase fishing effort in targeted fisheries."

Response: Although NMFS acknowledges that regulatory fishing effort controls (especially in fisheries that may allocate specific amounts of catch with catch shares) can effectively manage harvest capacity, NMFS declines to change its capacity neutral lending policy, as requested by the commenter. However, NMFS notes that vessel improvements that assist in the transition to reduced fishing capacity, as well as those adding technologies or upgrades that improve data collection, reduce bycatch, improve harvest selectivity, reduce adverse environmental impacts of fishing gear, or improve safety, will continue to be eligible for financing even if such projects make ancillary increases to a vessel's harvest capacity.

Even in so called "rationalized fisheries," adding new vessels and introducing vessels with augmented harvest capacity can push effort into other fisheries. Although overall harvest levels may remain unchanged, as a new vessel replaces an existing vessel, the owner or operator may have an incentive to sell the old vessel or employ it in a different fishery. Similarly, efficiencies brought on by increasing a vessel's harvest capacity may displace one or more additional vessels, and the displaced vessel(s) may exacerbate problems in other locations by moving into them. In addition to fishing effort displacement, the FFP lacks the staff resources to undertake detailed reporting and heightened due diligence required to support loan commitments for new vessel construction. Currently, the FFP's credit risk model doesn't account for the added risks associated with taking security interests in construction materials or addressing shipyard liens. Accordingly, NMFS will retain its policy against financing the construction of new vessels or vessel improvements primarily designed to increase harvest capacity.

Comment 7: Only the six CDQ group entities specified in section 305(i)(1)(D) of the Magnuson-Stevens Act should be eligible to participate in the CDQ loan program. Listing all of the villages and not the representative groups is misleading, since the villages can only participate through their groups. The CDQ program is a closed class and no new villages or entities can be added without a statutory amendment.

Response: While it is true that section 305(i) of the Magnuson-Stevens Act, as amended, focuses on the six CDQ groups, the CDQ lending program in this final rule is authorized by section 211(e) of the AFA. Section 211(e) of the AFA extends loan eligibility to the "communities eligible to participate" consistent with the section 305(i) provisions in effect in 1998, the time of the AFA's passage. However, NMFS recognizes that meaningful participation in the loan program would be enhanced by the involvement of the six CDQ groups. Accordingly, NMFS listed CDQ groups in the proposed rule and lists them again in this final rule. Although NMFS acknowledges that only the six groups and various villages listed in the final rule are eligible, NMFS will retain the section 253.29(c)(7) provision to allow statutory expansion of the CDQ program without the need to wait for a corresponding change in the regulations.

Comment 8: The 2006 Science-State-Commerce Appropriations Act, Public Law 109–108, as amended by section 416(c)(2) of the Coast Guard and Maritime Transportation Act of 2006, Public Law 109–241, and section 211(e) of the AFA, mandate that eligible CDQ borrowers be allowed to use loan funds for the purchase of all or part of ownership interests in fishing or processing vessels.

Response: NMFS agrees that borrowers in the CDQ loan program may use FFP financing to purchase full or partial interests in BSAI fishing vessels, shoreside facilities, and fishing licenses; and NMFS is willing to lend for these purposes, so long as the borrower is able to provide a valid security interest in collateral financed by the loan. However, NMFS has determined that the statutory provisions that the commenter cites do not create any "mandate" to lend that would supersede the requirements of other statutes. Notably, section 211(e) of the AFA expands the legal authority found in the FFP's primary statutory authority (the provisions referenced as "Title XI") to allow the FFP to make loans to CDQ eligible entities, for the purposes specified in the statute. Also, the 2006 appropriation act, as amended, provides the actual funds to cover the budgetary cost under the Federal Credit Reform Act of 1990, 2 U.S.C. 661 *et seq.,* so that the FFP can "afford" to make the loans. The authority to make CDQ loans still stems from Title XI, which requires that the FFP obtain adequate security interests in its collateral, and the FFP knows of no other provisions that supersede this requirement. Thus, while NMFS agrees that certain loan funds may be used to purchase all or part of an interest in a fishing or processing vessel, other requirements still attach to those loans, even if there is a "mandate" for such loans. NMFS cannot make any loans, even to CDQ borrowers for eligible purposes, without adequate security interest(s) in the collateral.

Comment 9: In order to allow CDQ program entities to purchase a partial interest in a vessel without a first lien position security interest, NMFS should change section 253.29(d)(2) of the rule by adding the following sentence: "Notwithstanding any other provision in this section, the Program shall not require a first lien position on the whole of the primary collateral when only a partial interest of such primary collateral is purchased with such loan funds." NMFS' requirement for a lien upon the whole of a vessel has precluded one or more CDQ entities from using FFP loan funds to make a purchase of a partial ownership interest because the other owner did not want its interest encumbered by a NMFS preferred ship mortgage.

Response: NMFS is unable to make the requested change because it contravenes existing law. Under the Ship Mortgage Act, 46 U.S.C. sections 31301–30, a mortgage lien must apply to the whole vessel pledged as collateral in order to attain the status of a "first preferred ship mortgage," regardless of whether the financing is used to purchase or acquire a whole vessel or only a partial ownership interest in the vessel. Pursuant to the requirements of 46 U.S.C. 53711, NMFS determines that a recorded preferred ship mortgage is the only instrument that will create, attach and perfect the requisite security interest in a federally documented vessel or its appurtenances, which in turn is necessary to protect the interest of the United States Government. NMFS has more flexibility to adjust the priority of its mortgage liens to allow for unique circumstances or complex transactions, but NMFS is unable to alter the requirements of the Ship Mortgage Act.

Comment 10: The relevant statutes and the proposed rule mandate flexibility in regards to the collateral requirements for FFP loans to the CDQ program entities.

Response: Although Title XI grants NMFS some discretion to adjust collateral requirements, the Program's authorizing statute still requires that the FFP, at a minimum, take a security interest in the property that the loan finances or refinances. NMFS does not

construe the proposed regulations or the statutory provisions applicable to CDQ lending as superseding the required security determinations, loan limits and collateral requirements set forth in statute, in particular 46 U.S.C. 53709 and 53711. Moreover, NMFS is not under any requirement to approve every loan application. Nevertheless, NMFS remains committed to make reasonable loans to CDQ groups with as much flexibility in the collateral requirements, as is appropriate, within the bounds of its lending authorities.

Comment 11: Including the current market value of the land used by a facility that is pledged as collateral in the revised definition of Actual Cost better reflects the true value of the collateral.

Response: NMFS agrees. The unique nature of land can result in absurd results when using pure cost basis to determine asset value. For instance, using the purchase price and accounting costs may fail to reflect actual value if an applicant has owned the land for an extended period; and, purchase price alone may not reflect the true liquidation value of real property in times of price volatility. Accordingly, NMFS uses current market valued to determine asset value for the purposes of loans under the Program.

Comment 12: Valuing refinanced limited entry privileges using a current market value metric based on contemporaneous comparable sales will provide existing permit holders with flexibility for their existing permits.

Response: The FFP's experience over the last 12 years has shown that the value of quota can fluctuate over time, making current market value the most useful starting point to evaluate quota. In its approval process, the FFP will also examine the trend in value of individual fisheries' quota. However, NMFS emphasizes that the final rule retains the FFP's policy to deny applications that will disburse more than an applicant's outstanding indebtedness, calculated as principal and accrued interest, when refinancing an existing loan.

Comment 13: FFP funds should not be used to finance the purchase of new limited entry privileges at this time. This opposition is based solely on the practical fact that the FFP loan authority is not sufficiently funded at this time to enable the agency to meet all traditional loan applications, as well as financing for aquaculture, new IFQ financing, and new permit funding. Loan authority should be restored to the peak levels of prior budget cycles.

Response: The FFP receives two separate loan funding authorities. One is for the traditional loan program, and a separate authorization is for IFQ lending. Approving IFQ loans does not decrease the loan authority available for traditional loans and vice versa. Although NMFS has no final control over what is ultimately established as a lending ceiling, or funds given in annual appropriations legislation, NMFS will track the demand for both traditional and IFQ lending, and may include a request in its submission for the President's budget for greater loan authority if it deems it necessary.

Comment 14: FFP loan authority should be used to implement an IFQ loan program consistent with the Magnuson-Stevens Act. The onset of the new NOAA policy on catch shares will make FFP lending an important tool for the commercial fishing industry.

Response: NMFS notes the comment; however, NMFS points out that the decision to implement an IFQ program for any particular fishery lies with the appropriate Fishery Management Council.

Changes From the Proposed Rule

General FFP credit standards and requirements section 253.11 (j) is changed to reflect the terms of 46 U.S.C. 53709(b)(1) and (b)(4) which, collectively, require that any loan amount be limited to 80 percent of the actual cost or depreciated actual cost of the property used as security. By implication, this will require the FFP to take a security interest in the specified project property, and that the value of the collateral pledged will limit the aggregate amount of the loan. The proposed rule allowed the Program to waive this requirement or allow substitute collateral. This rule now requires a first lien position on the project's primary collateral. The FFP may still take junior lien positions on secondary collateral. NMFS also made minor changes to correct errors or improve readability that do not affect the substantive provisions of the rule.

Classification

The NMFS Assistant Administrator has determined that this final rule is published under the authority of Chapter 537 of the Shipping Act, and is consistent with the Magnuson-Stevens Act, as amended, and other applicable law.

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866. This rule does not duplicate, overlap, or conflict with any other relevant Federal rules.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rule will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are explained in the proposed rule (75 FR 24549) and are not fully repeated here. Briefly, the Department certified that this rule will not have a significant economic impact on a substantial number of small businesses because:

> Both small and large entities benefit from the availability of long-term, fixed rate financing. Community Development Quota (CDQ) groups, which consist of 65 Western Alaskan villages combined into six community coalitions, benefit from the positive economic opportunities that FFP lending provides. The proposed rule has no adverse impacts on small business entities because of the nature of the rule. Applications by small business entities for program financing are voluntary. No mandatory requirements are placed on any small business. No small entities are directly regulated by this rule. Those small business entities that use the program do so for beneficial impacts.

This certification was provided to the public for comment, and NMFS received no comments or concerns related to the certification. Accordingly, no regulatory analysis is required and none has been prepared.

Paperwork Reduction Act

This final rule contains collection-of information requirements subject to the Paperwork Reduction Act (PRA). The collections of information have been approved by the Office of Management and Budget (OMB) under OMB Control Numbers 0648–0012 (traditional loan application) and 0648–0272 (IFQ loan application). The public reporting burden for the FFP financing is estimated to average eight hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data information, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *OIRA_submission@omb.eop.gov,* or fax to 202–395–7285.

List of Subjects in 50 CFR Part 253

Aquaculture, Community development groups, Direct lending,

Financial assistance, Fisheries, Fishing, Individual fishing quota.

Dated: December 10, 2010.

Samuel D. Rauch III,

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

■ For the reasons set out in the preamble, 50 CFR part 253 is revised as follows.

PART 253—FISHERIES ASSISTANCE PROGRAMS

Subpart A—General

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Subpart C—Interjurisdictional Fisheries

253.50 Definitions.
253.51 Apportionment.
253.52 State projects.
253.53 Other funds.
253.54 Administrative requirements.

Authority: 46 U.S.C. 53701 and 16 U.S.C. 4101 *et seq.*

Subpart A—General

§ 253.1 Purpose.

(a) The regulations in this part pertain to fisheries assistance programs. Subpart B of this part governs the Fisheries Finance Program (FFP or the Program), which makes capacity neutral long-term direct fisheries and aquaculture loans. The FFP conducts all credit investigations, makes all credit determinations and holds and services all credit collateral.

(b) Subpart C of this part implements Public Law 99–659 (16 U.S.C. 4100 *et seq.*), which has two objectives:

(1) Promote and encourage State activities in support of the management of interjurisdictional fishery resources identified in interstate or Federal fishery management plans; and

(2) Promote and encourage management of interjurisdictional fishery resources throughout their range.

(3) The scope of this part includes guidance on making financial assistance awards to States or Interstate Commissions to undertake projects in support of management of interjurisdictional fishery resources in both the executive economic zone (EEZ) and State waters, and to encourage States to enter into enforcement agreements with either the Department of Commerce or the Department of the Interior.

Subpart B—Fisheries Finance Program

253.10 General definitions.

The terms used in this subpart have the following meanings:

Act means Chapter 537 of Title 46 of the U.S. Code, (46 U.S.C. 53701–35), as may be amended from time to time.

Actual cost means the sum of all amounts for a project paid by an obligor (or related person), as well as all amounts that the Program determines the obligor will become obligated to pay, as such amounts are calculated by § 253.16.

Applicant means the individual or entity applying for a loan (the prospective obligor).

Application means the documents provided to or requested by NMFS from an applicant to apply for a loan.

Application fee means 0.5 percent of the dollar amount of financing requested.

Approval in principle letter (AIP) means a written communication from NMFS to the applicant expressing the agency's commitment to provide financing for a project, subject to all applicable regulatory and Program requirements and in accordance with the terms and conditions contained in the AIP.

Aquaculture facility means land, structures, appurtenances, laboratories, water craft built in the U.S., and any equipment used for the hatching, caring for, or growing fish, under controlled circumstances for commercial purposes, as well as the unloading, receiving, holding, processing, or distribution of such fish.

Capital Construction Fund (CCF), as described under 46 U.S.C. 53501–17, allows owners of eligible vessels to reserve capital for replacement vessels, additional vessels, reconstruction of vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States, for operation in the fisheries of the United States.

Captain means a vessel operator or a vessel master.

Charter fishing means fishing from a vessel carrying a "passenger for hire," as defined in 46 U.S.C. 2101(21a), such passenger being engaged in recreational fishing, from whom consideration is provided as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.

Citizen means a "citizen of the United States," as described in 46 U.S.C. 104, or an entity who is a citizen for the purpose of documenting a vessel in the coastwise trade under 46 U.S.C. 50501.

Crewman means any individual, other than a captain, a passenger for hire, or a fisheries observer working on a vessel that is engaged in fishing.

Demand means a noteholder's request that a debtor or guarantor pay a note's full principal and interest balance.

Facility means a fishery or an aquaculture facility.

Fish means finfish, mollusks, crustaceans and all other forms of aquatic animal and plant life, other than marine mammals and birds.

Fisheries harvest authorization means any transferable permit, license or other right, approval, or privilege to engage in fishing.

Fishery facility means land, land structures, water craft that do not engage in fishing, and equipment used for transporting, unloading, receiving, holding, processing, preserving, or distributing fish for commercial purposes (including any water craft used for charter fishing).

Fishing means:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish;

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1) through (3) of this section.

(5) Fishing does not include any scientific research activity which is conducted by a scientific research vessel.

Fishing industry for the purposes of this part, means the broad sector of the national economy comprised of persons or entities that are engaged in or substantially associated with fishing, including aquaculture, charter operators, guides, harvesters, outfitters, processors, suppliers, among others, without regard to the location of their

activity or whether they are engaged in fishing for wild stocks or aquaculture.

Guarantee means a guarantor's contractual promise to repay indebtedness if an obligor fails to repay as agreed.

Guarantee fee means one percent of a guaranteed note's average annual unpaid principal balance.

Guaranteed note means a promissory note from an obligor to a noteholder, the repayment of which the United States guarantees.

IFQ means Individual Fishing Quota, which is a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. IFQ does not include community development quotas.

Noteholder means a guaranteed note payee.

Obligor means a party primarily liable for payment of the principal of or interest on an obligation, used interchangeably with the terms "note payor" or "notemaker."

Origination year means the year in which an application for a loan is accepted for processing.

Program means the Fisheries Finance Program, Financial Services Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

Project means:

(1) The refinancing or construction of a new fishing vessel or the financing or refinancing of a fishery or aquaculture facility or the refurbishing or purchase of an existing vessel or facility, including, but not limited to, architectural, engineering, inspection, delivery, outfitting, and interest costs, as well as the cost of any consulting contract the Program requires;

(2) The purchase or refinance of any limited access privilege, IFQ, fisheries access right, permit, or other fisheries harvest authorization, for which the actual cost of the purchase of such authorization would be eligible under the Act for direct loans;

(3) Activities (other than fishing capacity reduction, as set forth in part 600.1000 of this title) that assist in the transition to reduced fishing capacity;

(4) Technologies or upgrades designed to improve collection and reporting of fishery-dependent data, to reduce bycatch, to improve selectivity or reduce adverse impacts of fishing gear, or to improve safety; or

(5) Any other activity that helps develop the U.S. fishing industry, including, but not limited to, measures designed or intended to improve a vessel's fuel efficiency, to increase fisheries exports, to develop an underutilized fishery, or to enhance financial stability, financial performance, growth, productivity, or any other business attribute related to fishing or fisheries.

RAM means the Restricted Access Management division in the Alaska Regional Office of NMFS or the office that undertakes the duties of this division to issue or manage quota shares.

Refinancing means newer debt that either replaces older debt or reimburses applicants for previous expenditures.

Refinancing/assumption fee means a one time fee assessed on the principal amount of an existing FFP note to be refinanced or assumed.

Refurbishing means any reconstruction, reconditioning, or other improvement of existing vessels or facilities, but does not include routine repairs or activities characterized as maintenance.

Security documents mean all documents related to the collateral securing the U.S. Note's repayment and all other assurances, undertakings, and contractual arrangements associated with financing or guarantees provided by NMFS.

Underutilized fishery means any stock of fish (a) harvested below its optimum yield or (b) limited to a level of harvest or cultivation below that corresponding to optimum yield by the lack of aggregate facilities.

U.S. means the United States of America and, for citizenship purposes, includes the fifty states, Commonwealth of Puerto Rico, American Samoa, the Territory of the U.S. Virgin Islands, Guam, the Republic of the Marshal Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States, or any political subdivision of any of them.

U.S. Note means a promissory note payable by the obligor to the United States.

Useful life means the period during which project property will, as determined by the Program, remain economically productive.

Vessel means any vessel documented under U.S. law and used for fishing.

Wise use means the development, advancement, management, conservation, and protection of fishery resources, that is not inconsistent with the National Standards for Fishery Conservation and Management (16 U.S.C. 1851) and any other relevant criteria, as may be specified in applicable statutes, regulations, Fishery Management Plans, or NMFS guidance.

§ 253.11 General FFP credit standards and requirements.

(a) *Principal.* Unless explicitly stated otherwise in these regulations or applicable statutes, the amount of any loan may not exceed 80 percent of actual cost, as such term is described in § 253.16; provided that the Program may approve an amount that is less, in accordance with its credit determination.

(b) *Interest rate.* Each loan's annual interest rate will be 2 percent greater than the U.S. Department of Treasury's cost of borrowing public funds of an equivalent maturity at the time the loan closes.

(c) *Ability and experience requirements.* An obligor and the majority of its principals must demonstrate the ability, experience, resources, character, reputation, and other qualifications the Program deems necessary for successfully operating the project property and protecting the Program's interest in the project.

(d) *Lending restrictions.* Unless it can document that unique or extraordinary circumstances exist, the Program will not provide financing:

(1) For venture capital purposes; or

(2) To an applicant who cannot document successful fishing industry ability and experience of a duration, degree, and nature that the Program deems necessary to successfully repay the requested loan.

(e) *Income and expense projections.* The Program, using conservative income and expense projections for the project property's operation, must determine that projected net earnings can service all debt, properly maintain the project property, and protect the Program's interest against risks of loss, including the industry's cyclical economics.

(f) *Working capital.* The Program must determine that a project has sufficient initial working capital to achieve net earnings projections, fund all foreseeable contingencies, and protect the Program's interest in the project. In making its determination, the Program will use a conservative assessment of an applicant's financial condition, and at the Program's discretion, some portion of projected working capital needs may be met by something other than current assets minus liabilities (i.e., by a line or letter of credit, non-current assets readily capable of generating working capital, a guarantor with sufficient financial resources, etc.).

(g) *Audited financial statements.* Audited financial statements will ordinarily be required for any obligor

with large or financially complex operations, as determined by the program, whose financial condition the Program believes cannot be otherwise assessed with reasonable certainty.

(h) *Consultant services.* Expert consulting services may be necessary to help the Program assess a project's economic, technical, or financial feasibility. The Program will notify the applicant if an expert is required. The Program will select and employ the necessary consultant, but require the applicant to reimburse the Program for any fees charged by the consultant. In the event that an application requires expert consulting services, the loan will not be closed until the applicant fully reimburses the Program for the consulting fees. This cost may, at the Program's discretion, be included in the amount of the note. For a declined application, the Program may reimburse itself from the application fee as described in § 253.12, including any portion known as the commitment fee that could otherwise be refunded to the applicant.

(i) *Property inspections.* The Program may require adequate condition and valuation inspection of all property used as collateral as the basis for assessing the property's worth and suitability for lending. The Program may also require these at specified periods during the life of the loan. These must be conducted by competent and impartial inspectors acceptable to the Program. Inspection cost(s) will be at an applicant's expense. Those occurring before application approval may be included in actual cost, as actual cost is described in § 253.16.

(j) *Collateral.* The Program shall have first lien(s) on all primary project property pledged as collateral. The Program, at its discretion, may request additional collateral and will consider any additional collateral in its credit determinations.

(k) *No additional liens.* All primary project property pledged as collateral, including any additional collateral, shall be free of additional liens, unless the Program, at the request of the applicant, expressly waives this requirement in writing.

(l) *General FFP credit standards apply.* Unless explicitly stated otherwise in these rules, all FFP direct lending is subject to the above general credit standards and requirements found in §§ 253.12 through 253.30. The Program may adjust collateral, guarantee and other requirements to reflect individual credit risks.

(m) *Adverse legal proceedings.* The Program, at its own discretion, may decline or hold in abeyance any loan approval or disbursement(s) to any applicant found to have outstanding lawsuits, citations, hearings, liabilities, appeals, sanctions or other pending actions whose negative outcome could significantly impact, in the opinion of the Program, the financial circumstances of the applicant.

§ 253.12 Credit application.

(a) *Applicant.* (1) An applicant must be a U.S. citizen and be eligible to document a vessel in the coastwise trade: and

(2) Only the legal title holder of project property, or its parent company (or the lessee of an appropriate long-term lease) may apply for a loan; and

(3) An applicant and the majority of its principals must generally have the ability, experience, resources, character, reputation, and other qualifications the Program deems necessary for successfully operating, utilizing, or carrying out the project and protecting the Program's interest; and

(4) Applicants should apply to the appropriate NMFS Regional Financial Services Branch to be considered.

(b) *Application fee.* An application fee of 0.5 percent of the dollar amount of an application is due when the application is formally accepted. Upon submission, 50 percent of the application fee, known as the "filing fee," is non-refundable; the remainder, known as the "commitment fee," may be refunded if the Program declines an application or an applicant withdraws its application before the Program issues an AIP letter, as described in § 253.13(e). The Program will not issue an AIP letter if any of the application fee remains unpaid. No portion of the application fee shall be refunded once the Program issues an AIP letter.

(c) *False statement.* A false statement on an application is grounds for denial or termination of funds, grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001 and an event of a security default.

§ 253.13 Initial investigation and approval.

(a) The Program shall undertake a due diligence investigation of every application it receives to determine if, in the Program's sole judgment, the application is both:

(1) Eligible for a loan because it meets applicable loan requirements; and

(2) Qualified for a loan because the project is deemed an acceptable credit risk.

(b) The Program will approve eligible and qualified applicants by evaluating the information obtained during the application and investigation process.

(c) Among other investigations, applicants may be subject to a background check, fisheries violations check and credit review. Background checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's honesty or financial integrity.

(d) The Program, at its own discretion, may decline or delay approval of any loans or disbursements to any applicant found to have outstanding citations, notices of violations, or other pending legal actions or unresolved claims.

(e) The Program may place any terms and conditions on such approvals that the Program, in its sole discretion, deems necessary and appropriate.

(f) *Credit decision.* (1) The Program shall issue to approved applicants an AIP letter, which shall describe the terms and conditions of the loan, including (but not limited to) loan amounts, maturities, additional collateral, repayment sources or guarantees. Such terms and conditions are at the Program's sole discretion and shall also be incorporated in security documents that the Program prepares. An applicant's non-acceptance of any terms and conditions may result in an applicant's disqualification.

(2) Any application the Program deems ineligible or unqualified will be declined.

§ 253.14 Loan documents.

(a) *U.S. Note.* (1) The U.S. Note will be in the form the Program prescribes.

(2) The U.S. Note evidences the obligor's indebtedness to the United States.

(i) For financing approved after October 11, 1996, the U.S. Note evidences the obligor's actual indebtedness to the U.S.; and

(ii) For financing originating before October 11, 1996, that continues to be associated with a Guaranteed Note, the U.S. Note shall evidence the obligor's actual indebtedness to the U.S. upon the Program's payment of any or all of the sums due under the Guaranteed Note or otherwise disbursed on the obligor's behalf.

(iii) The U.S. Note will, among other things, contain provisions to add to its principal balance all amounts the Program advances or incurs, including additional interest charges and costs incurred to protect its interest or accommodate the obligor.

(3) The U.S. Note shall be assignable by the Program, at its sole discretion.

(b) *Security documents.* (1) Each security document will be in the form the Program prescribes.

(2) The Program will, at a minimum, require the pledge of adequate collateral, generally in the form of a security interest or mortgage against all property associated with a project or security as otherwise required by the Program.

(3) The Program will require such other security as it deems necessary and appropriate, given the circumstances of each obligor and the project.

(4) The security documents will, among other things, contain provisions to secure the repayment of all additional amounts the Program advances or incurs to protect its interest or accommodate the obligor, including additional interest charges and fees.

§ 253.15 Recourse against parties.

(a) *Form.* Recourse by borrowers or guarantors may be by a repayment guarantee, irrevocable letter of credit, additional tangible or intangible collateral, or other form acceptable to the Program.

(b) *Principals accountable.* The principal parties in interest, who ultimately stand most to benefit from the project, will ordinarily be held financially accountable for the project's performance. The Program may require recourse against:

(1) All major shareholders of a closely-held corporate obligor;

(2) The parent corporation of a subsidiary corporate obligor;

(3) The related business entities of the obligor if the Program determines that the obligor lacks substantial pledged assets other than the project property or is otherwise lacking in any credit factor required to approve the application;

(4) Any or all major limited partners;

(5) Non-obligor spouses of applicants or obligors in community property states; and/or

(6) Against any others it deems necessary to protect its interest.

(c) *Recourse against parties.* Should the Program determine that a secondary means of repayment from other sources is necessary (including the net worth of parties other than the obligor), the Program may require secured or unsecured recourse against any such secondary repayment sources.

(d) *Recourse unavailable.* Where appropriate recourse is unavailable, the conservatively projected net liquidating value of the obligor's assets (as such assets are pledged to the Program) must, in the Program's credit judgment, substantially exceed all projected Program exposure or other risks of loss.

§ 253.16 Actual cost.

Actual cost shall be determined as follows:

(a) The actual cost of a vessel shall be the sum of:

(1) The total cost of the project depreciated on a straight-line basis, over the project property's useful life, using a 10-percent salvage value; and

(2) The current market value of appurtenant limited access privileges or transferable limited access privileges vested in the name of the obligor, the subject vessel or their owners, provided that such privileges are utilized by or aboard the subject vessel and will be pledged as collateral for the subject FFP financing.

(b) The actual cost of a facility shall be the sum of:

(1) The total cost of the project, not including land, depreciated on a straightline basis over the Project Property's useful life, using a 10-percent salvage value;

(2) The current market value of the land that will be pledged as collateral for the subject FFP financing, provided that such land is utilized by the facility; and

(3) The net present value of the payments due under a long term lease of land or marine use rights, provided that they meet the following requirements:

(i) The project property must be located at such leased space or directly use such marine use rights;

(ii) Such lease or marine use right must have a duration the Program deems sufficient; and

(iii) The lease or marine use right must be assigned to the Program such that the Program may foreclose and transfer such lease to another party.

(c) The actual cost of a transferable limited access privilege shall be determined as follows:

(1) For financing the purchase of limited access privileges, the actual cost shall be the purchase cost.

(2) For refinancing limited access privileges, the actual cost shall be the current market value.

(d) The actual cost of any Project that includes any combination of items described in paragraphs (a), (b) or (c) of this section shall be the sum of such calculations.

§ 253.17 Insurance.

(a) All insurable collateral property and other risks shall be continuously insured so long as any balance of principal or interest on a Program loan or guarantee remains outstanding.

(b) Insurers must be acceptable to the Program.

(c) Insurance must be in such forms and amounts and against such risks the Program deems necessary to protect the United States' interest.

(d) Insurance must be endorsed to include the requirements the Program deems necessary and appropriate.

(1) Normally and as appropriate, the Program will be named as an additional insured, mortgagee, or loss payee, for the amount of its interest; any waiver of this requirement must be in writing;

(2) Cancellation will require adequate advance written notice;

(3) The Program will be adequately protected against other insureds' breaches of policy warranties, negligence, omission, etc., in the case of marine insurance, vessel seaworthiness will be required;

(4) The insured must provide coverage for any other risk or casualty the Program may require.

§ 253.18 Closing.

(a) *Approval in principle letters.* Every closing will be in strict accordance with a final approval in principle letter.

(b) *Contracts.* Promissory notes, security documents, and any other documents the Program may require will be on standard Program forms that may not be altered without Program written approval. The Program will ordinarily prepare all contracts, except certain pledges involving real property or other matters involving local law, which will be prepared by each obligor's attorney at the direction and approval of the Program.

(c) *Additional requirements.* At its discretion the Program may require services from applicant's attorneys, other contractors or agents. Real property services required from an applicant's attorney or agent may include, but are not limited to: Title search, title insurance, mortgage and other document preparation, document execution and recording, escrow and disbursement, and legal opinions and other assurances. The Program will notify the applicant in advance if any such services are required of the applicant's attorneys, contractors or other agents. Applicants are responsible for all attorney's fees, as well as those of any other private contractor. Attorneys and other contractors must be satisfactory to the Program.

(d) *Closing schedules.* The Program will not be liable for adverse interest-rate fluctuations, loss of commitments, or other consequences of an inability by any of the parties to meet the closing schedule.

§ 253.19 Dual-use CCF.

The Program may require the pledge of a CCF account or annual deposits of some portion of the project property's net income into a dual-use CCF. A dual-use CCF provides the normal CCF tax-

deferral benefits, but also gives the Program control of CCF withdrawals, recourse against CCF deposits, ensures an emergency refurbishing reserve (tax-deferred) for project property, and provides additional collateral.

§ 253.20 Fees.

(a) *Application fee.* See §§ 253.10 and 253.12(b).

(b) *Guarantee fee.* For existing Guaranteed Loans, an annual guarantee fee will be due in advance and will be based on the guaranteed note's repayment provisions for the prospective year. The first annual guarantee fee is due at guarantee closing. Each subsequent guarantee fee is due and payable on the guarantee closing's anniversary date. Each is fully earned when due, and shall not subsequently be refunded for any reason.

(c) *Refinancing or assumption fee.* The Program will assess a fee of one quarter of one (1) percent of the note to be refinanced or assumed. This fee is due upon application for refinancing or assumption of a guaranteed or direct loan. Upon submission, the fee shall be non-refundable. The Program may waive a refinancing or assumption fee's payment when the refinancing or assumption's primary purpose will benefit the United States.

(d) *Where payable.* Fees are payable by check to "U.S. Department of Commerce/NOAA." Other than those collected at application or closing, fees are payable by mailing checks to the "U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service," to such address as the Program may designate. To ensure proper crediting, each check should include the official case number the Program assigns.

§ 253.21 Demand by guaranteed noteholder and payment.

Every demand by the guaranteed noteholder must be delivered in writing to the Program and must include the noteholder's certified record of the date and amount of each payment made on the guaranteed note and the manner of its application. The only period during which a guaranteed noteholder can make demand for a payment default begins on the thirty-first day of the payment default and continues through the ninetieth day of a payment default. The noteholder must possess evidence of the demand's timely delivery.

§ 253.22 Program operating guidelines.

The Program may issue policy and administrative guidelines, as the need arises.

§ 253.23 Default and liquidation.

Upon default under the terms of any note, guarantee, security agreement, mortgage, or other security document the Program shall take remedial actions including, but not limited to, where appropriate, retaking or arrest of collateral, foreclosure, restructuring, debarment, referral for debt collection, or liquidation as it deems best able to protect the U.S. Government's interest.

§ 253.24 Enforcement violations and adverse actions.

(a) *Compliance with applicable law.* All applicants and Program participants shall comply with applicable law.

(b) *Applicant disqualification.* (1) Any issuance of any citation or Notice of Violation and Assessment by NMFS enforcement or other enforcement authority may constitute grounds for the Program to:

(i) Delay application or approval processing;

(ii) Delay loan closing;

(iii) Delay disbursement of loan proceeds;

(iv) Disqualify an applicant or obligor; or

(v) Declare default.

(2) The Program will not approve loans or disburse funds to any applicant found to have an outstanding, final and unappealable fisheries fine or other unresolved penalty until either: Such fine is paid or penalty has been resolved; or the applicant enters into an agreement to pay the penalty and makes all payments or installments as they are due. Failure to pay or resolve any such fine or penalty in a reasonable period of time will result in the applicant's disqualification.

(c) *Foreclosure in addition to other penalties.* In the event that a person with an outstanding balance on a Program loan or guarantee violates any ownership, lease, use, or other provision of applicable law, such person may be subject to foreclosure of property, in addition to any fines, sanctions, or other penalties.

§ 253.25 Other administrative requirements.

(a) *Debt Collection Act.* In accordance with the provisions of the Debt Collection Improvement Act of 1996, a person may not obtain any Federal financial assistance in the form of a loan (other than a disaster loan) or loan guarantee if the person has an outstanding debt (other than a debt under the Internal Revenue Code of 1986) with any Federal agency which is in a delinquent status, as determined under standards prescribed by the Secretary of the Treasury.

(b) *Certifications.* Applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," or its equivalent or successor form, if any.

(c) *Taxpayer identification.* An applicant classified for tax purposes as an individual, limited liability company, partnership, proprietorship, corporation, or legal entity is required to submit along with the application a taxpayer identification number (TIN) (social security number, employer identification number as applicable, or registered foreign organization number). Recipients who either fail to provide their TIN or provide an incorrect TIN may have application processing or funding suspended until the requirement is met.

(d) *Audit inquiry.* An audit of a Program loan may be conducted at any time. Auditors, selected at the discretion of the Program or other agency of the United States, shall have access to any and all books, documents, papers and records of the obligor or any other party to a financing that the auditor(s) deem(s) pertinent, whether written, printed, recorded, produced or reproduced by any mechanical, magnetic or other process or medium.

(e) *Paperwork Reduction Act.* The application requirements contained in these rules have been approved under OMB control number 0648–0012. The applications for the halibut/sablefish QS crew member eligibility certificate have been approved under OMB control number 0648–0272. Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

§ 253.26 Traditional loans.

(a) *Eligible projects.* Financing or refinancing up to 80 percent of a project's actual cost shall be available to any citizen who is determined to be eligible and qualified under the Act and these rules, except—

(1) The Program will not finance the cost of new vessel construction.

(2) The Program will not finance a vessel refurbishing project that materially increases an existing vessel's harvesting capacity.

(b) *Financing or refinancing.* (1) Projects, other than those specified in paragraphs (a) (1) and (a)(2) of this section, may be financed, as well as refinanced.

(2) Notwithstanding paragraph (a)(1) of this section, the Program may refinance the construction cost of a vessel whose construction cost has already been financed (or otherwise paid) prior to the submission of a loan application.

(3) Notwithstanding paragraph (a)(2) of this section, the Program may refinance the refurbishing cost of a vessel whose initial refurbishing cost has already been financed (or otherwise paid) prior to the submission of a loan application.

(4) The Program may finance or refinance the purchase or refurbishment of any vessel or facility for which the Secretary has:

(i) Accelerated and/or paid outstanding debts or obligations;

(ii) Acquired; or

(iii) Sold at foreclosure.

(c) *Existing vessels and facilities.* The Program may finance the purchase of an existing vessel or existing fishery facility if such vessel or facility will be refurbished in the United States and will be used in the fishing industry.

(d) *Fisheries modernization.* Notwithstanding any of this part, the Program may finance or refinance any:

(1) Activities that assist in the transition to reduced fishing capacity; or

(2) Technologies or upgrades designed to:

(i) Improve collection and reporting of fishery-dependent data;

(ii) Reduce bycatch;

(iii) Improve selectivity;

(iv) Reduce adverse impacts of fishing gear; or

(v) Improve safety.

(e) *Guaranty transition.* Upon application by the obligor, any guaranteed loans originated prior to October 11, 1996, may be refinanced as direct loans, regardless of the original purpose of the guaranteed loan.

(f) *Maturity.* Maturity may not exceed 25 years, but shall not exceed the project property's useful life. The Program, at its sole discretion, may set a shorter maturity period.

(g) *Credit standards.* Traditional loans are subject to all Program general credit standards and requirements. Collateral, guarantee and other requirements may be adjusted in accordance with the Program's assessment of individual credit risks.

§ 253.27 IFQ financing.

The Program may finance or refinance the project cost of purchasing, including the reimbursement of obligors for expenditures previously made for purchasing, individual fishing quotas in accordance with the applicable sections of the Magnuson-Stevens Fishery Conservation and Management Act or any other statute.

§ 253.28 Halibut sablefish IFQ loans.

(a) *Specific definitions.* For the purposes of this section, the following definitions apply:

(1) Entry-level fishermen means fishermen who do not own any IFQ in the year they apply for a loan.

(2) Fishermen who fish from small vessels means fishermen wishing to purchase IFQ for use on Category B, Category C, or Category D vessels, but who do not own, in whole or in part, any Category A or Category B vessels, as such vessels are defined in 50 CFR 679.40(a)(5) of this title.

(3) Halibut sablefish quota share means a halibut or sablefish permit, the face amount of which is used as the basis for the annual calculation of a person's halibut or sablefish IFQ, also abbreviated as "HSQS" or "halibut/sablefish QS."

(4) Halibut/Sablefish IFQ means the annual catch limit of halibut or sablefish that may be harvested by a person who is lawfully allocated halibut or sablefish quota share, a harvest privilege for a specific portion of the total allowable catch of halibut or sablefish.

(b) *Entry level fishermen.* The Program may finance up to 80 percent of the cost of purchasing HSQS by an entry level fisherman who:

(1) Does not own any halibut/sablefish QS during the origination year;

(2) Applies for a loan to purchase a quantity of halibut/sablefish QS that is not greater than the equivalent of 8,000 lb. (3,628.7 kg) of IFQ during the origination year;

(3) Possesses the appropriate transfer eligibility documentation duly issued by RAM for HSQS;

(4) Intends to be present aboard the vessel, as may be required by applicable regulations; and

(5) Meets all other Program eligibility, qualification, lending and credit requirements.

(c) *Fishermen fishing from small vessels.* The Program may finance up to 80 percent of the cost of purchasing HSQS by a fisherman who fishes from a small vessel, provided that any such fisherman shall:

(1) Apply for a loan to purchase halibut or sablefish QS for use on vessel Categories B, C, or D, as defined under 50 CFR 679.40(a)(5) of this title;

(2) Not own an aggregate quantity of halibut/sablefish QS (including the loan QS) of more than the equivalent of 50,000 lb. (22,679.6 kg) of IFQ during the origination year;

(3) Not own, in whole or in part, directly or indirectly (including through stock or other ownership interest) any vessel of the type that would have been assigned Category A or Category B HSQS under 50 CFR 679.40(a)(5);

(4) Possess the appropriate transfer eligibility documentation duly issued by the RAM for HSQS;

(5) Intend to be present aboard the vessel, as may be required by applicable regulations, as IFQ associated with halibut/sablefish QS financed by the loan is harvested; and

(6) Meet all other Program eligibility, qualification, lending and credit requirements.

(d) *Refinancing.* (1) The Program may refinance any existing debts associated with HSQS an applicant currently holds, provided that—

(i) The HSQS being refinanced would have been eligible for Program financing at the time the applicant purchased it, and

(ii) The applicant meets the Program's applicable lending requirements.

(2) The refinancing is in an amount up to 80 percent of HSQS' current market value; however, the Program will not disburse any amount that exceeds the outstanding principal balance, plus accrued interest (if any), of the existing HSQS debt being refinanced.

(3) In the event that the current market value of HSQS and principal loan balance do not meet the 80 percent requirement in paragraph (d)(2) of this section, applicants seeking refinancing may be required to provide additional down payment.

(e) *Maturity.* Loan maturity may not exceed 25 years, but may be shorter depending on credit and other considerations.

(f) *Repayment.* Repayment will be by equal quarterly installments of principal and interest.

(g) *Security.* Although quota share(s) will be the primary collateral for a HSQS loan, the Program may require additional security pledges to maintain the priority of the Program's security interest. The Program, at its option, may also require all parties with significant ownership interests to personally guarantee loan repayment for any applicant that is a corporation, partnership, or other entity. Subject to the Program's credit risk determination, some projects may require additional security, collateral, or credit enhancement.

(h) *Crew member transfer eligibility certification.* The Program will accept RAM certification as proof that applicants are eligible to hold HSQS. The application of any person determined by RAM to be unable to receive such certification will be declined. Applicants who fail to obtain

appropriate transfer eligibility certification within 45 working days of the date of application may lose their processing priority.

(i) *Program credit standards.* HSQS loans, regardless of purpose, are subject to all Program general credit standards and requirements. Collateral, guarantee and other requirements may be adjusted to individual credit risks.

§ 253.29 CDQ loans.

(a) *FFP actions.* The Program may finance or refinance up to 80 percent of a project's actual cost.

(b) *Eligible projects.* Eligible projects include the purchase of all or part of ownership interests in fishing or processing vessels, shoreside fish processing facilities, permits, quota, and cooperative rights in any of the Bering Sea and Aleutian Islands fisheries.

(c) *Eligible entities.* The following communities, in accordance with applicable law and regulations are eligible to participate in the loan program:

(1) The villages of Akutan, Atka, False Pass, Nelson Lagoon, Nikolski, and Saint George through the Aleutian Pribilof Island Community Development Association.

(2) The villages of Aleknagik, Clark's Point, Dillingham, Egegik, Ekuk, Ekwok, King Salmon/Savonoski, Levelock, Manokotak, Naknek, Pilot Point, Port Heiden, Portage Creek, South Naknek, Togiak, Twin Hills, and Ugashik through the Bristol Bay Economic Development Corporation.

(3) The village of Saint Paul through the Central Bering Sea Fishermen's Association.

(4) The villages of Chefornak, Chevak, Eek, Goodnews Bay, Hooper Bay, Kipnuk, Kongiganak, Kwigillingok, Mekoryuk, Napakiak, Napaskiak, Newtok, Nightmute, Oscarville, Platinum, Quinhagak, Scammon Bay, Toksook Bay, Tuntutuliak, and Tununak through the Coastal Villages Region Fund.

(5) The villages of Brevig Mission, Diomede, Elim, Gambell, Golovin, Koyuk, Nome, Saint Michael, Savoonga, Shaktoolik, Stebbins, Teller, Unalakleet, Wales, and White Mountain through the Norton Sound Economic Development Corporation.

(6) The villages of Alakanuk, Emmonak, Grayling, Kotlik, Mountain Village, and Nunam Iqua through the Yukon Delta Fisheries Development Association.

(7) Any new groups established by applicable law.

(d) *Loan terms.* (1) CDQ loans may have terms up to thirty years, but shall not exceed the project property's useful life. The Program, at its sole discretion, may set a shorter maturity period.

(2) CDQ loans are subject to all Program general credit standards and requirements. Collateral, guarantee and other requirements may be adjusted to individual credit risks.

§ 253.30 Crab IFQ loans.

(a) *Specific definitions.* For the purposes of this section, the following definitions apply:

(1) Crab means those crab species managed under the Fishery Management Plan for Bering Sea/Aleutian Island (BSAI) King and Tanner Crab.

(2) Crab FMP means the Fishery Management Plan for BSAI King and Tanner Crab.

(3) Crab quota share means a BSAI King and Tanner Crab permit, the base amount of which is used as a basis for the annual calculation of a person's Crab IFQ, also abbreviated as "Crab QS."

(b) *Crab captains or crewmen.* The Program may finance up to 80 percent of the cost of purchasing Crab QS by a citizen:

(1) Who is or was:

(i) A captain of a crab fishing vessel, or

(ii) A crew member of a crab fishing vessel;

(2) Who has been issued the appropriate documentation of eligibility by RAM;

(3) Whose aggregate holdings of QS will not exceed any limit on Crab QS holdings that may be in effect in the Crab FMP implementing regulations or applicable statutes in effect at the time of loan closing; and will not hold either individually or collectively, based on the initial QS pool, as published in 50 CFR Part 680, Table 8; and

(4) Who, at the time of initial application, meets all other applicable eligibility requirements to fish for crab or hold Crab QS contained in the Crab FMP implementing regulations or applicable statutes in effect at the time of loan closing.

(c) *Refinancing.* (1) The Program may refinance any existing debts associated with Crab QS that an applicant currently holds, provided that:

(i) The Crab QS being refinanced would have been eligible for Program financing at the time the applicant purchased it;

(ii) The applicant meets the Program's applicable lending requirements; and

(iii) The applicant would meet the requirements found in the Crab FMP implementing regulations at the time any such refinancing loan would close.

(2) The Program may refinance an amount up to 80 percent of Crab QS's current market value; however, the Program will not disburse any amount that exceeds the outstanding principal balance, plus accrued interest (if any), of the existing Crab QS debt being refinanced.

(3) In the event that the current market value of Crab QS and current principal balance do not meet the 80 percent requirement in paragraph (c)(2) of this section, applicants seeking refinancing may be required to provide additional down payment.

(d) *Maturity.* Loan maturity may not exceed 25 years, but may be shorter depending on credit and other considerations.

(e) *Repayment.* Repayment schedules will be set by the loan documents.

(f) *Security.* Although the quota share will be the primary collateral for a Crab QS loan, the Program may require additional security pledges to maintain the priority of the Program's security interest. The Program, at its option, may also require all parties with significant ownership interests to personally guarantee loan repayment for any applicant that is a corporation, partnership, or other entity. Subject to the Program's credit risk determination, some projects may require additional security, collateral, or credit enhancement.

(g) *Crew member transfer eligibility certification.* The Program will accept RAM transfer eligibility certification as proof that applicants are eligible to hold Crab QS. The application of any person determined by RAM to be unable to receive such certification will be declined. Applicants who fail to obtain appropriate transfer eligibility certification within 45 working days of the date of application may lose their processing priority.

(h) *Crab Quota Share Ownership Limitation.* A program obligor must comply with all applicable maximum amounts, as may be established by NMFS regulations, policy or North Pacific Fishery Management Council action.

(i) *Program credit standards.* Crab QS loans are subject to all Program general credit standards and requirements. Collateral, guarantee and other requirements may be adjusted to individual credit risks.

§§ 253.31—253.49 [Reserved]

Subpart C—Interjurisdictional Fisheries

§ 253.50 Definitions.

The terms used in this subpart have the following meanings:

Act means the Interjurisdictional Fisheries Act of 1986, Public Law 99–659 (Title III).

Adopt means to implement an interstate fishery management plan by State action or regulation.

Commercial fishery failure means a serious disruption of a fishery resource affecting present or future productivity due to natural or undetermined causes. It does not include either:

(1) The inability to harvest or sell raw fish or manufactured and processed fishery merchandise; or

(2) Compensation for economic loss suffered by any segment of the fishing industry as the result of a resource disaster.

Enforcement agreement means a written agreement, signed and dated, between a state agency and either the Secretary of the Interior or Secretary of Commerce, or both, to enforce Federal and state laws pertaining to the protection of interjurisdictional fishery resources.

Federal fishery management plan means a plan developed and approved under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Fisheries management means all activities concerned with conservation, restoration, enhancement, or utilization of fisheries resources, including research, data collection and analysis, monitoring, assessment, information dissemination, regulation, and enforcement.

Fishery resource means finfish, mollusks, and crustaceans, and any form of marine or Great Lakes animal or plant life, including habitat, other than marine mammals and birds.

Interjurisdictional fishery resource means:

(1) A fishery resource for which a fishery occurs in waters under the jurisdiction of one or more states and the U.S. Exclusive Economic Zone; or

(2) A fishery resource for which an interstate or a Federal fishery management plan exists; or

(3) A fishery resource which migrates between the waters under the jurisdiction of two or more States bordering on the Great Lakes.

Interstate Commission means a commission or other administrative body established by an interstate compact.

Interstate compact means a compact that has been entered into by two or more states, established for purposes of conserving and managing fishery resources throughout their range, and consented to and approved by Congress.

Interstate Fisheries Research Program means research conducted by two or more state agencies under a formal interstate agreement.

Interstate fishery management plan means a plan for managing a fishery resource developed and adopted by the member states of an Interstate Marine Fisheries Commission, and contains information regarding the status of the fishery resource and fisheries, and recommends actions to be taken by the States to conserve and manage the fishery resource.

Landed means the first point of offloading fishery resources.

NMFS Regional Director means the Director of any one of the five National Marine Fisheries Service regions.

Project means an undertaking or a proposal for research in support of management of an interjurisdictional fishery resource or an interstate fishery management plan.

Research means work or investigative study, designed to acquire knowledge of fisheries resources and their habitat.

Secretary means the Secretary of Commerce or his/her designee.

State means each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, or the Commonwealth of the Northern Mariana Islands.

State agency means any department, agency, commission, or official of a state authorized under the laws of the State to regulate commercial fisheries or enforce laws relating to commercial fisheries.

Value means the monetary worth of fishery resources used in developing the apportionment formula, which is equal to the price paid at the first point of landing.

Volume means the weight of the fishery resource as landed, at the first point of landing.

§ 253.51 Apportionment.

(a) *Apportionment formula.* The amount of funds apportioned to each state is to be determined by the Secretary as the ratio which the equally weighted average of the volume and value of fishery resources harvested by domestic commercial fishermen and landed within such state during the 3 most recent calendar years for which data satisfactory to the Secretary are available bears to the total equally weighted average of the volume and value of all fishery resources harvested by domestic commercial fishermen and landed within all of the states during those calendar years.

(1) The equally weighted average value is determined by the following formula:

$$\frac{\text{Volume of X State}}{\text{Volume of all States}} = \text{A percent}$$

$$\frac{\text{Value of X State}}{\text{Value of all States}} = \text{B percent}$$

$$\frac{[\text{A\%} + \text{B\%}]}{2} = \text{State percentage used to determine state's share of the total available funds}$$

(2) Upon appropriation of funds by Congress, the Secretary will take the following actions:

(i) Determine each state's share according to the apportionment formula.

(ii) Certify the funds to the respective NMFS Regional Director.

(iii) Instruct NMFS Regional Directors to promptly notify states of funds' availability.

(b) No state, under the apportionment formula in paragraph (a) of this section, that has a ratio of one-third of 1 percent or higher may receive an apportionment for any fiscal year that is less than 1 percent of the total amount of funds available for that fiscal year.

(c) If a State's ratio under the apportionment formula in paragraph (b) of this section is less than one-third of 1 percent, that state may receive funding if the state:

(1) Is signatory to an interstate fishery compact;

(2) Has entered into an enforcement agreement with the Secretary and/or the Secretary of the Interior for a fishery that is managed under an interstate fishery management plan;

(3) Borders one or more of the Great Lakes;

(4) Has entered into an interstate cooperative fishery management agreement and has in effect an interstate fisheries management plan or an interstate fisheries research Program; or

(5) Has adopted a Federal fishery management plan for an interjurisdictional fishery resource.

(d) Any state that has a ratio of less than one-third of 1 percent and meets any of the requirements set forth in paragraphs (c)(1) through (5) of this section may receive an apportionment for any fiscal year that is not less than 0.5 percent of the total amount of funds available for apportionment for such fiscal year.

(e) No state may receive an apportionment under this section for any fiscal year that is more than 6 percent of the total amount of funds available for apportionment for such fiscal year.

(f) *Unused apportionments.* Any part of an apportionment for any fiscal year to any state:

(1) That is not obligated during that year;

(2) With respect to which the state notifies the Secretary that it does not wish to receive that part; or

(3) That is returned to the Secretary by the state, may not be considered to be appropriated to that state and must be added to such funds as are appropriated for the next fiscal year. Any notification or return of funds by a state referred to in this section is irrevocable.

§ 253.52 State projects.

(a) *General*—(1) *Designation of state agency.* The Governor of each state shall notify the Secretary of which agency of the state government is authorized under its laws to regulate commercial fisheries and is, therefore, designated receive financial assistance awards. An official of such agency shall certify which official(s) is authorized in accordance with state law to commit the state to participation under the Act, to sign project documents, and to receive payments.

(2) States that choose to submit proposals in any fiscal year must so notify the NMFS Regional Director before the end of the third quarter of that fiscal year.

(3) Any state may, through its state agency, submit to the NMFS Regional Director a completed NOAA Grants and Cooperative Agreement Application Package with its proposal for a project, which may be multiyear. Proposals must describe the full scope of work, specifications, and cost estimates for such project.

(4) States may submit a proposal for a project through, and request payment to be made to, an Interstate Fisheries Commission. Any payment so made shall be charged against the apportionment of the appropriate state(s). Submitting a project through one of the Commissions does not remove the matching funds requirement for any state, as provided in paragraph (c) of this section.

(b) *Evaluation of projects.* The Secretary, before approving any proposal for a project, will evaluate the proposal as to its applicability, in accordance with 16 U.S.C. 4104(a)(2).

(c) *State matching requirements.* The Federal share of the costs of any project conducted under this subpart, including a project submitted through an Interstate Commission, cannot exceed 75 percent of the total estimated cost of the project, unless:

(1) The state has adopted an interstate fishery management plan for the fishery resource to which the project applies; or

(2) The state has adopted fishery regulations that the Secretary has determined are consistent with any Federal fishery management plan for the species to which the project applies, in which case the Federal share cannot exceed 90 percent of the total estimated cost of the project.

(d) *Financial assistance award.* If the Secretary approves or disapproves a proposal for a project, he or she will promptly give written notification, including, if disapproved, a detailed explanation of the reason(s) for the disapproval.

(e) *Restrictions.* (1) The total cost of all items included for engineering, planning, inspection, and unforeseen contingencies in connection with any works to be constructed as part of such a proposed project shall not exceed 10 percent of the total cost of such works, and shall be paid by the state as a part of its contribution to the total cost of the project.

(2) The expenditure of funds under this subpart may be applied only to projects for which a proposal has been evaluated under paragraph (b) of this section and approved by the Secretary, except that up to $25,000 each fiscal year may be awarded to a state out of the state's regular apportionment to carry out an "enforcement agreement." An enforcement agreement does not require state matching funds.

(f) *Prosecution of work.* All work must be performed in accordance with applicable state laws or regulations, except when such laws or regulations are in conflict with Federal laws or regulations such that the Federal law or regulation prevails.

§ 263.53 Other funds.

(a) *Funds for disaster assistance.* (1) The Secretary shall retain sole authority in distributing any disaster assistance funds made available under section 308(b) of the Act. The Secretary may distribute these funds after he or she has made a thorough evaluation of the scientific information submitted, and has determined that a commercial fishery failure of a fishery resource arising from natural or undetermined causes has occurred. Funds may only be used to restore the resource affected by the disaster, and only by existing methods and technology. Any fishery resource used in computing the states' amount under the apportionment formula in § 253.601(a) will qualify for funding under this section. The Federal share of the cost of any activity conducted under the disaster provision of the Act shall be limited to 75 percent of the total cost.

(2) In addition, pursuant to section 308(d) of the Act, the Secretary is authorized to award grants to persons engaged in commercial fisheries for uninsured losses determined by the Secretary to have been suffered as a direct result of a fishery resource disaster. Funds may be distributed by the Secretary only after notice and opportunity for public comment of the appropriate limitations, terms, and conditions for awarding assistance under this section. Assistance provided under this section is limited to 75 percent of an uninsured loss to the extent that such losses have not been compensated by other Federal or State Programs.

(b) *Funds for interstate commissions.* Funds authorized to support the efforts of the three chartered Interstate Marine Fisheries Commissions to develop and maintain interstate fishery management plans for interjurisdictional fisheries will be divided equally among the Commissions.

§ 253.54 Administrative requirements.

Federal assistance awards made as a result of this Act are subject to all Federal laws, Executive Orders, Office of Management and Budget Circulars as incorporated by the award; Department of Commerce and NOAA regulations; policies and procedures applicable to Federal financial assistance awards; and terms and conditions of the awards.

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Proposed Rules

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Thursday, December 16, 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.

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R–1400]

RIN 7100–AD60

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

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

DATES: Comments must be received on or before February 1, 2011. Comments on the Paperwork Reduction Act analysis set forth in Section V of this **Federal Register** notice must be received on or before February 14, 2011.

ADDRESSES: You may submit comments, identified by Docket No. R–1400 and RIN No. 7100–AD60, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number and RIN in the subject line of the message.
- *Facsimile:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

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

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Leasing Act

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

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

The Dodd-Frank Wall Street Reform and Consumer Protection Act

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

The Board is proposing to amend § 213.2(e), the accompanying commentary, and the commentary to § 213.7(a) for consistency with the amendments to the CLA's exemption threshold. In addition, because the Dodd-Frank Act makes similar amendments to TILA's exemption threshold for consumer credit transactions, the Board is proposing elsewhere in today's **Federal Register** to amend Regulation Z, which implements the provisions of TILA that do not address consumer leases.

Effective Date

Section 1100H of the Dodd-Frank Act provides that Section 1100E will become effective on the designated transfer date, as defined by Section 1062 of that Act. Section 1062 of the Dodd-Frank Act requires, in relevant part, the Secretary of the Treasury to designate a

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

single calendar date for the transfer of certain functions from other agencies to the Bureau of Consumer Financial Protection. Pursuant to Section 1062(a) of the Dodd-Frank Act, the Secretary of the Treasury has determined that the designated transfer date shall be July 21, 2011. *See* 75 FR 57252 (Sept. 20, 2010). Accordingly, because Section 1100E will become effective on July 21, 2011, the Board intends to make the amendments to Regulation M effective on that date.

Comment Period

The new threshold for exempt consumer leases in the CLA goes into effect on July 21, 2011. Accordingly, the Board must issue the final rule implementing the new threshold sufficiently in advance of July 21, 2011 to permit lessors to make the necessary changes to bring their systems and practices into compliance. To ensure that the Board has adequate time to analyze the comments received on the proposed rule, the Board is requiring that those comments be submitted by the later of February 1, 2011 or 30 days after publication of the proposal in the **Federal Register** (although comments on the Board's Paperwork Reduction Act analysis are not due until 60 days after publication). Because the proposal is narrow in scope, the Board believes that interested parties will have sufficient time to review the proposed rule and prepare their comments.

II. Statutory Authority

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

III. Section-by-Section Analysis

Section 213.2—Definitions

2(e) Consumer Lease

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

In addition to increasing the threshold for an exemption from $25,000 to $50,000 effective July 21, 2011, Section 1100E of the Dodd-Frank Act provides that, beginning in 2012, the $50,000 threshold will be further increased annually to reflect any increases in the CPI–W. Accordingly, whether the total contractual obligation under a consumer lease is sufficient to exempt that lease from the CLA will depend on the threshold amount in effect when the lease was consummated. For that reason, the Board is proposing to amend § 213.2(e)(1) to provide that a consumer lease is exempt if the total contractual obligation exceeds "the applicable threshold amount," which would be listed in the official staff commentary. The Board would further amend § 213.2(e)(1) to provide that the threshold amount will be adjusted annually to reflect increases in the CPI–W (as applicable).

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

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

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

Finally, the comment would clarify that, if a consumer lease is exempt from the requirements of Regulation M because the total contractual obligation exceeds the threshold amount in effect at the time of consummation, the lease remains exempt regardless of a subsequent increase in the threshold amount as a result of an increase in the CPI–W. Thus, for example, if a lease with a total contractual obligation of $30,000 was consummated in June 2010, that lease is exempt based on the $25,000 threshold in effect at that time and would remain exempt after July 21, 2011, notwithstanding the increase in the threshold to $50,000. Similarly, if a lease with a total contractual obligation

of $55,000 is consummated in August 2011, that lease would be exempt based on the $50,000 threshold in effect at that time and would remain exempt even if the threshold were subsequently increased to $56,000 based on an increase in the CPI–W. This approach is consistent with § 213.3(e), which provides that events that occur after consummation of a consumer lease generally do not require the lessor to provide additional Regulation M disclosures. *See* comment 3(e)–2. The Board, however, solicits comment on any operational difficulties for open-end leases posed by this amendment.

Section 213.7—Advertising

7(a) General Rule

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

IV. Regulatory Flexibility Act Analysis

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

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

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

Based on 2010 call report data, there are no banks with assets of $175 million or less that engage in consumer leasing. In addition, the Board's 2005 Finance Company Survey indicates that fewer than ten small finance companies engage in consumer leasing. The Board acknowledges, however, that the total number of small entities likely to be affected by the proposed rule is unknown, in part because it is unclear how many of the small entities currently engaged in consumer leasing offer leases with total contractual obligations of more than $25,000 but not more than $50,000. The Board invites comment on the effect of the proposed rule on small entities.

3. *Recordkeeping, reporting, and compliance requirements.* The proposed rule would not impose any new reporting requirements. However, the proposed rule would impose new recordkeeping requirements for small entities that offer consumer leases with total contractual obligations of more than $25,000 but not more than $50,000. Regulation M requires lessors to retain evidence of compliance with its provisions (except the advertising requirements in § 213.7) for a period of not less than two years after the date the disclosures are required to be made or an action is required to be taken. 12 CFR 213.8. Thus, the proposed rule would require lessors to retain records for new consumer leases with total contractual obligations not exceeding $50,000, adjusted annually to reflect increases in the CPI–W.

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

The Board understands that small entities that offer consumer leases generally have systems in place to provide the disclosures required by Regulation M and retain records of those disclosures, even if some of their leases are currently exempt. Thus, while the precise costs to small entities to provide disclosures and retain records for a larger population of leases are difficult to predict, the Board does not believe that the proposed rule would have a significant economic impact on a substantial number of small entities. However, the Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small entities.

4. *Other Federal rules.* The Board has not identified any Federal rules that duplicate, overlap, or conflict with the proposed revisions to Regulation M.

5. *Significant alternatives to the proposed revisions.* The proposed rule would implement Section 1100E of the Dodd-Frank Act, which goes into effect on July 21, 2011. As discussed in the supplementary information, the proposed rule would clarify that, if a consumer lease with a total contractual obligation exceeding $25,000 is consummated prior to July 21, 2011, that lease remains exempt, notwithstanding subsequent increases in the threshold amount. The Board welcomes comment on any significant alternatives, consistent with Section 1100E of the Dodd-Frank Act, which would minimize the impact of the proposed rule on small entities.

V. Paperwork Reduction Act Analysis

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

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

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

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

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

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

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

The total burden increase represents averages for all respondents regulated by the Board. The Board expects that the amount of time required to implement each of the proposed changes for a given financial institution or entity may vary based on the size and complexity of the respondent.

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

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility; (2) the accuracy of the Board's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated

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

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

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

collection techniques or other forms of information technology. Comments on the collection of information should be sent to Cynthia Ayouch, Acting Federal Reserve Clearance Officer, Division of Research and Statistics, Mail Stop 95–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0202), Washington, DC 20503.

List of Subjects in 12 CFR Part 213

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

Text of Proposed Revisions

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

PART 213—CONSUMER LEASING (REGULATION M)

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

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

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

§ 213.2 Definitions.

* * * * *

(e)(1) *Consumer lease* means a contract in the form of a bailment or lease for the use of personal property by a natural person primarily for personal, family, or household purposes, for a period exceeding four months and for a total contractual obligation not exceeding ►the applicable threshold amount◄ [$25,000], whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease. ►For purposes of this paragraph, the threshold amount is adjusted annually to reflect increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as applicable. See the official staff commentary to this paragraph for the threshold amount applicable to a specific consumer lease.◄ Unless the context indicates otherwise, in this part "lease" means "consumer lease."

* * * * *

3. In Supplement I to Part 213:

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

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

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

* * * * *

Section 213.2—Definitions

* * * * *

2(e) Consumer Lease.

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

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

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

* * * * *

Section 213.7—Advertising

7(a) General Rule.

* * * * *

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

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

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

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

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By order of the Board of Governors of the Federal Reserve System, December 10, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–31530 Filed 12–15–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1399]

RIN 7100–AD59

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

SUMMARY: Effective July 21, 2011, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amends the Truth in Lending Act (TILA) by increasing the threshold for exempt consumer credit transactions from $25,000 to $50,000. In addition, the Dodd-Frank Act provides that, on or after December 31, 2011, this threshold must be adjusted annually by any annual percentage increase in the Consumer Price Index for Urban Wage

Earners and Clerical Workers. Accordingly, the Board is proposing to make corresponding amendments to Regulation Z, which implements TILA, and to the accompanying staff commentary. Because the Dodd-Frank Act also increases the Consumer Leasing Act's threshold for exempt consumer leases from $25,000 to $50,000, the Board is proposing similar amendments to Regulation M elsewhere in today's **Federal Register.**

DATES: Comments must be received on or before February 1, 2011. Comments on the Paperwork Reduction Act analysis set forth in Section V of **SUPPLEMENTARY INFORMATION** must be received on or before February 14, 2011.

ADDRESSES: You may submit comments, identified by Docket No. R–1399 and RIN No. 7100–AD59, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Facsimile:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

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

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act

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

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

The Board is proposing to amend § 226.3(b) and the accompanying commentary for consistency with the amendments made by the Dodd-Frank Act. In addition, because the Dodd-Frank Act makes similar amendments to the exemption threshold in the Consumer Leasing Act (which is part of TILA), the Board is proposing elsewhere in today's **Federal Register** to amend Regulation M, which implements the Consumer Leasing Act.

Effective Date

Section 1100H of the Dodd-Frank Act provides that Section 1100E will become effective on the designated transfer date, as defined by Section 1062 of that Act. Section 1062 of the Dodd-Frank Act requires, in relevant part, the Secretary of the Treasury to designate a single calendar date for the transfer of certain functions from other agencies to the newly established Bureau of Consumer Financial Protection. Pursuant to Section 1062(a), the Secretary of the Treasury has determined that the designated transfer date shall be July 21, 2011. *See* 75 FR 57252 (Sept. 20, 2010). Accordingly, because Section 1100E will become effective on July 21, 2011, the Board intends to make the amendments to Regulation Z effective on that date.

Comment Period

Because the new threshold for exempt consumer credit transactions in TILA Section 104(3) goes into effect on July 21, 2011, the Board must issue the final rule implementing the new threshold sufficiently in advance of that date to permit creditors to make the necessary changes to bring their systems and practices into compliance. To ensure that the Board has adequate time to analyze the comments received on the proposed rule, the Board is requiring that comments be submitted by the later of February 1, 2011 or 30 days after publication of the proposal in the **Federal Register** (although comments on the Board's Paperwork Reduction Act analysis are not due until 60 days after publication). Because the proposal is narrow in scope, the Board believes that interested parties will have sufficient time to review the proposed rule and prepare their comments.

II. Statutory Authority

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

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

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

III. Section-by-Section Analysis

Section 226.3 Exempt Transactions

3(b) Credit Over Applicable Threshold Amount

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

3(b)(1) General Exemption

As an initial matter, current § 226.3(b) would be redesignated as § 226.3(b)(1)(i) and a new § 226.3(b)(1)(ii) would be added to provide that the threshold amount will be adjusted annually to reflect any annual percentage increase in the CPI–W.[1] Because the threshold amount could change from year to year, § 226.3(b)(1)(i) would refer to the "applicable threshold amount," rather than stating a specific amount. Instead, new § 226.3(b)(1)(ii) would explain that the threshold amount applicable to a specific extension of credit or express written commitment to extend credit is listed in the official staff commentary. The Board also proposes to revise and reorganize the commentary to § 226.3(b).[2]

Threshold Amount

Revised comment 3(b)–1 would list the threshold amount in effect for specific periods of time.[3] In particular, the comment would clarify that, prior to July 21, 2011, the threshold amount is $25,000 and that, from July 21, 2011 through December 31, 2011, the threshold amount will be $50,000. This comment would also explain that the threshold amount will be adjusted effective January 1 of each year by any annual percentage increase in the CPI–W that was in effect on the preceding June 1.[4] The comment will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on the previous June 1 becomes available.

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

Open-End Credit

Revised comment 3(b)–2 would provide guidance on the application of § 226.3(b)(1) to open-end credit accounts. Consistent with the existing commentary, comment 3(b)–2.i would clarify that an open-end account qualifies for exemption under § 226.3(b) (unless secured by any real property, or by personal property used or expected to be used as the consumer's principal dwelling) if either: (1) The creditor makes an initial extension of credit that exceeds the threshold amount in effect at the time the account is opened; or (2) the creditor makes a firm written commitment to extend a total amount of credit in excess of the threshold amount in effect at the time the account is opened with no requirement of additional credit information for any advances on the account (except as permitted from time to time with respect to open-end accounts pursuant to § 226.2(a)(20)).

In addition, the Board would clarify that the initial extension of credit or firm commitment must be made *at account opening* in order for an open-end account to be exempt under § 226.3(b). The Board understands that some open-end lines of credit associated with brokerage accounts are structured to be exempt under § 226.3(b) based on a requirement that the initial extension of credit must exceed $25,000, even if that extension does not occur until months or years after account opening. The Board is concerned that this approach could produce uncertainty as to whether the account is exempt at account opening or only becomes exempt when the initial extension in excess of $25,000 actually occurs. Currently, § 226.3(b) does not address when the initial extension of credit must occur for purposes of the exemption. Therefore, in order to provide greater certainty for consumers and creditors, the Board believes it is appropriate to determine whether an account is exempt under § 226.3(b) at account opening. The Board, however, solicits comment on any operational difficulties posed by this proposed guidance and whether greater flexibility would be appropriate.

Revised comment 3(b)–2.ii would provide general guidance regarding the effect of subsequent changes to an open-end account or the threshold amount on the account's exempt status. Specifically, this comment would clarify which changes to an open-end account or the threshold amount may result in the account no longer qualifying for the exemption in § 226.3(b). In these circumstances, the creditor must begin to comply with all of the applicable requirements of Regulation Z within a reasonable period of time after the account ceases to be exempt (except as otherwise provided). For example, if an open-end credit account ceases to be exempt, the creditor must within a reasonable period of time provide the disclosures required by § 226.6 reflecting the current terms of the account and begin to provide periodic statements consistent with § 226.7. The Board

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

[2] For consistency with revised § 226.3(b), the Board also proposes to make corresponding amendments to comments 2(a)(19)–3 and 23(a)(1)–5.

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

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

solicits comment on whether additional specificity is needed regarding the amount of time necessary to begin to comply with Regulation Z.

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

Revised comment 3(b)–2.iv would address the effect of subsequent changes when an open-end account is exempt under § 226.3(b) based on a firm commitment to extend credit, rather than an initial extension of credit. In particular, the comment would clarify that if the firm commitment does not exceed the threshold amount, the account is not exempt under § 226.3(b) even if the account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest). In addition, the comment would clarify that, in order for an open-end account to remain exempt under § 226.3(b) based on a firm commitment, the amount of the firm commitment must continue to exceed the threshold amount currently in effect, as adjusted annually. Thus, in order for an account to remain exempt, a creditor could not reduce its firm commitment below the threshold amount currently in effect and may be required to increase its firm commitment when the threshold amount is increased as a result of an increase in the CPI–W. Illustrative examples are provided in the commentary.

The Board believes that if creditors were not required to exceed the applicable threshold amount on an ongoing basis for open-end accounts, it could produce anomalous results and, in some cases, raise concerns about circumvention of Regulation Z. For example, if an open-end account remained exempt permanently based on a firm commitment at account opening to extend credit in excess of the threshold amount, an account opened in December might qualify for an exemption based on a firm commitment while an identical account with the same firm commitment opened in January would not because the applicable threshold amount had increased. Furthermore, the proposed rule would prevent accounts from being established with firm commitments that qualify for the exemption at account opening but then have the commitment reduced below the threshold. Under the proposed rule, the account would lose its exempt status in these circumstances. The Board believes that, because Section 1100E was intended to broaden the scope of TILA, it is consistent with Congress's intent to construe the exemption in § 226.3(b) narrowly.

However, proposed comment 3(b)–2.iv would provide creditors with flexibility when an open-end account no longer qualifies for an exemption under § 226.3(b) based on a firm commitment. Specifically, the comment would clarify that the creditor may either begin to comply with Regulation Z or, if permitted by the account agreement and applicable state law, permit the consumer to repay any outstanding balance on the account consistent with the account terms without providing additional extensions of credit. The Board believes that additional flexibility is necessary in these circumstances, so that creditors that do not have the systems in place to comply with Regulation Z do not close the account and require the consumer to immediately repay the outstanding balance. However, the Board solicits comment on whether the proposed guidance poses any operational difficulties and whether additional flexibility is warranted in these circumstances.

Finally, revised comment 3(b)–2.iv addresses circumstances in which an account qualifies for a § 226.3(b) exemption at account opening based on a firm commitment and the creditor subsequently makes an initial extension of credit that exceeds the applicable threshold amount. The comment would clarify that, in these circumstances, the account may qualify for a § 226.3(b) exemption based on the initial extension of credit if that extension is a single advance exceeding the threshold amount at the time of the extension. As a result, the account would remain exempt under § 226.3(b) even if the credit limit is subsequently reduced below the threshold amount or if the threshold amount is subsequently increased to reflect an increase in the CPI–W.

For example, assume that, at account opening on January 1 of year one, the threshold amount under § 226.3(b) is $50,000 and an open-end account qualifies for an exemption because the creditor has made a firm commitment to extend $52,000 in credit. On July 1 of year one, the consumer uses the account for a single advance of $52,000, which is the initial extension of credit on the account. As a result of this extension of credit, the account will remain exempt under § 226.3(b) even if, after July 1 of year one, the creditor reduces the firm commitment to less than $50,000 or if, on January 1 of year two, the threshold amount increases to $52,500 to reflect an increase in the CPI–W.

As discussed above, the Board believes that, as a general matter, whether an account is exempt under § 226.3(b) should be determined at account opening. However, when an account qualifies for an exemption at account opening based on a firm commitment, the Board believes that it may be appropriate to permit the account to retain that exemption based on an initial extension of credit that occurs after account opening. However, the Board solicits comment on this approach.

Closed-End Credit

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

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

Second, the comment clarifies that a closed-end loan would be exempt if the

creditor makes a loan commitment at consummation to extend a total amount of credit in excess of the threshold amount in effect at the time of consummation. The comment would further clarify that, in these circumstances, the loan remains exempt under § 226.3(b) even if the total amount of credit actually extended does not exceed the threshold amount.[5] This guidance addresses loan commitments (such as certain construction loans) with terms that provide for scheduled advances or advances at the consumer's option, where the total amount of credit ultimately drawn may be less than the original loan commitment on which the exemption was based. The Board, however, solicits comment on whether this guidance sufficiently addresses other types of closed-end loan products.

Revised comment 3(b)–3.ii would also provide guidance on the effect of subsequent changes to a closed-end loan or loan commitment or to the threshold amount. Specifically, the comment would clarify that, if a creditor makes an extension of credit or loan commitment to extend credit that exceeds the threshold amount in effect at the time of consummation, the closed-end loan remains exempt under § 226.3(b) regardless of a subsequent increase in the threshold amount as a result of an increase in the CPI–W. In addition, the revised comment incorporates existing guidance regarding the refinancing of an exempt closed-end loan.

Additional Commentary

New comment 3(b)–4 would provide guidance where a security interest in any real property, or in personal property used or expected to be used as a consumer's principal dwelling, is added to an existing account or loan that is exempt under § 226.3(b). The proposed comment would incorporate guidance from current comments 3(b)–2.ii and 3(b)–3 with respect to open-end credit and closed-end credit, respectively.

Finally, new comment 3(b)-5 would incorporate the guidance currently provided in comment 3(b)-1 regarding credit extensions secured by mobile homes. Specifically, this comment would clarify that the exemption in § 226.3(b) does not apply to a credit extension secured by a mobile home used or expected to be used as the principal dwelling of the consumer.

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

3(b)(2) Special Exemption; Open-End Accounts Exempt Prior to July 21, 2011

The Board proposes to add a new § 226.3(b)(2) in order to address transition issues related to open-end accounts that are exempt under current § 226.3(b) but may not be exempt under revised § 226.3(b)(1). Specifically, new § 226.3(b)(2) would provide that an open-end account that is exempt under § 226.3(b) on July 20, 2011 based on an extension of credit in excess of $25,000 or an express written commitment to extend credit in excess of $25,000 remains exempt until July 21, 2012. However, the account would cease to be exempt under § 226.3(b)(2) if the creditor takes a security interest in any real property, or in personal property used or expected to be used as the consumer's principal dwelling; or if the creditor reduces any express written commitment to extend credit to $25,000 or less. New § 226.3(b)(2) is proposed pursuant to the Board's authority under TILA Section 105(a) to make adjustments that are necessary to effectuate the purposes of, and to facilitate compliance with, TILA. 15 U.S.C. 1604(a).

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

In particular, the Board understands that this concern arises with respect to certain open-end lines of credit associated with brokerage accounts that are serviced on platforms that cannot currently provide Regulation Z disclosures.[6] In some cases, the creditor may provide in the account terms that the initial extension of credit must exceed $25,000. However, credit is not necessarily extended at account opening, and may be extended only upon request by the consumer at a later date, which may be months or years after account opening. Thus, if an extension in excess of $25,000 has not occurred prior to July 21, 2011, the account would cease to qualify for an exemption under § 226.3(b), consistent with proposed comment 3(b)-2.

In these circumstances, it appears that additional time may be required to enable creditors to either develop the systems necessary to comply with Regulation Z or to take steps necessary to retain exempt status for the account (such as by making a firm commitment in excess of the threshold amount). If additional time were not provided, the Board believes some creditors might choose to close unused accounts shortly before July 21, 2011, which could harm consumers who rely on their ability to access those accounts. Accordingly, in this narrow set of circumstances, the Board proposes to provide creditors with an additional 12 months (in other words, until July 21, 2012) to make the necessary adjustments. However, the Board solicits comment on whether any transition period is necessary and, if so, whether a different time period (shorter or longer) would be more appropriate.

In other cases, a creditor may provide a firm commitment to extend credit in an amount equal to the value of the securities in the associated brokerage account. Thus, a line of credit secured by collateral valued at $30,000 would cease to be exempt on July 21, 2011. While creditors relying on an exemption under § 226.3(b) based on a firm commitment will have to account for regular increases in the exemption threshold as a result of increases in the CPI–W, the Board believes that, for the reasons discussed above, it may be appropriate to provide creditors with additional time to adjust to the increase in the threshold amount from $25,000 to $50,000. As above, the Board solicits comment on whether any transition period is necessary and, if so, whether a different time period (shorter or longer) would be more appropriate.

New comment 3(b)–6 would provide guidance and illustrative examples regarding the application of § 226.3(b)(2). In particular, it would clarify that § 226.3(b)(2) applies only to open-end accounts opened prior to July 21, 2011 and does not apply if a security interest is taken in any real property, or in personal property used or expected to be used as the consumer's principal dwelling.

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

IV. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to perform an initial and final regulatory flexibility analysis on the impact a rule is expected to have on small entities. However, under section 605(b) of the RFA, the regulatory flexibility analysis otherwise required

under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. The Board has prepared the following initial regulatory flexibility analysis pursuant to section 603 of the RFA.

Based on its analysis and for the reasons stated below, the Board believes that this proposed rule would not have a significant economic impact on a substantial number of small entities.

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

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

3. *Recordkeeping, reporting, and compliance requirements.* The proposed rule would impose new recordkeeping, reporting, and compliance requirements under Regulation Z on creditors that extend consumer credit in amounts that exceed $25,000 but do not exceed $50,000, as adjusted annually to reflect increases in the CPI–W. The Board understands that small entities that offer consumer credit generally have systems in place to comply with Regulation Z for extensions of credit of $25,000 or less. The Board notes that the precise costs to small entities to provide Regulation Z disclosures to accounts with consumer credit extensions of more than $25,000 but not more than $50,000, and the costs of updating their systems to comply with the proposed rule, are difficult to predict. These costs would depend on a number of factors that are unknown to the Board, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures and administer accounts, the complexity of the terms of the products that they offer, and the range of such product offerings. The Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small entities.

Proposed Amendments

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

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

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

Proposed § 226.3(b)(2) would address circumstances where certain previously exempt open-end accounts would cease to qualify for an exemption on July 21, 2011 under the revised threshold amount. Under proposed § 226.3(b)(2), these accounts would have until July 21, 2012 (one year after the effective date) to comply with the revised threshold amount in effect at that time. The Board would reduce the burden on small entities by providing transition guidance for these accounts in order to ease compliance with the proposed rule.

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

4. *Other Federal rules.* The Board has not identified any Federal rules that duplicate, overlap, or conflict with the proposed revisions to Regulation Z.

5. *Significant alternatives to the proposed revisions.* The provisions of the proposed rule would implement the statutory requirements of the Dodd-Frank Act, which establish new threshold requirements for exempt consumer credit transactions. As discussed in the supplementary information, the Board has sought to provide small entities with additional time to come into compliance where necessary, while effectuating the statute in a manner that is beneficial to consumers. In addition, the proposed rule would clarify that, if an initial extension of credit in excess of the existing threshold ($25,000) is made prior to July 21, 2011, the account remains exempt, notwithstanding subsequent increases in the threshold amount. The Board welcomes comment on any significant alternatives, consistent with Section 1100E of the

Dodd-Frank Act, which would minimize the impact of the proposed rule on small entities.

V. Paperwork Reduction Act Analysis

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

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). The respondents/recordkeepers are creditors and other entities subject to Regulation Z, including for-profit financial institutions, small businesses, and institutions of higher education. TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For open-end credit, creditors are required to, among other things, disclose information about the initial costs and terms and to provide periodic statements of account activity, notices of changes in terms, and statements of rights concerning billing error procedures. Regulation Z requires specific types of disclosures for credit and charge card accounts and for home-equity plans. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required in connection with certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance for twenty-four months (§ 226.25), but Regulation Z does not specify the types of records that must be retained.

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

The current total annual burden to comply with the provisions of Regulation Z is estimated to be 1,497,362 hours for the 1,138 institutions [7] supervised by the Board that are deemed to be respondents for the purposes of the PRA.

On July 21, 2011, the amendments to proposed § 226.3(b)(1)(i) and its accompanying commentary would raise the threshold for exempt consumer credit transactions from $25,000 to $50,000. In addition, proposed § 226.3(b)(1)(ii) would require that the threshold dollar amount be adjusted annually for inflation to reflect any annual percentage increase in the CPI–W. Creditors would be required to begin complying with Regulation Z requirements for certain accounts with extensions of consumer credit of more than $25,000 but not more than $50,000, as adjusted annually to reflect increases in the CPI–W.

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

The total burden increase represents averages for all respondents regulated by the Board. The Board expects that the amount of time required to implement each of the proposed changes for a given financial institution or entity may vary based on the size and complexity of the respondent.

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

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance

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

[8] The burden estimate for this rulemaking does not include the burden addressing changes to implement the following provisions announced in separate rulemakings:

Closed-End Mortgages (Docket No. R–1366) (74 FR 43232)(75 FR 58470), Home-Equity Lines of Credit (Docket No. R–1367) (74 FR 43428),

Reverse Mortgages (Docket No. R–1390) (75 FR 58539), or

Appraisal Independence (Docket No. R–1394) (75 FR 66554).

of the Board's functions, including whether the information has practical utility; (2) the accuracy of the Board's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Cynthia Ayouch, Acting Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 95–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

List of Subjects in 12 CFR Part 226

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

Text of Proposed Revisions

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

PART 226—TRUTH IN LENDING (REGULATION Z)

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

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

Subpart B—Open-End Credit

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

§ 226.3 Exempt transactions.

* * * * *

(b) *Credit over* ►*applicable threshold amount*◄ *[$25,000 not secured by real property or a dwelling].* ►(1) *General exemption.* (i) *Requirements.*◄ An extension of credit in which the amount ►of credit extended◄ [financed] exceeds ►the applicable threshold amount◄ [$25,000] or in which there is an express written commitment to extend credit in excess of ►the applicable threshold amount◄ [$25,000], unless the extension of credit is:

►(A)◄ [(1)] Secured by ►any◄ real property, or by personal property used or expected to be used as the principal dwelling of the consumer; or

►(B)◄ [(2)] A private education loan as defined in § 226.46(b)(5).

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

(2) *Special exemption; open-end accounts exempt prior to July 21, 2011.* An open-end account that is exempt under paragraph (b) of this section on July 20, 2011 based on an extension of credit in excess of $25,000 or an express written commitment to extend credit in excess of $25,000 remains exempt until July 21, 2012. However, an account ceases to be exempt under this paragraph if:

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

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

* * * * *

3. In Supplement I to Part 226:

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

B. Under *Section 226.3—Exempt Transactions,* the heading *3(b) Credit over $25,000 not secured by real property or a dwelling* and paragraphs 1. through 3. are revised and paragraphs 4. through 6. are added.

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

The additions and revisions read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart A—General

* * * * *

Section 226.2—Definitions and Rules of Construction

* * * * *

2(a)(19) Dwelling.

* * * * *

3. *Relation to exemptions.* Any transaction involving a security interest in a consumer's principal dwelling (as well as in any real property) remains subject to the regulation despite the general exemption in § 226.3(b) [for credit extensions over $25,000].

* * * * *

Section 226.3—Exempt Transactions

* * * * *

3(b) Credit over ►*applicable threshold amount*◄ *[$25,000 not secured by real property or a dwelling].*

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

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

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

2. *Open-end credit.*

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

A. The creditor makes an initial extension of credit at account opening that exceeds the threshold amount in effect at the time the account is opened; or

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

ii. *Subsequent changes generally.* Subsequent changes to an open-end account or the threshold amount may result in the account no longer qualifying for the exemption in § 226.3(b). In these circumstances, the creditor must begin to comply with all of the applicable requirements of this Part within a reasonable period of time after the account ceases to be exempt (except as otherwise provided). For example, if an open-end credit account ceases to be exempt, the creditor must within a reasonable period of time provide the disclosures required by § 226.6 reflecting the current terms of the account and begin to provide periodic statements consistent with § 226.7. See also comment 3(b)–4.

iii. *Subsequent changes when exemption based on initial extension of credit.* If a

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

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

A. *General.* If an open-end account is exempt under § 226.3(b) based on a firm commitment to extend credit, the account remains exempt even if the amount of credit actually extended does not exceed the threshold amount. However, if the firm commitment does not exceed the threshold amount, the account is not exempt under § 226.3(b) even if the account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest). In addition, in order for an open-end account to remain exempt under § 226.3(b) based on a firm commitment, the amount of the firm commitment must continue to exceed the threshold amount currently in effect, as adjusted annually. For example:

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

(2) Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If the threshold amount increases to $50,900 on January 1 of year two as a result of an increase in the CPI–W, the account remains exempt under § 226.3(b). However, if the threshold amount increases to $55,000 on January 1 of year six, the creditor would have to increase its firm commitment to an amount above $55,000 in order for the account to remain exempt.

B. *Accounts no longer qualifying for exemption.* If an open-end account that was exempt under § 226.3(b) based on a firm commitment no longer qualifies for that exemption, the creditor may begin to comply with all of the applicable requirements of this Part within a reasonable period of time after the account ceases to be exempt. However, in the alternative, the creditor may, at its option, permit the consumer to repay any outstanding balance on the account consistent with the account terms without providing additional extensions of credit, if permitted by the terms of the account and applicable state law.

C. *Subsequent initial extension of credit.* If an open-end account qualifies for a § 226.3(b) exemption at account opening based on a firm commitment, that account may also subsequently qualify for a § 226.3(b) exemption based on an initial extension of credit. However, that initial extension must be a single advance in excess of the threshold amount in effect at the time the extension is made. Although the initial extension of credit need not be made at account opening in these circumstances, the account must qualify for an exemption based on the firm commitment at account opening and continue to qualify for an exemption on that basis until the initial extension of credit is made. For example:

(1) Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under § 226.3(b) based on the creditor's firm commitment to extend $55,000 in credit. The account is not used for an extension of credit during year one. On January 1 of year two, the threshold amount increases to $51,000 as a result of an increase in the CPI–W. On July 1 of year two, the consumer uses the account for an initial extension of $52,000. As a result of this extension of credit, the account remains exempt under § 226.3(b) even if, after July 1 of year two, the creditor reduces the firm commitment to $51,000 or less, or if, during year three, the threshold amount increases to $53,000 to reflect an increase in the CPI–W.

(2) Same facts as in paragraph (1) above except that the consumer uses the account for an initial extension of $30,000 on July 1 of year two and for an extension of $22,000 on July 15 of year two. In these circumstances, the account is not exempt under § 226.3(b) based on the $30,000 initial extension of credit because that extension did not exceed the applicable threshold amount ($52,000), although the account remains exempt based on the firm commitment to extend $55,000 in credit.

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

3. *Closed-end credit.*

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

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

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

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

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

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

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

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

6. *Special exemption for open-end accounts exempt prior to July 21, 2011.* Section 226.3(b)(2) applies only to open-end accounts opened prior to July 21, 2011. Section 226.3(b)(2) does not apply if a security interest is taken by the creditor in any real property, or in personal property used or expected to be used as the consumer's principal dwelling.

i. *Initial extension of credit.*

A. If, prior to July 21, 2011, a creditor makes an initial extension of credit of more than $25,000 on an open-end account, the account remains exempt under § 226.3(b)(1) regardless of subsequent increases in the threshold amount.

B. If the terms of an open-end account require that the initial extension of credit on that account be more than $25,000 but that extension has not occurred prior to July 21, 2011, the account remains exempt under § 226.3(b)(2) until July 21, 2012. However, if an initial extension of credit of more than $25,000 is actually made prior to July 21, 2012, the account remains exempt under § 226.3(b)(1) regardless of subsequent increases in the threshold amount. If an initial extension of credit of more than $25,000 is not made prior to July 21, 2012, the account is no longer exempt under § 226.3(b). However, if, prior to that date, the creditor makes a firm commitment to extend credit in excess of the threshold amount in effect at that time, the account remains exempt under § 226.3(b)(1).

ii. *Firm commitment.* If, prior to July 21, 2011, a creditor makes a firm commitment to extend credit in excess of $25,000 on an open-end account, the account remains exempt under § 226.3(b)(2) until July 21, 2012 (unless the firm commitment is reduced to $25,000 or less). If an initial extension of credit of more than $25,000 is made prior to July 21, 2012, the account remains exempt under § 226.3(b)(1) regardless of subsequent increases in the threshold amount. However, if no such extension of credit is made, the firm commitment must be increased prior to July 21, 2012 to the threshold amount in effect at that time in order for the account to remain exempt under § 226.3(b)(1).◄

[1. *Coverage.* Since a mobile home can be a dwelling under § 226.2(a)(19), this exemption does not apply to a credit extension secured by a mobile home used or expected to be used as the principal dwelling of the consumer, even if the credit exceeds $25,000. A loan commitment for closed-end credit in excess of $25,000 is exempt even though the amounts actually drawn never actually reach $25,000.

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

A. The creditor makes a firm commitment to lend over $25,000 with no requirement of additional credit information for any advances (except as permitted from time to time pursuant to § 226.2(a)(20)).

B. The initial extension of credit on the line exceeds $25,000.

ii. If a security interest is taken at a later time in any real property, or in personal property used or expected to be used as the consumer's principal dwelling, the plan would no longer be exempt. The creditor must comply with all of the requirements of the regulation including, for example, providing the consumer with an initial disclosure statement. If the security interest being added is in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest. (See the commentary to § 226.15 concerning the right of rescission.)

3. *Closed-end credit—subsequent changes.* A closed-end loan for over $25,000 may later be rewritten for $25,000 or less, or a security interest in real property or in personal property used or expected to be used as the consumer's principal dwelling may be added to an extension of credit for over $25,000. Such a transaction is consumer credit requiring disclosures only if the existing obligation is satisfied and replaced by a new obligation made for consumer purposes undertaken by the same obligor. (See the commentary to § 226.23(a)(1) regarding the right of rescission when a security interest in a consumer's principal dwelling is added to a previously exempt transaction.)]

* * * * *

Section 226.23—Right of Rescission

* * * * *

23(a) Consumer's Right to Rescind

Paragraph 23(a)(1).

* * * * *

5. *Addition of a security interest.* Under footnote 47, the addition of a security interest in a consumer's principal dwelling to an existing obligation is rescindable even if the existing obligation is not satisfied and replaced by a new obligation, and even if the existing obligation was previously exempt ►under § 226.3(b)◄ [(because it was credit over $25,000 not secured by real property or a consumer's principal dwelling)]. The right of rescission applies only to the added security interest, however, and not to the original obligation. In those situations, only the § 226.23(b) notice need be delivered, not new material disclosures; the rescission period will begin to run from the delivery of the notice.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 10, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–31529 Filed 12–15–10; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1054; Airspace Docket No. 10–AGL–23]

Proposed Amendment of Class E Airspace; Kenton, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Kenton, OH. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Hardin County Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: 0901 UTC. Comments must be received on or before January 31, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–1054/Airspace Docket No. 10–AGL–23, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321–7716.

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 and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–1054/Airspace Docket No. 10–AGL–23." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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 **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 Central Service Center, 2601 Meacham Blvd, Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs 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

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 700 feet above the surface for SIAPs operations at Hardin County Airport, Kenton, OH. Additional controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas 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 would 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 rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish additional controlled airspace at Hardin County Airport, Kenton, OH.

List 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 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 FAA Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

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

* * * * *

AGL OH E5 Kenton, OH [Amended]

Kenton, Hardin County Airport, OH
(Lat. 40°36′36″ N., long. 83°38′39″ W.)

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 40°43′34″ N., long. 83°33′51″ W., to lat. 40°38′16″ N., long. 83°23′39″ W., to lat. 40°30′37″ N., long. 83°30′57″ W., to lat. 40°24′00″ N., long. 83°33′37″ W., to lat. 40°13′31″ N., long. 83°40′22″ W., to lat. 40°11′47″ N., long. 83°52′11″ W., to lat. 40°16′44″ N., long. 84°01′10″ W., to lat. 40°24′31″ N., long. 84°02′39″ W., to lat. 40°31′30″ N., long. 83°56′56″ W., to lat. 40°32′13″ N., long. 83°50′20″ W., to lat. 40°34′45″ N., long. 83°47′33″ W., to lat. 40°38′56″ N., long. 83°48′49″ W., to lat. 40°43′49″ N., long. 83°42′14″ W., to the point of beginning.

Issued in Fort Worth, TX, on December 9, 2010.

Roger M. Trevino,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–31615 Filed 12–15–10; 8:45 am]

BILLING CODE 4901–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0449; FRL–9239–3]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is proposing to approve a request submitted by the Minnesota Pollution Control Agency (MPCA) on May 7, 2010, to revise the Minnesota State Implementation Plan (SIP) for particulate matter less than 10 microns (PM_{10}). The proposed approval revises the Minnesota SIP by updating information for the Metropolitan Council Environmental Services (MCES) Metropolitan Wastewater Treatment Plant located in St. Paul, Minnesota. The revision reflects changes at the facility which include the decommissioning of six multiple hearth incinerators and associated equipment and the addition of three fluidized bed incinerators and associated equipment. These revisions are included in a joint Title I/Title V document for the MCES Metropolitan Wastewater Treatment Plant, which replaces the document currently approved in the SIP for the

facility. These revisions will result in reducing the PM_{10} emissions in the St. Paul area, and strengthen the existing PM_{10} SIP.

DATES: Comments must be received on or before January 18, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–0449, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: aburano.douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Douglas Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, Chief, Control Strategies Section, 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: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because EPA 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: December 3, 2010.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2010–31343 Filed 12–15–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1163]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed Rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before March 16, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1163, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

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

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

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies

that have federalism implications under Executive Order 13132.

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Putnam County, Florida, and Incorporated Areas				
Devall Branch	Approximately 181 feet downstream of the railroad	+5	+6	Unincorporated Areas of Putnam County.
	Just downstream of Davis Lake Road	None	+60	
Two Mile Creek	Just downstream of Cherry Trail	+5	+6	City of Palatka, Unincorporated Areas of Putnam County.
	Approximately 251 feet upstream of Mellon Road	None	+57	
Unnamed Tributary	Approximately 84 feet upstream of the confluence with Two Mile Creek.	None	+12	Unincorporated Areas of Putnam County.
	Approximately 184 feet upstream of Old Peniel Road	None	+51	

* National Geodetic Vertical Datum.
\+ North American Vertical Datum.
\# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Palatka
Maps are available for inspection at 201 North 2nd Street, Palatka, FL 32177.

Unincorporated Areas of Putnam County
Maps are available for inspection at 515 Reid Street, Building 1D, Palatka, FL 32177.

Lenawee County, Michigan (All Jurisdictions)				
Bean Creek	Approximately 0.50 mile upstream of Jackson Street	None	+905	Township of Hudson.
	Approximately 1,600 feet west of the intersection of Maple Grove Avenue and Cadmus Road.	None	+909	
Lake Loch Erin	Entire shoreline within community	None	+927	Township of Cambridge, Township of Franklin.
River Raisin	Approximately 0.5 mile downstream of Bucholtz Highway.	None	+669	Charter Township of Raisin, Township of Blissfield, Township of Clinton, Township of Deerfield, Township of Tecumseh.
	Approximately 0.8 mile downstream of West Michigan Avenue.	None	+798	
South Branch River Raisin	Approximately 1,150 feet downstream of U.S. Route 223.	None	+753	Charter Township of Madison.
	Approximately 850 feet downstream of U.S. Route 223.	None	+753	
Wolf Creek	Approximately 1,050 feet upstream of Bent Oak Avenue.	None	+762	City of Adrian.
	Approximately 0.4 mile upstream of Wolf Creek Highway.	None	+784	
Wolf Creek	Approximately 1,050 feet upstream of Bent Oak Avenue.	None	+762	Charter Township of Adrian.
	Approximately 1,600 feet upstream of Bent Oak Avenue.	None	+762	

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

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Charter Township of Adrian
Maps are available for inspection at 2907 Tipton Highway, Adrian, MI 49221.
Charter Township of Madison
Maps are available for inspection at 4008 South Adrian Highway, Adrian, MI 49221
Charter Township of Raisin
Maps are available for inspection at 5525 Occidental Highway, Tecumseh, MI 49286.
City of Adrian
Maps are available for inspection at 135 East Maumee Street, Adrian, MI 49221.
Township of Blissfield
Maps are available for inspection at 120 South Lane Street, Blissfield, MI 49228.
Township of Cambridge:
Maps are available for inspection at 9990 West M50, Onsted, MI 49265.
Township of Clinton
Maps are available for inspection at 172 West Michigan Avenue, Clinton, MI 49236.
Township of Deerfield
Maps are available for inspection at 468 Carey Street, Deerfield, MI 49238.
Township of Franklin
Maps are available for inspection at 4041 Monroe Road, Tipton, MI 49287.
Township of Hudson
Maps are available for inspection at 14510 Carleton Road, Hudson, MI 49247.
Township of Tecumseh
Maps are available for inspection at 320 Springbrook Avenue, Suite 102, Adrian, MI 49221.

Crook County, Oregon, and Incorporated Areas

Crooked River	Approximately 2.6 miles downstream of Ochoco Highway.	+2829	+2833	Unincorporated Areas of Crook County.
	Approximately 2.0 miles downstream of Ochoco Highway.	+2834	+2836	
Ochoco Creek	Approximately 0.7 mile downstream of Northwest Madras Highway.	+2831	+2834	City of Prineville, Unincorporated Areas of Crook County.
	Just downstream of Wayland Road	+3001	+3005	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Prineville
Maps are available for inspection at City Hall, 387 Northeast 3rd Street, Prineville, OR 97754.

Unincorporated Areas of Crook County
Maps are available for inspection at the Crook County Courthouse, 300 Northeast 3rd Street, Prineville, OR 97754.

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

Dated: December 3, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–31548 Filed 12–15–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1159]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before March 16, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1159, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

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

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

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Coahoma County, Mississippi, and Incorporated Areas				
Mill Creek	Approximately 200 feet upstream of North Desoto Avenue.	None	+157	City of Clarksdale, Town of Lyon.
	Approximately 650 feet upstream of Barkley Road	None	+162	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Moore Bayou	Approximately 0.72 mile downstream of Coldwater Road.	+171	+170	Town of Jonestown, Unincorporated Areas of Coahoma County.
	Approximately 0.57 mile upstream of Coldwater Road	None	+170	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Clarksdale
Maps are available for inspection at City Hall, 115 1st Street, Clarksdale, MS 38614.

Town of Jonestown
Maps are available for inspection at the Town Hall, 219 Main Street, Jonestown, MS 38639.

Town of Lyon
Maps are available for inspection at the Town Hall, 111 Park Street, Lyon, MS 39645.

Unincorporated Areas of Coahoma County
Maps are available for inspection at the Coahoma County Courthouse, 121 Sunflower Avenue, Clarksdale, MS 38614.

Holmes County, Mississippi, and Incorporated Areas

Yazoo River	Approximately 12 miles downstream of County Road 511.	None	+121	Town of Cruger, Unincorporated Areas of Holmes County.
	Approximately 6.5 miles downstream of County Road 511.	None	+123	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Cruger
Maps are available for inspection at Town Hall, 225 Railroad Street, Cruger, MS 38924.

Unincorporated Areas of Holmes County
Maps are available for inspection at the Holmes Courthouse, 300 Yazoo Street, Lexington, MS 39095.

Humphreys County, Mississippi, and Incorporated Areas

Shallow Flooding	An area bounded by the county boundary to the west and south, the William M. Whittington Channel Levee to the east, and the confluence with Silver Creek and Straight Bayou to the north.	None	+100	Unincorporated Areas of Humphreys County.
Yazoo River	Approximately 10 miles upstream of State Highway 12.	None	+117	Unincorporated Areas of Humphreys County.
	Approximately 19.5 miles upstream of State Highway 12.	None	+120	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

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

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Humphreys County

Maps are available for inspection at 102 Castleman Street, Belzoni, MS 39038.

Issaquena County, Mississippi, and Incorporated Areas

Mississippi River	Approximately 5.3 miles upstream of U.S. Route 80 Bridge.	None	+112	Unincorporated Areas of Issaquena County.
	Approximately 9.3 miles upstream of U.S. Route 80 Bridge.	None	+120	
Steele Bayou	An area bounded by the county boundary to the north, west, south, and east.	None	+100	Town of Mayersville, Unincorporated Areas of Issaquena County.
Yazoo River	Approximately 6 miles downstream of U.S. Route 61	None	+105	Unincorporated Areas of Issaquena County.
	Approximately 12 miles upstream of U.S. Route 61	None	+105	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Mayersville

Maps are available for inspection at 132 Court Street, Mayersville, MS 39113.

Unincorporated Areas of Issaquena County

Maps are available for inspection at 129 Court Street, Mayersville, MS 39113.

Sharkey County, Mississippi, and Incorporated Areas

Deer Creek	Approximately 9.8 miles upstream of the confluence with Rolling Fork Creek.	None	+103	Town of Anguilla, Unincorporated Areas of Sharkey County.
	Approximately 10.8 miles upstream of the confluence with Rolling Fork Creek.	None	+103	
Steele Bayou	An area bounded by the county boundary to the north, west, south, and east; approximately 3 miles south of the northern county boundary.	None	+100	City of Rolling Fork, Town of Anguilla, Town of Cary, Unincorporated Areas of Sharkey County.
Yazoo River	At the county boundary	None	+105	Unincorporated Areas of Sharkey County.
	Approximately 300 feet upstream of the county boundary.	None	+105	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Rolling Fork

Maps are available for inspection at 130 Walnut Street, Rolling Fork, MS 39159.

Town of Anguilla

Maps are available for inspection at 22 Rolling Fork Road, Anguilla, MS 38924.

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

Town of Cary

Maps are available for inspection at 30 Oak Circle, Cary, MS 39054.

Unincorporated Areas of Sharkey County

Maps are available for inspection at 120 Locust Street, Rolling Fork, MS 39159.

Washington County, Mississippi, and Incorporated Areas

Steele Bayou Control Structure.	An area bounded by the county boundary to the south and east, State Highway 436 to the north, and West Side Lake Washington Road to the west.	None	+100	Unincorporated Areas of Washington County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Washington County

Maps are available for inspection at the Washington County Courthouse, 900 Washington Avenue, Greenville, MS 38701.

Yazoo County, Mississippi, and Incorporated Areas

Big Black River	Approximately 21.9 miles downstream of U.S. Route 49.	None	+149	Unincorporated Areas of Yazoo County.
	Approximately 10.7 miles downstream of U.S. Route 49.	None	+155	
Collins Creek	An area bounded by the Yazoo River Levee to the north and west, State Highway 3 to the south, and Germania Road to the east.	None	+93	Unincorporated Areas of Yazoo County.
Satartia Creek (backwater effects from Mississippi River).	Approximately 0.75 mile downstream of State Highway 3.	None	+105	Unincorporated Areas of Yazoo County.
	Approximately 1,900 feet downstream of State Highway 3.	None	+105	
Steele Bayou	An area bounded by the county boundary to the north, west, and south, and the William M. Whittington Canal Levee to the east.	None	+100	Unincorporated Areas of Yazoo County.
Yazoo River (backwater effects from Mississippi River).	Approximately 21 miles downstream of Satartia Road	None	+105	Unincorporated Areas of Yazoo County.
	Approximately 15 miles downstream of Satartia Road	None	+105	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Yazoo County

Maps are available for inspection at 211 East Broadway Street, Yazoo City, MS 39194.

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

Dated: December 3, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–31546 Filed 12–15–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1158]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before March 16, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1158, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

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

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

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified
Unincorporated Areas of Richmond County, North Carolina					
North Carolina	Unincorporated Areas.	Crooked Creek	At the Scotland County boundary	+243	+242

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified
			Approximately 0.8 mile upstream of County Line Road (SR 1803).	+262	+261

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Richmond County

Maps are available for inspection at the Richmond County Planning Department, 221 South Hancock Street, Rockingham, NC 28379.

City of Newport News, Virginia

Virginia	City of Newport News.	Newmarket Creek	Approximately 0.45 mile downstream of Hampton Roads Center Parkway.	None	+18
			Approximately 0.94 mile upstream of Hampton Roads Center Parkway.	None	+21
Virginia	City of Newport News.	Newmarket Creek	Approximately 1,287 feet downstream of Harpersville Road.	None	+24
			Approximately 0.56 mile upstream of Harpersville Road.	None	+26
Virginia	City of Newport News.	Newmarket Creek Tributary.	Approximately 765 feet downstream of Agusta Drive.	None	+22
			Approximately 167 feet upstream of Agusta Drive.	None	+22
Virginia	City of Newport News.	Stoney Run	Approximately 0.8 mile downstream of Old Courthouse Way.	+7	+8
			Approximately 0.56 mile upstream of Woodside Lane.	None	+47
Virginia	City of Newport News.	Stoney Run—Colony Pines Branch.	Approximately 776 feet downstream of Richneck Road.	None	+27
			Approximately 1,450 feet upstream of Windsor Castle Drive.	None	+35
Virginia	City of Newport News.	Stoney Run—Denbigh Branch.	Just downstream of Richneck Road	None	+27
			Just downstream of McManus Boulevard	None	+35

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

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ADDRESSES

City of Newport News

Maps are available for inspection at the Department of Engineering, 2400 Washington Avenue, Newport News, VA 23607.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Mohave County, Arizona, and Incorporated Areas				
Bronco Creek	Approximately 1,295 feet downstream of U.S. Route 93.	None	+1903	Unincorporated Areas of Mohave County.
	Approximately 0.7 mile upstream of U.S. Route 93	None	+2063	
Colorado River	Approximately 1.2 miles upstream of I–40	None	+464	Unincorporated Areas of Mohave County.
	Approximately 3.1 miles upstream of I–40	None	+466	
Tributary A	At the confluence with Unnamed Tributary to Bronco Creek.	None	+2046	Unincorporated Areas of Mohave County.
	Approximately 1,845 feet upstream of the confluence with Unnamed Tributary to Bronco Creek.	None	+2095	
Tributary B	At the confluence with Unnamed Tributary to Bronco Creek.	None	+2055	Unincorporated Areas of Mohave County.
	Approximately 1,715 feet upstream of the confluence with Unnamed Tributary to Bronco Creek.	None	+2112	
Tributary C	At the confluence with Unnamed Tributary to Bronco Creek.	None	+2058	Unincorporated Areas of Mohave County.
	Approximately 0.4 mile upstream of the confluence with Unnamed Tributary to Bronco Creek.	None	+2121	
Unnamed Tributary to Bronco Creek.	At the confluence with Bronco Creek	None	+1987	Unincorporated Areas of Mohave County.
	Approximately 1,440 feet upstream of Chicken Springs Road.	None	+2151	

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# Depth in feet above ground.
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ADDRESSES

Unincorporated Areas of Mohave County

Maps are available for inspection at 700 West Beale Street, Kingman, AZ 86401.

Maui County, Hawaii				
Iao East Overflow	Approximately 54 feet downstream of Kahului Beach Road.	None	∧15	Maui County.
	At the confluence with Iao Stream	None	∧162	
Iao Stream	Approximately 1,036 feet downstream of Waiehu Beach Road.	∧15	∧17	Maui County.
	Approximately 0.7 mile upstream of North Market Street.	∧357	∧347	
Pacific Ocean (entire shoreline of the Island of Lanai).	Approximately 1.5 miles northwest of the intersection of Kaumalapau Highway and Lanai Rock Quarry Road.	None	∧3	Maui County.
	Approximately 1.1 miles southwest of the intersection of Hulopoe Drive and Mauna Lei Drive.	None	∧55	
Pacific Ocean—Island of Maui.	Southeast corner of the Island of Maui, approximately 670 feet southwest of the intersection of Honoapiilani Highway and Keawe Street.	None	∧4	Maui County.
	Northwest corner of the Island of Maui, approximately 1.7 miles southwest of the intersection of Piilani Highway and Kaupo Gap Road.	None	∧79	
Pacific Ocean—Island of Molokai.	Northeast corner of the Island of Molokai, approximately 1,700 feet southwest of the intersection of Maunaloa Highway and Hoawa Road.	None	∧3	Maui County.
	Northwest corner of the Island of Molokai, approximately 2.0 miles northwest of the intersection of Kaluakoi Road and Kakaako Road.	None	∧28	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Shallow Flooding (Island of Maui).	Approximately 0.9 mile northwest of Apole Point	∧10	#2	Maui County.
Shallow Flooding (Island of Maui).	Approximately 0.7 mile northwest of Apole Point	None	#2	Maui County.

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+ North American Vertical Datum.
# Depth in feet above ground.
∧ Elevation in feet (LTD).
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ADDRESSES

Maui County

Maps are available for inspection at the Maui County Planning Department, 250 South High Street, 2nd Floor, Wailuku, HI 96793.

Greene County, Mississippi, and Incorporated Areas

Leaf River	Approximately 1.1 miles downstream of U.S. Route 98.	None	+74	Unincorporated Areas of Greene County.
	Approximately 4.2 miles upstream of U.S. Route 98 ...	None	+85	

* National Geodetic Vertical Datum.
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∧ Mean Sea Level, rounded to the nearest 0.1 meter.
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ADDRESSES

Unincorporated Areas of Greene County

Maps are available for inspection at the Greene County Courthouse, 400 Main Street, Leakesville, MS 39451.

Panola County, Mississippi, and Incorporated Areas

Enid Lake	Entire shoreline within community	None	+274	Unincorporated Areas of Panola County.
Fowler Creek	Approximately 790 feet downstream of the railroad	+189	+188	Town of Crenshaw, Unincorporated Areas of Panola County.
	Approximately 180 feet upstream of Old Crenshaw Road.	+197	+200	
Peters Creek	Approximately 380 feet upstream of the railroad	None	+228	Town of Courtland, Village of Pope.
	Approximately 1,730 feet upstream of U.S. Route 51	None	+231	
Sardis Lake	Entire shoreline within community	None	+286	Unincorporated Areas of Panola County.
Shallow Flooding	An area bounded by State Highway 6 to the north, Farrish Gravel Road to the west, and State Highway 35 to the south and east.	None	#1	City of Batesville.
Whitten Creek	Approximately 1,085 feet downstream of Tiger Drive ..	None	+236	City of Batesville.
	Approximately 1,120 feet upstream of Shamrock Drive.	None	+282	

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

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ADDRESSES

City of Batesville
Maps are available for inspection at City Hall, 103 College Street, Batesville, MS 38606.

Town of Courtland
Maps are available for inspection at the Panola County Courthouse, 151 Public Square, Batesville, MS 38606.

Town of Crenshaw
Maps are available for inspection at Crenshaw City Hall, 600 Broad Street, Crenshaw, MS 38621.

Unincorporated Areas of Panola County
Maps are available for inspection at the Panola County Courthouse, 151 Public Square, Batesville, MS 38606.

Village of Pope
Maps are available for inspection at the Panola County Courthouse, 151 Public Square, Batesville, MS 38606.

Quitman County, Mississippi, and Incorporated Areas

Opossum Bayou Tributary	Approximately 1,875 feet downstream of State Highway 3.	None	+153	Town of Lambert, Unincorporated Areas of Quitman County.
	Approximately 350 feet upstream of Johnson Avenue	None	+156	

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ADDRESSES

Town of Lambert
Maps are available for inspection at the Mayor's Office, 831 Scott Avenue, Lambert, MS 38643.

Unincorporated Areas of Quitman County
Maps are available for inspection at the Quitman County Courthouse, 230 Chestnut Street, Marks, MS 38646.

Saline County, Missouri, and Incorporated Areas

Bell Branch (backwater effects from Missouri River).	From the confluence with the Missouri River to approximately 0.76 mile upstream of the confluence with the Missouri River.	+658	+657	City of Miami, Unincorporated Areas of Saline County.
Missouri River	Approximately 1,400 feet upstream of the Cooper County boundary.	None	+611	City of Miami, Town of Arrow Rock, Town of Grand Pass, Unincorporated Areas of Saline County.
	At the Lafayette County boundary	None	+672	
North Fork Finney Creek	Approximately 850 feet downstream of Fairground Road.	None	+703	Unincorporated Areas of Saline County.
	Approximately 900 feet downstream of Arrow Street ..	None	+721	
North Fork Finney Creek Tributary.	At the confluence with North Fork Finney Creek	None	+708	City of Marshall, Unincorporated Areas of Saline County.
	Approximately 60 feet downstream of Miami Avenue	None	+735	

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

ADDRESSES

City of Marshall

Maps are available for inspection at the City Office, 214 North Lafayette Avenue, Marshall, MO 65340.

City of Miami

Maps are available for inspection at the Saline County Courthouse, 19 East Arrow Street, Room 101, Marshall, MO 65340.

Town of Arrow Rock

Maps are available for inspection at the Saline County Courthouse, 19 East Arrow Street, Room 101, Marshall, MO 65340.

Town of Grand Pass

Maps are available for inspection at the Saline County Courthouse, 19 East Arrow Street, Room 101, Marshall, MO 65340.

Unincorporated Areas of Saline County

Maps are available for inspection at the Saline County Courthouse, 19 East Arrow Street, Room 101, Marshall, MO 65340.

Scotland County, North Carolina, and Incorporated Areas

Cabin Branch	Approximately 90 feet upstream of the confluence with Big Branch.	None	+169	City of Laurinburg, Unincorporated Areas of Scotland County.
	Approximately 1.4 miles upstream of Barnes Bridge Road (SR 1614).	None	+209	
Crooked Creek	At the State of South Carolina boundary	+225	+224	Unincorporated Areas of Scotland County.
	At the Richmond County boundary	+243	+241	
Little Creek	Just upstream of Highland Road	+194	+189	City of Laurinburg, Unincorporated Areas of Scotland County.
	Approximately 600 feet upstream of Wagram Road	+219	+218	
Lumber River	Approximately 1.2 miles upstream of the Robeson County boundary.	+190	+191	Town of Wagram, Unincorporated Areas of Scotland County.
	Approximately 0.5 mile upstream of the confluence with Quewhiffle Creek.	+256	+257	
Unnamed Tributary to Gum Swamp Creek.	Approximately 1,050 feet upstream of the confluence with Gum Swamp Creek.	None	+167	City of Laurinburg, Unincorporated Areas of Scotland County.
	Approximately 175 feet upstream of Blue Woods Road (SR 1116).	None	+217	
Water Creek	Approximately 1.4 miles downstream of Barnes Bridge Road (SR 1614).	None	+179	City of Laurinburg, Unincorporated Areas of Scotland County.
	Approximately 1,950 feet upstream of Hasty Road (SR 1615).	None	+207	

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+ North American Vertical Datum.

Depth in feet above ground.

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ADDRESSES

City of Laurinburg

Maps are available for inspection at City Hall, 305 West Church Street, Laurinburg, NC 28353.

Town of Wagram

Maps are available for inspection at the Town Office, 24341 Riverton Road, Wagram, NC 28396.

Unincorporated Areas of Scotland County

Maps are available for inspection at the Scotland County Government Administration Building, 507 West Covington Street, Laurinburg, NC 28353.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Greer County, Oklahoma, and Incorporated Areas				
Lake Altus	Entire shoreline within community	None	+1555	Town of Granite, Unincorporated Areas of Greer County.

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ADDRESSES

Town of Granite

Maps are available for inspection at the Town Hall, 420 North Main Street, Granite, OK 73547.

Unincorporated Areas of Greer County

Maps are available for inspection at the Greer County Courthouse, 106 East Jefferson Street, Mangum, OK 73554.

Kiowa County, Oklahoma, and Incorporated Areas				
Lake Altus	Entire shoreline within community	None	+1555	Unincorporated Areas of Kiowa County.
Tributary 1	Approximately 1,200 feet downstream of A Street	None	+1347	Unincorporated Areas of Kiowa County.
	Approximately 70 feet downstream of the railroad	None	+1356	
Tributary 2	Approximately 950 feet downstream of B Street	None	+1353	Unincorporated Areas of Kiowa County.
	Approximately 600 feet downstream of the railroad	None	+1360	

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ADDRESSES

Unincorporated Areas of Kiowa County

Maps are available for inspection at the Kiowa County Courthouse, 316 South Main Street, Hobart, OK 73651.

Washita County, Oklahoma, and Incorporated Areas				
Cobb Creek	Approximately 0.9 mile downstream of Seger Street	None	+1449	Cheyenne and Arapaho Tribes of Oklahoma, Unincorporated Areas of Washita County.
	Approximately 250 feet upstream of North 2420 Road	None	+1470	
North Cavalry Creek	Approximately 100 feet downstream of East 1210 Road.	None	+1470	Unincorporated Areas of Washita County.
	Approximately 675 feet upstream of North 2230 Road	None	+1574	
Tributary No. 1 of North Cavalry Creek.	At the confluence with North Cavalry Creek	None	+1487	Unincorporated Areas of Washita County.
	Approximately 550 feet downstream of Cavalry Creek Dam 24.	None	+1566	
Tributary No. 1 of Tributary No. 1 of North Cavalry Creek.	Approximately 1,000 feet upstream of the confluence with Tributary No.1 of North Cavalry Creek.	None	+1535	Unincorporated Areas of Washita County.
	Approximately 850 feet upstream of East 14th Street	None	+1562	

* National Geodetic Vertical Datum.

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

+ North American Vertical Datum.
# Depth in feet above ground.
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ADDRESSES

Cheyenne and Arapaho Tribes of Oklahoma

Maps are available for inspection at the Cheyenne and Arapaho Tribes of Oklahoma Executive Office, 100 Red Moon Circle, Concho, OK 73022.

Unincorporated Areas of Washita County

Maps are available for inspection at the Washita County Courthouse, 111 East Main Street, New Cordell, OK 73632.

Bedford County, Pennsylvania (All Jurisdictions)

Georges Creek	Approximately 1,932 feet downstream of Simple Road	None	+1278	Township of West St. Clair.
	Approximately 1,562 feet downstream of Simple Road	None	+1284	
Little Wills Creek	Approximately 1.0 mile upstream of the confluence with Wolf Camp Run.	None	+1200	Township of Harrison.
	Approximately 1.32 miles upstream of the confluence with Wolf Camp Run.	None	+1215	
Little Wills Creek	At the confluence with Wills Creek	+934	+932	Township of Londonderry.
	Approximately 280 feet upstream of the confluence with Wills Creek.	+937	+935	
Raystown Branch Juniata River.	Approximately 380 feet downstream of Ritchie Bridge Road.	None	+927	Township of Hopewell.
	Approximately 100 feet downstream of Ritchie Bridge Road.	None	+928	
Raystown Branch Juniata River.	Approximately 0.46 mile downstream of Six Mile Run Road.	None	+858	Township of Liberty.
	Approximately 180 feet downstream of Six Mile Run Road.	None	+860	

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ADDRESSES

Township of Harrison

Maps are available for inspection at the Harrison Township Municipal Building, 4747 Milligans Cove Road, Manns Choice, PA 15550.

Township of Hopewell

Maps are available for inspection at the Township Building, 1402 Norris Street, Hopewell, PA 16650.

Township of Liberty

Maps are available for inspection at the Liberty Township Building, 504 17th Street, Saxton, PA 16678.

Township of Londonderry

Maps are available for inspection at the Londonderry Township Building, 4303 Hyndman Road, Hyndman, PA 15545.

Township of West St. Clair

Maps are available for inspection at the West St. Clair Township Office, Chestnut Ridge Ambulance Building, 4037 Quaker Valley Road, Alum Bank, PA 15521.

Sanborn County, South Dakota, and Incorporated Areas

Branch 4 of Ditch 21	At the confluence with County Ditch No. 6 and County Ditch No. 8.	None	+1298	Unincorporated Areas of Sanborn County.
	Just downstream of 227th Street	None	+1305	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
County Ditch No. 6	At the confluence with County Ditch No. 8 and Branch 4 of Ditch 21.	None	+1298	Unincorporated Areas of Sanborn County.
	Approximately 630 feet upstream of 396th Avenue	None	+1307	
County Ditch No. 7	Approximately 350 feet downstream of 397th Avenue	None	+1300	City of Woonsocket, Unincorporated Areas of Sanborn County.
	Approximately 0.6 mile upstream of 396th Avenue	None	+1302	
County Ditch No. 8	Approximately 0.6 mile downstream of 398th Avenue	None	+1292	City of Woonsocket, Unincorporated Areas of Sanborn County.
	At the confluence with County Ditch No. 6 and Branch 4 of Ditch 21.	None	+1298	
Dry Run 8	At the confluence with County Ditch No. 8	None	+1295	Unincorporated Areas of Sanborn County.
	Approximately 1.3 miles upstream of the confluence with County Ditch No. 8.	None	+1297	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Woonsocket

Maps are available for inspection at City Hall, 103 South 3rd Avenue, Woonsocket, SD 57385.

Unincorporated Areas of Sanborn County

Maps are available for inspection at the Sanborn County Government Offices, 604 West 6th Street, Woonsocket, SD 57385.

Carbon County, Utah, and Incorporated Areas

Grassy Trail Creek	Approximately 320 feet downstream of the confluence with Northern Slope Tributary.	None	+6167	City of East Carbon.
	Approximately 2.12 miles upstream of the confluence with Northern Slope Tributary.	None	+6408	
Northern Slope Tributary	At the confluence with Grassy Trail Creek	None	+6170	City of East Carbon.
	Approximately 0.53 mile upstream of the confluence with Grassy Trail Creek.	None	+6234	
Price River	Approximately 0.40 mile downstream of 760 North Street.	+5545	+5544	City of Helper, Unincorporated Areas of Carbon County.
	Approximately 760 feet downstream of Union Pacific Railroad.	+5956	+5955	
Spring Canyon Wash	Just upstream of the confluence with the Price River	+5857	+5858	City of Helper.
	Approximately 500 feet upstream of Canyon Street	+5917	+5918	
Spring Glen Wash	At the confluence with the Price River	+5738	+5736	Unincorporated Areas of Carbon County.
	Approximately 0.52 mile upstream of 1900 West Street.	None	+5848	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of East Carbon

Maps are available for inspection at City Hall, 105 West Geneva Drive, East Carbon City, UT 84520.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
City of Helper				
Maps are available for inspection at City Hall, 73 South Main Street, Helper, UT 84526.				
Unincorporated Areas of Carbon County				
Maps are available for inspection at the Carbon County Planning and Zoning Department, 120 East Main Street, Price, UT 84501.				
Ritchie County, West Virginia, and Incorporated Areas				
North Fork Hughes River	Approximately 0.55 mile downstream of Main Street ..	+672	+670	Town of Cairo.
	Approximately 0.41 mile upstream of Main Street	+676	+673	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Cairo

Maps are available for inspection at the Cairo Town Hall, 115 East Main Street, Harrisville, WV 26362.

Roane County, West Virginia, and Incorporated Areas				
Goff Run	Approximately 0.41 mile upstream of Williams Drive ..	None	+734	Unincorporated Areas of Roane County.
	Approximately 0.53 mile upstream of Williams Drive ..	None	+739	
Reedy Creek	Approximately 940 feet downstream of Mill Street	None	+678	Unincorporated Areas of Roane County.
	Approximately 214 feet upstream of Mill Street	None	+679	
Reedy Creek	Approximately 1,890 feet upstream of Center Street ..	None	+678	Unincorporated Areas of Roane County.
	Approximately 0.40 mile upstream of Center Street	None	+678	
Reedy Creek	Approximately 1,230 feet upstream of Mill Street	None	+679	Unincorporated Areas of Roane County.
	Approximately 1,810 feet upstream of Mill Street	None	+679	
Spring Creek	Approximately 1,784 feet downstream of Roane Avenue.	None	+724	Unincorporated Areas of Roane County.
	Approximately 1,519 feet downstream of Roane Avenue.	None	+724	
Spring Creek	Approximately 355 feet downstream of the Spring Creek Dam.	None	+727	Unincorporated Areas of Roane County.
	Approximately 352 feet downstream of Clary Road	None	+728	
Tanner Run	Approximately 510 feet upstream of Main Street	None	+726	Unincorporated Areas of Roane County.
	Approximately 0.51 mile upstream of Main Street	None	+733	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Roane County

Maps are available for inspection at the Roane County Courthouse, 200 Main Street, Spencer, WV 25276.

Douglas County, Wisconsin, and Incorporated Areas				
Bond Lake	Entire shoreline within community	None	+1035	Unincorporated Areas of Douglas County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Lake Minnesuing	Entire shoreline within community	None	+1117	Unincorporated Areas of Douglas County.
Lake Nebagamon	Entire shoreline within community	None	+1111	Village of Lake Nebagamon.
Lake Superior	Entire shoreline within community	None	+605	City of Superior, Unincorporated Areas of Douglas County, Village of Oliver, Village of Superior.
Leader Lake	Entire shoreline within community	None	+1036	Unincorporated Areas of Douglas County.
Lower Eau Claire Lake	Entire shoreline within community	None	+1124	Unincorporated Areas of Douglas County.
Lyman Lake	Entire shoreline within community	None	+1190	Unincorporated Areas of Douglas County.
Nemadji River	Just downstream of the Hammond Avenue abandoned bridge.	None	+623	Village of Superior.
	Approximately 1 mile upstream of the Hammond Avenue abandoned bridge.	None	+624	
St. Croix Flowage	Entire shoreline within community	None	+1018	Unincorporated Areas of Douglas County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Superior
Maps are available for inspection at 1316 North 4th Street, Superior, WI 54880.

Unincorporated Areas of Douglas County
Maps are available for inspection at 1313 Belknap Street, Superior, WI 54880.

Village of Lake Nebagamon
Maps are available for inspection at 11596 East Waterfront Street, Lake Nebagamon, WI 54849.

Village of Oliver
Maps are available for inspection at 2931 South Winona Avenue, Superior, WI 54880.

Village of Superior
Maps are available for inspection at 6702 Ogden Avenue, Superior, WI 54880

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

Dated: December 3, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–31545 Filed 12–15–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1169]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood

Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before March 16, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1169, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

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

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

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground − Elevation in meters (MSL)		
		Effective	Modified	Communities affected
Meeker County, Minnesota, and Incorporated Areas				
Jewett Creek	At the upstream side of State Highway 24	None	+1105	Unincorporated Areas of Meeker County.
	Approximately 676 feet downstream of Sibley Avenue	None	+1105	
Lake Ripley/East Lake Ripley	Entire shoreline within community	None	+1128	Unincorporated Areas of Meeker County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
− Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Meeker County

Maps are available for inspection at the Meeker County Courthouse, 325 Sibley Avenue North, Litchfield, MN 55355.

Big Creek (backwater effects from Missouri River).	From the Grand River confluence to approximately 2.7 miles upstream of County Road 335.	None	+649	Unincorporated Areas of Carroll County.
Grand River (backwater effects from Missouri River).	From the Missouri River confluence to the upstream side of the railroad.	None	+649	Unincorporated Areas of Carroll County.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground − Elevation in meters (MSL)		
		Effective	Modified	Communities affected
Missouri River	At the Grand River confluence	+646	+645	City of Dewitt, City of Norborne, Town of Carrollton, Unincorporated Areas of Carroll County.
	At the Ray County boundary	+692	+689	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
− Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Dewitt

Maps are available for inspection at the Carroll County Courthouse, 8 South Main Street, Suite 6, Carrollton, MO 64633.

City of Norborne

Maps are available for inspection at the Carroll County Courthouse, 8 South Main Street, Suite 6, Carrollton, MO 64633.

Town of Carrollton

Maps are available for inspection at Carrollton City Hall, 206 West Washington Avenue, Carrollton, MO 64633.

Unincorporated Areas of Carroll County

Maps are available for inspection at the Carroll County Courthouse, 8 South Main Street, Suite 6, Carrollton, MO 64633.

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

Dated: December 7, 2010.

Sandra K. Knight,

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

[FR Doc. 2010–31549 Filed 12–15–10; 8:45 am]

BILLING CODE 9110–12–P

Notices

Federal Register

Vol. 75, No. 241

Thursday, December 16, 2010

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Cooperative Conservation Partnership Initiative—Chesapeake Bay Watershed

AGENCY: Commodity Credit Corporation and Natural Resources Conservation Service, Department of Agriculture.

ACTION: Notice of Request for proposals.

SUMMARY: The purpose of this request for proposals is to solicit proposals from potential partner applicants who seek to enter into partnership agreements with the Natural Resources Conservation Service (NRCS) through the Cooperative Conservation Partnership Initiative—Chesapeake Bay Watershed (CCPI–CBW) in order to provide assistance to producers enrolled in a conservation program. The NRCS is the administrator of CCPI–CBW.

CCPI–CBW was established by the Food, Conservation, and Energy Act of 2008 (2008 Act). CCPI–CBW is a voluntary conservation initiative that enables the use of certain conservation programs, combined with resources from eligible partners who have entered into partnership agreements with NRCS, to provide financial and technical assistance to owners and operators of agricultural and nonindustrial private forest lands. Through fiscal year (FY) 2011 CCPI–CBW, NRCS will make Environmental Quality Incentives Program (EQIP) and Wildlife Habitat Incentive Program (WHIP) funds available to eligible producers in approved CCPI–CBW project areas. Special priority consideration will be given to applications/projects in the river basins of the Patuxent, Potomac (North and South), Shenandoah, and Susquehanna (see attached map). In addition, priority will be given to applications/projects in the NRCS Chesapeake Bay Watershed priority areas (see attached map).

DATES: *Effective Date:* The notice of request is effective December 16, 2010. Proposals must be received on or before January 31, 2011.

ADDRESSES: Applicants are highly encouraged to submit proposals electronically to *cbwi@wdc.usda.gov.* Identify the proposal is for CCPI–CBW.

Paper proposals may be submitted via courier service to Dana D. York, Director, Watershed and Landscape Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6015 South Building, Washington, DC 20250. CCPI–CBW proposal should be marked on the envelope.

Do not send submissions via registered or certified mail. Do not send the same proposal to both the e-mail and mailing address; use only one method to submit a proposal. If submitting more than one project proposal, submit each one separately.

FOR FURTHER INFORMATION CONTACT: Dana D. York, Director, Watershed and Landscape Programs Division, Department of Agriculture, Natural Resources Conservation Service; 1400 Independence Avenue, SW., Room 5239 South Building, Washington, DC 20250; *Telephone:* (202) 720–8851; *Fax:* (202) 720–2998; *E-mail: cbwi@wdc.usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, *etc.*) should contact the USDA TARGET Center at: (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

The Cooperative Conservation Partnership Initiative—Chesapeake Bay Watershed

Overview of the Cooperative Conservation Partnership Initiative—Chesapeake Bay Watershed

The CCPI–CBW is a voluntary conservation initiative that enables the use of certain conservation programs, combined with resources from eligible partners, to provide financial and technical assistance to owners and operators of agricultural and nonindustrial private forest lands in order to enhance conservation outcomes and achieve resource conservation objectives. The functions of CCPI–CBW are described in two parts: CCPI–CBW partners and CCPI–CBW program participants.

CCPI–CBW Partners

Under CCPI–CBW, eligible potential partners may submit proposals addressing the criteria outlined in this request for proposals. Partners who may enter into partnership agreements with NRCS include federally recognized Indian tribes, State and local units of government, producer associations, farmer cooperatives, institutions of higher education, and nongovernmental organizations with a history of working cooperatively with producers to effectively address conservation priorities related to agricultural production and nonindustrial private forest land. Individual agricultural producers are not an eligible partner entity and may not submit CCPI–CBW proposals.

When Submitting a Proposal and Being a Partner

Proposals will be evaluated in a competitive review process. NRCS will use the proposal ranking score along with other review commentary to select proposals for funding. After selection, the partners will enter into a partnership agreement with NRCS. The partnership agreement will not obligate funds, but will address:

1. The role of the partner;
2. The role of NRCS;
3. The responsibilities of the partner as it relates to the monitoring and evaluation;
4. The frequency and duration of monitoring and evaluation to be completed by the partner;
5. The format and frequency of reports (semi-annual, annual, and final) required as a condition of the partnership agreement;
6. Budget which includes other funding sources (if applicable) for financial and technical assistance;
7. The specified project schedule and timeframe; and
8. Other requirements deemed necessary by NRCS to further the purposes of the CCPI–CBW project.

Where flexibility is needed to meet project objectives, the partner may request that program adjustments be allowed, provided such policy adjustments are within the scope of the applicable program's statutory and regulatory program authorities. An example of a program adjustment may

be to expedite the applicable program ranking process in a situation where a partner has identified the producers approved to participate in the project. Another example of a program adjustment may include flexibility in payment rate, or using a single area-wide plan of operations rather than individual plan of operations. An example of program authority that cannot be waived under the provision of CCPI–CBW flexibility includes program payment limits, maximum practice payment percentages, and participant eligibility requirements. Questions regarding proposed requests for CCPI–CBW flexibility may be directed to: *CCPI@wdc.usda.gov.*

CCPI–CBW is not a grant program, and all Federal funds made available through this request for proposals will be paid directly to producers through program contract agreements. No technical assistance funding may be provided to a partner through the CCPI–CBW partnership agreement. However, if requested by a partner, the State Conservationist may consider developing a separate contribution agreement to provide funding for delivery of technical services to producers participating in an approved CCPI–CBW project.

CCPI–CBW Program Participants

Once the agency approves and announces the selected partner projects, eligible agricultural producers located within the approved project areas may apply directly to NRCS for funding through one or more of the following programs: EQIP and WHIP. The CCPI–CBW uses the funds, policies, and processes of these programs to deliver assistance to eligible producers to implement approved conservation practices, enhancements, and activities.

Producers interested in applying must meet the eligibility requirements of the program for which they are applying. Individual applications from eligible producers will be evaluated and ranked to ensure that the producer applications selected for funding are most likely to achieve project objectives. Once applications are selected, the producers may enter into a contract or cost-share agreement with NRCS. Participants may enter into multiple program contracts through CCPI–CBW if more than one program is needed to accomplish the project objectives.

During FY 2011, an objective of CCPI–CBW is to deliver EQIP and WHIP assistance to producers to achieve high-priority conservation objectives in geographic areas defined by the partner. Depending upon the program available in the project area, the assistance provided enables eligible producers to implement conservation practices and enhancements, including the development and adoption of innovative conservation practices and management approaches.

Availability of Funding

Effective on the publication date of this notice, the CCC announces the availability of up to $3.5 million in EQIP and WHIP financial assistance for CCPI–CBW during FY 2011.

Proposal Information

Proposal Format

It is highly recommended that the proposal be submitted via e-mail. Consult the NRCS national CCPI Web site for an example of an acceptable proposal document at: *http://www.nrcs.usda.gov/programs/CCPI/*. Do not submit other documents or letters of endorsement. The entire proposal may not exceed 12 pages in length including summary, maps, reference materials, and related reports.

Required Information

The proposal must include the following:

1. Proposal Cover Sheet and Summary (not to exceed two pages):

a. Project Title.

b. Project director/manager name, telephone number, and mailing and e-mail addresses.

c. Name and contact information for lead partner entity submitting the proposal.

d. Name and contact information for other collaborating partners.

e. Short summary of project including:

i. Project start and end dates (not to exceed a period of 5 years);

ii. Site map;

iii. Project objectives and resource concerns to be addressed; and

iv. Amount of CCPI–CBW financial assistance being requested by program.

2. Partner Background and Experience:

a. A description of the partner or partners' history of working with agricultural producers to address conservation priorities.

b. A description of how the partner(s) will collaborate to achieve the objectives of the agreement. Include:

i. The roles, responsibilities, and capabilities of the partner(s); and

ii. The financial or technical commitments of each of the partners and how they will be leveraged by the Federal contribution through EQIP or WHIP. If partners are not the submitter of the proposal and intend to commit resources, a letter or other documentation from these partners confirming a commitment of resources is required. Partners need to clearly state, by project objective, how they intend to leverage Federal funds along with resources. The funding and time contribution by agricultural producers to implement agreed-to conservation practices in program contracts may not be considered any part of a match from the potential partner for purposes of CCPI–CBW.

3. Project Objectives and Natural Resource Concerns:

a. Identify and provide details about the project objectives. Objectives should be specific, measureable, achievable, and results-oriented.

b. Identify and provide details about the natural resource concern(s) to be addressed in this project. Include in this description how the proposal objectives will address the listed resource concerns.

Note: A complete list of NRCS approved natural resource concerns may be found on the CCPI Web site at: *http://www.nrcs.usda.gov/programs/ccpi/*.

4. Project Description:

a. A detailed description of the geographic area covered by the proposal including:

i. Types of lands to be treated;

ii. The location and size of the proposed project area; and

iii. Twelve digit Hydrologic Unit Coordinates (12 digit HUCs). (**Note:** Contact the appropriate State Conservationist(s) serving the State(s) where the proposed project is located to obtain information on 12 digit HUCs. The State Conservationists contact information is at the end of this request for proposals).

b. A detailed map showing the project area. Include on the map:

i. Outlined areas which need conservation treatments;

ii. What conservation treatments are needed in what areas; and

iii. The order of priority for the different areas to be treated.

c. A description of the project timeline. Include:

i. Duration of the project, not to exceed 5 years in length;

ii. Project implementation schedule that details when different objectives and conservation practices will be completed;

iii. When partner and Federal resources will be used within the timeframe of the project. Include the total amount of financial assistance funds requested for each fiscal year of the project to be made available for producer contracts and cost-share

agreements (for multi-State projects, provide the funds or acres by State as appropriate). The proposal must request NRCS program funds for obligation in producer contracts during FY 2011 (October 1, 2010 to September 30, 2011). Proposals which request funding starting after FY 2011 (September 30, 2011), will not be evaluated or considered during this funding cycle; and

iv. When the final project report will be submitted.

d. A description of the plan for monitoring, evaluating, and reporting on progress made toward achieving the objectives of the agreement.

e. Identify potential criteria to be used by NRCS to prioritize and rank agricultural producers' applications for EQIP and WHIP in the project area. Potential partners should collaborate with NRCS to develop meaningful criteria that NRCS can use to evaluate and rank producer' program applications. This will ensure that applications which will best accomplish the project's objectives will be selected.

f. An estimate of the percentage of producers, including nonindustrial private forest landowners, in the project area that may participate in the project along with an estimate of the total number of producers located in the project area. Provide details such as how the partner will encourage producer participation; whether the project includes any tribal producers, beginning farmers or ranchers, socially disadvantaged farmers or ranchers, or limited resource farmers or ranchers; and whether there are groups of producers who may submit joint applications to address resource issues of common interest and need.

g. A listing and description of the conservation practices, conservation activity plans, enhancements, and partner activities to be implemented during the project timeframe and the general sequence of implementation of the project. Also address technical assistance efforts that will be made by the partner. Describe any activities that are innovative or include outcome-based performance measures implemented by the partner. Information about approved NRCS practice standards is found at: *http://www.nrcs.usda.gov/technical/standards/nhcp.html*. For each conservation practice, estimate the amount of practice extent (feet, acres, number, *etc.*) the partner expects producers to implement and the amount of financial assistance requested to support implementation of each practice through producer contracts.

h. Indicate whether the project will address regulatory compliance and any other outcomes that partner expects to complete during the project period.

i. A detailed description of any requested policy adjustments, by program, with an explanation of why the adjustment is needed in order to achieve the objectives of the project.

j. A description of how the partner will provide for outreach to beginning farmers or ranchers, limited resource farmers or ranchers, socially disadvantaged farmers or ranchers, and Indian tribes.

k. A description of how the proposal's objectives may provide additional benefits to address renewable energy production, energy conservation, mitigating the effects of climate change, facilitating climate change adaptation, or fostering carbon sequestration, if applicable.

Ranking Considerations

The agency will evaluate proposals using a national competitive process. A higher priority may be given to proposals that:

1. Have a high percentage of producers actively farming or managing working agricultural or nonindustrial private forest lands included in the proposed project area;

2. Are in the river basins of the Patuxent, Potomac (North and South), Shenandoah, and Susquehanna;

3. Control erosion and reduce sediment and nutrient levels in ground and surface waters in designated 12 digit HUC priority watersheds (**Note:** Contact the appropriate State Conservationist(s) serving the State(s) where the proposed project is located to obtain information on 12 digit HUCs. The State Conservationist contact information is at the end of this request for proposals);

4. Significantly leverage non-Federal financial and technical resources;

5. Coordinate with other local, State, or Federal efforts;

6. Deliver high percentages of applied conservation practices to address water quality; water conservation; or State, regional, or national conservation initiatives;

7. Provide innovation in approved conservation practices, conservation methods, and delivery including outcome-based performance measures and methods;

8. Complete the application of the conservation practices and activities on all of the covered program contracts or cost-share agreements in 5 years or less;

9. Assist the participants in meeting local, State, and Federal regulatory requirements;

10. Provide for monitoring and evaluation of conservation practices, enhancements, and activities;

11. Provide for matching financial funds or technical assistance to assist participants with the implementation of their EQIP contracts and WHIP cost-share agreements;

12. Provide for outreach to, and participation of, beginning farmers or ranchers, socially disadvantaged farmers or ranchers, limited resource farmers or ranchers, and Indian tribes within the proposed project area; and

13. Identify other factors and criteria which best achieve the purposes of CCPI–CBW.

General CCPI–CBW Proposal Information

State Conservationist Letter of Review

Once a project proposal is received, the agency will provide a copy to the appropriate State Conservationist(s) for evaluation and ranking. The State Conservationist(s) will submit a letter of review to the NRCS National Headquarters to address:

1. Potential duplication of efforts with other projects or existing programs;

2. Adherence to, and consistency with, program regulations including requirements related to land and producer eligibility and use of approved NRCS resource concerns and conservation practices, enhancements, and other program requirements;

3. Expected benefits for project implementation in their State(s);

4. Other issues or concerns the State Conservationist is aware of that should be considered by the agency; and

5. A general recommendation for support or denial of project approval.

Proposal Submission, Review, and Notification

When submitting a proposal either by email or courier service, mark on the email or courier service envelope that the proposal is for CCPI–CBW. Your proposal must address, in sufficient detail, all the criteria outlined in the "Proposal Information" section of this notice. This will enable agency reviewers to understand your proposal's priority resource concerns, objectives, and expected outcomes.

State Conservationists are expected to provide, once requested, guidance to potential partners regarding resource concerns that may be addressed in the proposed project area, local working group and State Technical Committee natural resource priorities, approved conservation practices and activities, and other program requirements the partner should consider when

developing a proposal. NRCS may not assist in writing or submission of any proposal.

CCPI–CBW proposals submitted to NRCS become the property of the agency for use in the administration of the program, may be filed or disposed of by the agency, and will not be returned to the potential partner. Once proposals have been submitted for review and ranking, there will be no further opportunity to change or re-submit the proposal. Incomplete proposals or those that do not meet the requirements set forth in this notice will not be considered, and notification of elimination will be mailed to the applicant. Partner proposals may be withdrawn by written notice to the Director, Watershed and Landscape Programs Division at any time prior to selection (*see* "Addresses" section in this notice).

NRCS will review and evaluate the proposals based on the criteria set forth in the respective "Proposal Information" section of this notice for CCPI–CBW. Positive consideration will be given to proposals that thoroughly address the issues outlined in the respective "Ranking Considerations" section.

Partners whose proposal is selected will receive a letter of official notification. Upon notification of selection, the partner should contact the appropriate State Conservationist to develop the required partnership agreement and other project implementation requirements. Potential partners should note that, depending upon available funding and agency priorities, NRCS may offer a reduced amount of program financial assistance from what was requested in the proposal. Partner submissions of proposals that were not selected will also be notified.

Waiver Authority

To assist in the implementation of CCPI–CBW projects, the NRCS Chief may waive the applicability of the Adjusted Gross Income Limitation in producer program contracts, on a case-by-case basis, in accordance with 7 CFR § 1400.500(d)(2). Such waiver requests must be submitted in writing from the program applicant, addressed to the Chief, and submitted through the local designated conservationist.

Signed this 9th day of December, 2010, in Washington, DC.

Dave White,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

Addresses and phone number of NRCS State Conservationists in States having land in the Chesapeake Bay Watershed:

Delaware: Russell Morgan
Suite 100, 1221 College Park Drive
Dover, DE 19904–8713
Phone: (302) 678–4160
Fax: (302) 678–0843
russell.morgan@de.usda.gov

Maryland: Jon Hall
John Hanson Business Center, Suite 301
339 Busch's Frontage Road
Annapolis, MD 21409–5543
Phone: (410) 757–0861 Ext. 315
Fax: (410) 757–6504
jon.hall@md.usda.gov

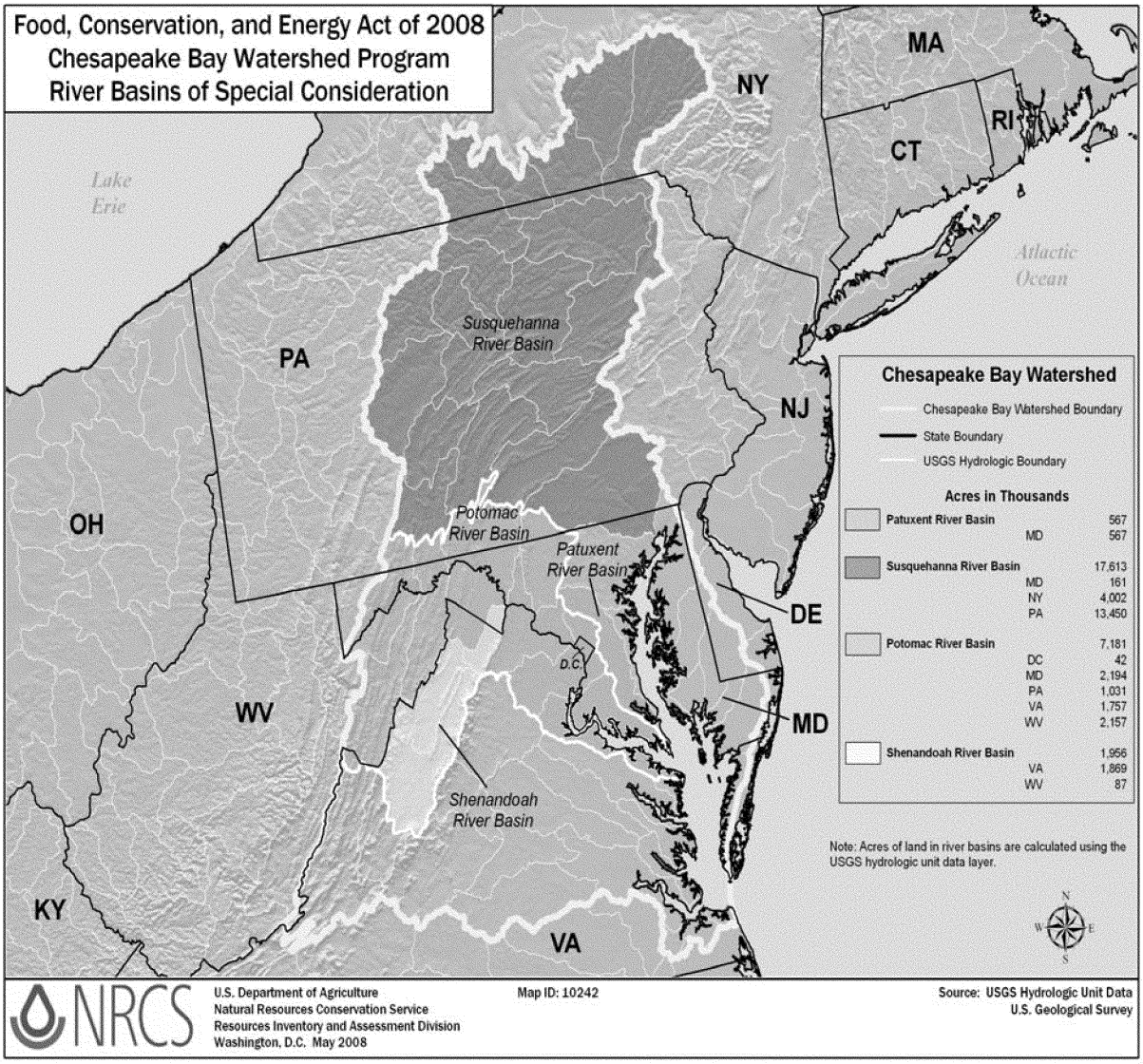
New York: Astor Boozer
Suite 354, 441 South Salina Street
Syracuse, NY 13202–2450
Phone: (315) 477–6504
Fax: (315) 477–6560
astor.boozer@ny.usda.gov

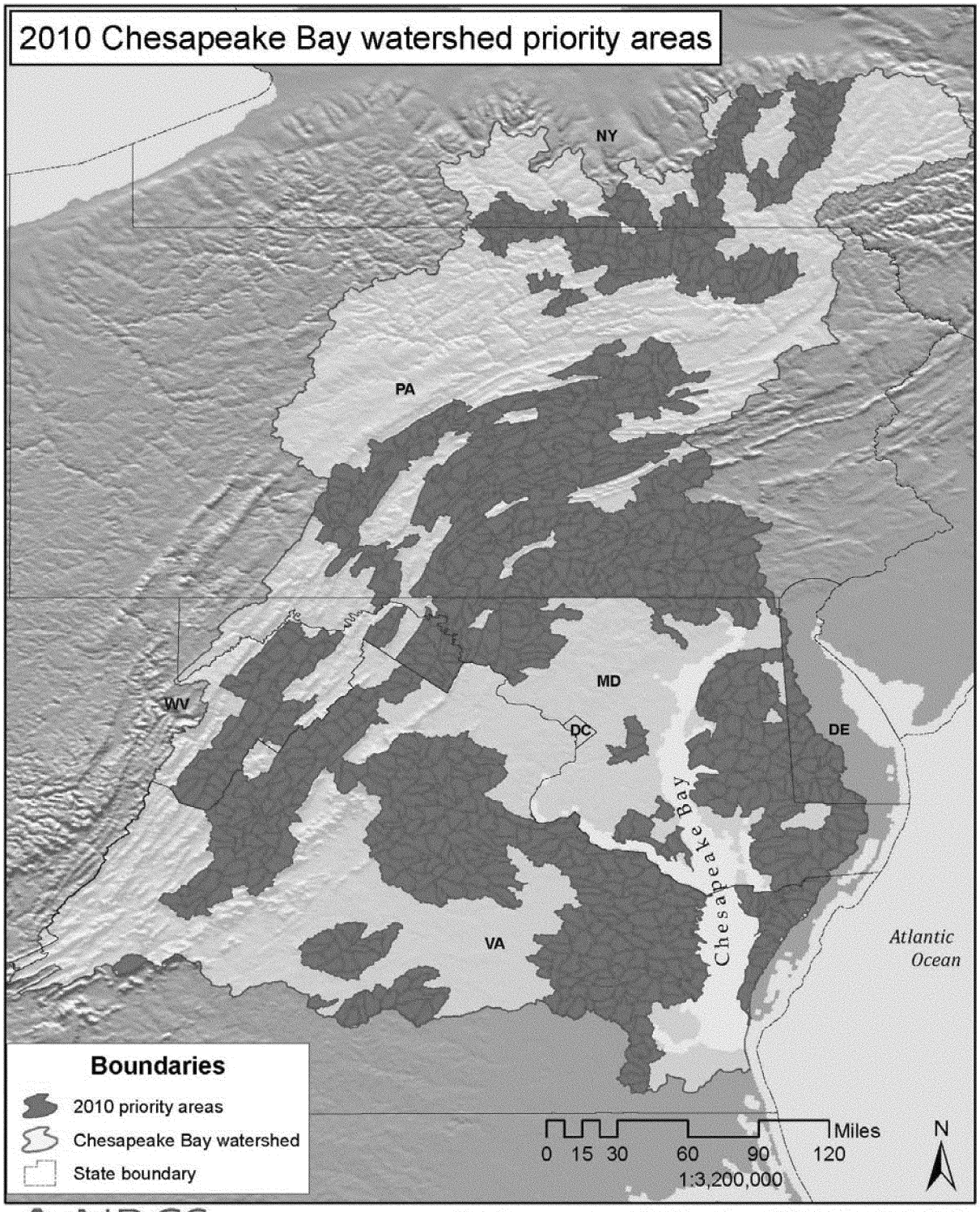
Pennsylvania: Denise Coleman
Suite 340, One Credit Union Place
Harrisburg, PA 17110–2993
Phone: (717) 237–2203
Fax: (717) 237–2238
denise.coleman@pa.usda.gov

Virginia: Jack Bricker
Culpeper Building, Suite 209
1606 Santa Rosa Road
Richmond, VA 23229–5014
Phone: (804) 287–1691
Fax: (804) 287–1737
jack.bricker@va.usda.gov

West Virginia: Kevin Wickey
Room 301, 75 High Street
Morgantown, WV 26505
Phone: (304) 284–7540
Fax: (304) 284–4839
kevin.wickey@wv.usda.gov

BILLING CODE 3410–16–P


Food, Conservation, and Energy Act of 2008
Chesapeake Bay Watershed Program
River Basins of Special Consideration
Lake Erie
Atlantic Ocean
NY
MA
RI
CT
PA
NJ
OH
WV
DE
MD
KY
VA
D.C.
Susquehanna River Basin
Potomac River Basin
Patuxent River Basin
Shenandoah River Basin
Chesapeake Bay Watershed
Chesapeake Bay Watershed Boundary
State Boundary
USGS Hydrologic Boundary
Acres in Thousands
Patuxent River Basin 567
MD 567
Susquehanna River Basin 17,613
MD 161
NY 4,002
PA 13,450
Potomac River Basin 7,181
DC 42
MD 2,194
PA 1,031
VA 1,757
WV 2,157
Shenandoah River Basin 1,956
VA 1,869
WV 87
Note: Acres of land in river basins are calculated using the USGS hydrologic unit data layer.
N
W
E
S
NRCS
U.S. Department of Agriculture
Natural Resources Conservation Service
Resources Inventory and Assessment Division
Washington, D.C. May 2008
Map ID: 10242
Source: USGS Hydrologic Unit Data
U.S. Geological Survey



NRCS

Map data sources: watersheds based on 12-digit HUCs USGS, NRCS areas submitted by states

December 2, 2009

[FR Doc. 2010–31648 Filed 12–15–10; 8:45 am]
BILLING CODE 3410–16–C

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Study To Assess the Effect of Supplemental Nutrition Assistance Program (SNAP) Participation on Food Security in the Post-American Recovery and Reinvestment Act (ARRA) Environment

AGENCY: Food and Nutrition Service (FNS), 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 this proposed collection. This is a new collection for the contract *Assessing the Effect of Supplemental Nutrition Assistance Program (SNAP) Participation on Food Security in the Post-American Recovery and Reinvestment Act (ARRA) Environment.*

DATES: Written comments must be received on or before *February 14, 2011.*

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

Comments may be sent to: Steven Carlson, Director, Office of Research and Analysis, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Steven Carlson at 703–305–2576 or via e-mail to *Steve.Carlson@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instruction for submitting comments electronically.

All written comments 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 Room 1014, 3101 Park Center Drive, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Steven Carlson on 703–305–2017.

SUPPLEMENTARY INFORMATION:

Title: Study To Assess the Effect of Supplemental Nutrition Assistance Program (SNAP) Participation on Food Security in the Post-American Recovery and Reinvestment Act (ARRA) Environment.

OMB Number: [0584–NEW.]

Expiration Date: [Not Yet Assigned.]

Type of Request: New collection.

Abstract: The Food and Nutrition Service (FNS) administers the food and nutrition assistance programs in the U.S. Department of Agriculture. SNAP, the new name of the Food Stamp Program, remains the cornerstone of the Nation's nutrition assistance safety net. SNAP provides nutrition assistance benefits and nutrition education services to low-income individuals and families in an effort to reduce hunger and improve the health and well-being of low-income people and families.

The implementation of ARRA presents a unique opportunity to measure the impact of increased benefits on food insecurity. For decades, policy makers, advocates, and those implementing the program have hypothesized that increasing benefit amounts would reduce food insecurity and, perhaps, draw more individuals into the program who may have been reticent to apply. The ARRA increases the maximum allotments of SNAP participants by 13.6 percent, eases eligibility requirements for childless adults without jobs, and provides additional funding to State agencies responsible for administering the program. The natural experiment offered by the ARRA's benefit increase will be used to measure its impact on reducing food insecurity and hunger. This collection notice pertains to this effort, *The Study To Assess the Effect of SNAP Participation on Food Security in the Post-American Recovery and Reinvestment Act (ARRA) Environment,* which is funded by the FNS to determine whether and to what extent food insecurity declines with SNAP participation in a post-ARRA environment.

The study has several objectives: (1) Determine how, if at all, the prevalence of household food insecurity and amount of food expenditures vary with SNAP participation; (2) determine how, if at all, the observed results vary by key household characteristics and circumstances; and (3) determine what factors distinguish between food secure and food insecure SNAP households with children.

To meet the first two objectives, FNS will collect information from two representative samples: One from new SNAP households and one from SNAP households who in their current spell have participated in the program 6–7 months. The new SNAP households will be interviewed twice—first, the baseline survey will occur soon after they have been approved to receive benefits and the second, the follow-up survey, will occur approximately 6–7 months later for those new entrants who continue to participate in the SNAP program.

Among households participating in SNAP at the time of the baseline survey, samples of new entrants and ongoing participants will be chosen for individual in-depth in-person interviews. The purpose of these interviews is to supplement the quantitative analysis of the household interview data by developing tentative generalizations and hypotheses about the causes and results of food insecurity.

SNAP participants from 30 states will be sampled via a two-stage sampling process where the states are the first stage and sampled with probability proportional to size based on the number of SNAP participant households in each state. Within the selected states that agree to participate, SNAP participants will be randomly sampled. To ensure sufficient sample for the follow-up interviews, an oversample will be drawn of the new SNAP households for the baseline survey.

Affected Public: Individuals/Household.

Type of Respondents: SNAP Participants.

Estimated Number of Respondents: Out of the estimated 17,100 individuals initially sampled, 1,710 will not be contacted due to invalid or incomplete contact information. The remaining 15,390 individuals in a total of 30 states are expected to be contacted (*see* table below). Of those, 3,770 will refuse or be determined to be ineligible.

Estimated Number of Responses per Respondent: 1 to 2 responses. 7,529 respondents will have participated in

only one interview. 4,001 respondents will have participated in both a baseline and follow-up interview. 90 respondents will have participated in both a baseline and an in-depth interview.

Estimated Time per Respondent: The estimated time per response varies from 5 minutes to 2 hours. The baseline and follow-up interviews will each average 0.50 hours (30 minutes). The in-depth interviews will average 1.50 hours (90 minutes). Therefore, among those who complete both a baseline and a follow-up interview, the burden estimate is 1 hour. For those who complete a baseline interview and an in-depth interview, the burden estimate is 2 hours. For all persons who decline to participate in the interview, the burden estimate is 0.08 hours (5 minutes) and includes the respondent's time to be screened in a brief call (*see* table below).

Estimated Total Annual Burden on Respondents: 8,247.1 hours. This includes interviewing hours for the baseline telephone survey, the in-depth in-person interviews and the follow-up telephone survey. See the table below for estimated total annual burden for each type of respondent by type of interview.

Respondent type	Instrument/s	Estimated number of respondents [1]	Responses annually per respondent	Total annual responses	Estimated average number of hours per response	Estimated total hours
New Entrants	Baseline only	3572	1	3572	0.50	1786.0
	Baseline & Follow-Up	4001	2	8002	0.50	4001.0
	Baseline & In-depth	45	2	90	[2] 1.0	90.0
	Refuse/Ineligible	2282	1	2282	0.08	182.6
Current SNAP Participants	Baseline only	3957	1	3957	0.50	1978.5
	Baseline & In-depth	45	2	90	[2] 1.0	90.0
	Refuse/Ineligible	1488	1	1488	0.08	119.0
Total		15,390		19,481		8,247.1

[1] Assumes 10 percent of the full sample (1,100 of new entrants and 610 of current SNAP participants) will not be contacted due to invalid or incomplete contact information.

[2] Average of 1.5 hours for the in-depth interview and 0.5 hours for the baseline interview.

Dated: December 8, 2010.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. 2010–31550 Filed 12–15–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Emergency Food Assistance Program; Availability of Foods for Fiscal Year 2011

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the surplus and purchased foods that the Department expects to make available for donation to States for use in providing nutrition assistance to the needy under The Emergency Food Assistance Program (TEFAP) in Fiscal Year (FY) 2011. The foods made available under this notice must, at the discretion of the State, be distributed to eligible recipient agencies for use in preparing meals and/or for distribution to households for home consumption.

DATES: *Effective Date:* October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Ashley Bress, Policy Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594 or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION: In accordance with the provisions set forth in the Emergency Food Assistance Act of 1983 (EFAA), 7 U.S.C. 7501, *et seq.,* and the Food and Nutrition Act of 2008, 7 U.S.C. 2036, the Department makes foods available to States for use in providing nutrition assistance to those in need through TEFAP. In accordance with section 214 of the EFAA, 7 U.S.C. 7515, 60 percent of each State's share of TEFAP foods is based on the number of people with incomes below the poverty level within the State and 40 percent on the number of unemployed persons within the State. State officials are responsible for establishing the network through which the foods will be used by eligible recipient agencies (ERA) in providing nutrition assistance to those in need, and for allocating foods among those ERAs. States have full discretion in determining the amount of foods that will be made available to ERAs for use in preparing meals and/or for distribution to households for home consumption.

The types of foods the Department expects to make available to States for distribution through TEFAP in FY 2011 are described below.

Surplus Foods

Surplus foods donated for distribution under TEFAP are Commodity Credit Corporation (CCC) foods purchased under the authority of section 416 of the Agricultural Act of 1949, 7 U.S.C. 1431 (section 416) and foods purchased under the surplus removal authority of section 32 of the Act of August 24, 1935, 7 U.S.C. 612c (section 32). The types of foods typically purchased under section 416 include dairy, grains, oils, and peanut products. The types of foods purchased under section 32 include meat, poultry, fish, vegetables, dry beans, juices, and fruits.

Approximately $155.9 million in surplus foods acquired in FY 2010 are being delivered to States in FY 2011. These foods include potatoes, cran-apple juice, apple juice, cranberry sauce, dried cranberries, dried cherries, strawberries, applesauce, wild blueberries, mixed fruit, strawberry cups, peaches, pears, plums, dates, fig pieces, chicken leg quarters, beef round roast, lamb shoulder chops, pork patties, and catfish strips. Other surplus foods may be made available to TEFAP throughout the year. The Department would like to point out that food acquisitions are based on changing agricultural market conditions; therefore, the availability of foods is subject to change.

Purchased Foods

In accordance with section 27 of the Food and Nutrition Act of 2008, 7 U.S.C. 2036, the Secretary is directed to purchase about $246.5 million worth of foods in FY 2011 for distribution through TEFAP. These foods are made

available to States in addition to those surplus foods which otherwise might be provided to States for distribution under TEFAP.

For FY 2011, the Department anticipates purchasing the following foods for distribution through TEFAP: Dehydrated potatoes, dried plums, raisins, frozen ground beef, frozen whole chicken, frozen ham, frozen turkey roast, blackeye beans, garbanzo beans, great northern beans, light red kidney beans, lentils, lima beans, pinto beans, egg mix, shell eggs, lowfat bakery mix, egg noodles, white and yellow corn grits, spaghetti, macaroni, oats, peanut butter, roasted peanuts, rice, whole grain rotini, vegetable oil, ultra high temperature fluid 1 percent milk, bran flakes, corn flakes, oat cereal, rice cereal, corn cereal, and corn and rice cereal; the following canned items: Green beans, blackeye beans, kidney beans, refried beans, vegetarian beans, carrots, cream corn, whole kernel corn, peas, sliced potatoes, pumpkin, spaghetti sauce, spinach, sweet potatoes, tomatoes, diced tomatoes, tomato sauce, mixed vegetables, tomato soup, vegetable soup, apricots, applesauce, mixed fruit, freestone and cling peaches, pears, beef, beef stew, chicken, pork, tuna, and salmon; and the following bottled juices: Apple, cherry apple, cran-apple, grape, grapefruit, orange, and tomato. The amounts of each item purchased will depend on the prices the Department must pay, as well as the quantity of each item requested by the States. Changes in agricultural market conditions may result in the availability of additional types of foods or the non-availability of one or more types listed above.

Dated: December 8, 2010.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. 2010–31536 Filed 12–15–10; 8:45 am]

BILLING CODE 3410–30–P

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 conference call is for project coordination and understanding.

DATES: The meeting will be held on January 6, 2011, and will begin at 9 a.m.

ADDRESSES: The conference call will be held at the Supervisor'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: To understand project proposals and coordination efforts, the PSI–RAC will convene a conference call. No decisions will be made during this call and the RAC will report out at the next meeting. The January 6 conference call is open to the public. The following business will be conducted: (1) Review projects submitted to the Web site, (2) Discuss RAC member liaison efforts, (3) 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 January 2, 2011 will have the opportunity to address the Committee at those sessions.

Dated: December 10, 2010.

John F. Peterson,

Designated Federal Official.

[FR Doc. 2010–31574 Filed 12–15–10; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Meeting cancellation.

SUMMARY: On December 9, 2010 (75 FR 76698), the U.S. Commission on Civil Rights announced a business meeting to be held on Friday, December 17, 2010 at the Commission's headquarters. On December 13, 2010 (75 FR 77613), the Commission submitted an amended announcement of the same business meeting to be held on Friday, December 17, 2010 via teleconference. Later on Monday, December 13, 2010, the meeting was cancelled. The details of the cancelled meeting are:

DATE AND TIME: Friday, December 17, 2010; 11:30 a.m. EST.

PLACE: Via Teleconference, Public Dial-In: 1–800–597–7623. Conference ID#: 31039129.

Meeting Agenda

This meeting is open to the public.

I. Approval of Agenda.
II. Welcome New Commissioners.
III. Management and Operations:
- Review of transition, order of succession, continuity of operations.
- Review of 2011 meeting calendar.
- Staff Director's report.

IV. Program Planning: Update and discussion of projects.
- Cy Pres.
- Disparate Impact in School Discipline Policies.
- Gender and the Wage Gap.
- Title IX—Sex Discrimination in Liberal Arts College Admissions.
- Eminent Domain Project.
- NBPP.

V. State Advisory Committee Issues:
- Update on status of North Dakota, Illinois and Minnesota SACs.
- Update on Vermont SAC.

VI. Approval of Minutes of December 3, 2010 Meeting.
VII. Announcements.
VIII. Adjourn.

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591. TDD: (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. TDD: (202) 376–8116.

Dated: December 14, 2010.

David Blackwood,

General Counsel.

[FR Doc. 2010–31717 Filed 12–14–10; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Current Population Survey (CPS) Basic Demographic Items

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before February 14, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to David M. Sheldon, U.S. Census Bureau, 7H108D, Washington, DC 20133–8400 at (301) 763–7327 (or via the Internet at *David.M.Sheldon@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request clearance from the Office of Management and Budget (OMB) for the collection of basic demographic information on the Current Population Survey (CPS) beginning in June 2011. The current clearance expires May 31, 2011.

The CPS has been the source of official government statistics on employment and unemployment for over 50 years. The Bureau of Labor Statistics (BLS) and the Census Bureau jointly sponsor the basic monthly survey. The Census Bureau also prepares and conducts all the field work. At the OMB's request, the Census Bureau and the BLS divide the clearance request in order to reflect the joint sponsorship and funding of the CPS program. The BLS submits a separate clearance request for the portion of the CPS that collects labor force information for the civilian non-institutional population. Some of the information within that portion includes employment status, number of hours worked, job search activities, earnings, duration of unemployment, and the industry and occupation classification of the job held the previous week. The justification that follows is in support of the demographic data.

The demographic information collected in the CPS provides a unique set of data on selected characteristics for the civilian non-institutional population. Some of the demographic information we collect are age, marital status, gender, Armed Forces status, education, race, origin, and family income. We use these data in conjunction with other data, particularly the monthly labor force data, as well as periodic supplement data. We also use these data independently for internal analytic research and for evaluation of other surveys. In addition, we use these data as a control to produce accurate estimates of other personal characteristics.

II. Method of Collection

The CPS basic demographic information is collected from individual households by both personal visit and telephone interviews each month. All interviews are conducted using computer-assisted interviewing. Households in the CPS are in sample for four consecutive months, and for the same four months the following year. This is called a 4–8–4 rotation pattern; households are in sample for four months, in a resting period for eight months, and then in sample again for four months.

III. Data

OMB Control Number: 0607–0049.

Form Number: There are no forms. We conduct all interviews on computers.

Type of Review: Regular submission.

Affected Public: Households.

Estimated Number of Respondents: 59,000 per month.

Estimated Time per Response: 1.5265 minutes.

Estimated Total Annual Burden Hours: 18,013.

Estimated Total Annual Cost: There is no cost to the respondents other than their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, U.S.C., Section 182, and Title 29, U.S.C., Sections 1–9.

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, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 10, 2010.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–31544 Filed 12–15–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

De Facto Criteria for Establishing a Separate Rate in Antidumping Proceedings Involving Non-Market Economy Countries

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Request for comments.

SUMMARY: In antidumping proceedings involving non-market economy ("NME") countries,[1] the Department of Commerce ("the Department") has a rebuttable presumption that the export activities of all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate (*i.e.,* the NME-Entity rate). It is the Department's policy to assign to all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a "separate rate" (*i.e.,* a

[1] The Department currently considers the following countries to be non-market economy countries—Armenia, Belarus, Georgia, Kyrgyzstan Republic, Moldova, the People's Republic of China, the Republic of Azerbaijan, the Socialist Republic of Vietnam, Tajikistan, Turkmenistan and Uzbekistan.

dumping margin separate from the margin assigned to the NME-Entity). Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over their export activities.

The Department is now considering revising its current policy and practice with respect to the *de facto* criteria examined for purposes of determining whether to grant separate rate status to individual exporters in antidumping proceedings involving NME countries. Through this notice, the Department invites the public to comment on amending the test as discussed below. Interested parties are invited to comment on this proposal.

DATES: To be assured of consideration, comments must be received no later January 31, 2011.[2]

FOR FURTHER INFORMATION CONTACT: Albert Hsu, Senior International Economist, Office of Policy or Eugene Degnan, Program Manager, Office 8, Office of Antidumping and Countervailing Duty Operations, Import Administration, U.S. Department of Commerce, at 202–482–4491 or 202–482–0414, respectively.

SUPPLEMENTARY INFORMATION:

Background

In proceedings involving NME countries, the Department has a rebuttable presumption that the export activities of all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate (*i.e.,* the NME-Entity rate). It is the Department's policy to assign all exporters of merchandise subject to an antidumping investigation or review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a "separate rate" (*i.e.,* a dumping margin separate from the margin assigned to the NME-Entity). Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over their export activities. The Department analyzes each entity exporting the subject merchandise that applies for a separate rate under a test first articulated in *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588* (May 6, 1991) ("*Sparklers*"), as further developed in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585* (May 2, 1994) ("*Silicon Carbide*").[3] However, if the Department determines that an exporter of NME-produced merchandise is wholly foreign-owned or located in a market economy country, under current practice a separate-rate analysis is not necessary to determine whether it is independent from government control.

The Department is not revisiting the *de jure* criteria currently examined for purposes of establishing a company's separate rate. The Department is considering, however, the extent to which it might incorporate additional *de facto* criteria into its analysis when assessing and verifying whether a foreign producer/exporter in a non-market economy is sufficiently free of government control to be granted separate rate status.

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions. They are: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[4] The Department has determined that an analysis of *de facto* control is critical in determining whether exporters or producers are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

Currently, when conducting its *de facto* separate rate analysis, the Department asks of those being considered for separate rate status questions regarding: (1) Ownership and whether any individual owners hold office at any level of the NME government; (2) export sales negotiations and prices; (3) selection of company management and whether any managers held government positions; (4) disposition of profits; and (5) affiliations with any companies involved in the production or sale in the home market, third-country markets, or the United States of merchandise which would fall under the description of merchandise covered by the scope of the proceeding. The Department's full Separate Rate Status Application is available on the Department's Web site at *http://www.trade.gov/ia.*

The Department's current practice focuses on direct government involvement in a firm's export activities and, to that extent, it may not take sufficient account of the government's role in the NME and how that role may impact an exporter's behavior with regard to its export activities and setting prices. For this reason, the Department is considering modifying the *de facto* criteria to look beyond direct government control of export activities in assessing whether an entity should be granted separate rate status. The Department welcomes comments on this proposed reassessment of its current practice. Further, the Department invites comments and suggestions regarding additional *de facto* criteria to examine in assessing a company's eligibility for separate rate status. Comments should include a description of the criteria parties propose the Department examine, specific questions the Department might ask a separate rate applicant, and the type of documentation the Department would expect to review, and procedures followed, at verification.

Submission of Comments:

As specified above, to be assured of consideration, comments must be received no later than January 31, 2011. All comments must be submitted through the Federal eRulemaking Portal at *http://www.regulations.gov,* Docket No. ITA–2010–0010, unless the commenter does not have access to the Internet. Commenters that do not have access to the Internet may submit the original and two copies of each set of comments by mail or hand delivery/

[2] The Department typically allows 30 days for filing comments in instances such as this. However, due to the intervening holiday season, the Department is allowing 45 days in this particular instance to ensure that all parties have adequate time to comment.

[3] *See also* Policy Bulletin 05.1, which states: "[w]hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. **Note,** however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation."

[4] *See Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994); *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

courier. All comments should be addressed to the Secretary of Commerce, *Attention:* Wendy J. Frankel, Director, Office 8, Antidumping and Countervailing Duty Operations, Room 1870, Import Administration, U.S., Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230.

The Department will consider all comments received before the close of the comment period. The Department will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. All comments responding to this notice will be a matter of public record and will be available for inspection at Import Administration's Central Records Unit (Room 7046 of the Herbert C. Hoover Building) and on the Department's Web site at *http://www.trade.gov/ia/.*

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, *e-mail address: webmaster-support@ita.doc.gov.*

Dated: December 10, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–31644 Filed 12–15–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Methodology for Respondent Selection in Antidumping Proceedings; Request for Comment

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") seeks public comment on its proposed methodology for respondent selection and related issues.

DATES: To be assured of consideration, comments must be received no later than January 18, 2011.

FOR FURTHER INFORMATION CONTACT: Albert Hsu, Senior Economist, Office of Policy, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–4491.

SUPPLEMENTARY INFORMATION:

Background

When the number of producers/exporters ("companies") involved in an antidumping investigation or review is so large that the Department finds it impracticable to examine each company individually, the Department has statutory authority to limit its examination to (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the administering authority at the time of selection, or (2) exporters and producers accounting for the largest volume of subject merchandise from the exporting country that can be reasonably examined (see sections 777A(c)(2)(A) and (B) of the Tariff Act of 1930, as amended ("the Act")). The Department has, to date, used the second option in virtually every one of its proceedings. A consequence of this practice is that companies under investigation or review with relatively smaller import volumes have typically not been selected by the Department for individual examination.

Sampling companies with varying import volumes under section 777A(c)(2)(A) of the Act is one way to remedy this problem. If the Department were to select respondents on the basis of a sample, the statute requires that the sample be "statistically valid." The Department has interpreted this requirement as referring to the manner in which the Department selects respondents and not to the size of the sample or precision of the sample results. *See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review* 71 FR 66304 (Nov. 14, 2006), and accompanying Issues and Decision Memorandum at Comment 1A.

Therefore, to ensure the statistical validity of the samples, in the methodology described below, the Department proposes to employ a sampling technique that (1) is random, (2) is stratified, and (3) uses probability-proportional-to-size ("PPS") samples. Random selection ensures that every company has a chance of being selected as a respondent and captures potential variability across the population. Stratification by import volume ensures the participation of companies of different import volume in the investigation or review, given the small samples that would be used. Finally, PPS samples ensure that the probability of each company being chosen as a respondent is proportional to its share of imports in its respective stratum.

Proposed Methodology

1.1 When To Sample

Given the benefits of sampling described above, where possible, the Department proposes to use sampling to select respondents rather than limiting its examination to companies accounting for the largest import volume that can be reasonably examined. However, the Department will, in general, forgo sampling under the following circumstances: (1) If, due to resource constraints, the Department is unable to examine at least three companies, (2) when the largest companies by import volume account for at least 75 percent of total imports, or (3) when characteristics of the underlying population make it highly likely that results obtained from the largest possible sample, given resource constraints, would be unreasonable to represent the population.

To make a determination under (3) above, for a segment of a proceeding in which the Department intends to apply sampling for respondent selection, the Department proposes to announce a ten-day period for interested parties to comment on the existence of significant variation in company characteristics that are likely to have a substantial effect on the variation in dumping margins of the companies in the population in question. The comments can take into account sampled company margins from previous segments of the proceeding, if such data exist, that may indicate significant variation in the individual margins of sampled companies. If the Department receives any comment, there will be a five-day rebuttal period before the Department announces its decision on the respondent selection method for that segment of the proceeding. If the Department does not find that selecting respondents through sampling is appropriate for that particular segment based on information and comments on the record at the time of respondent selection, the Department will choose as respondents those companies accounting for the largest import volume that can be reasonably examined, in accordance with section 777A(c)(2)(B) of the Act.

1.2 Definition of Population

Currently, the Department generally chooses companies for individual examination based on import volumes reported in case-specific Customs and Border Protection ("CBP") import data. It also assigns an antidumping duty rate to all other companies that are not selected for individual examination. The Department currently does not require

any evidence of shipment from a non-selected company before making its respondent-selection decision. However, in the sampling context, the existence of shipments will be required in order to both define the population, and if the company is selected, establish a dumping margin for the company. Therefore, the Department will normally use CBP data as evidence of shipment, and proposes to define the relevant population from which to sample as (1) all companies subject to investigation with shipments of subject merchandise, and (2) all companies named in a review with shipments of subject merchandise.

In a non-market economy ("NME") case, the relevant population should not include companies that are a part of the NME entity. Since the Department may not be able to determine a company's eligibility for a separate rate before respondent selection, the Department proposes to exclude from the relevant population companies that have not submitted separate rate applications.

1.3 Sampling Technique

The Department proposes to use stratified PPS samples. The first step in the proposed sampling technique is to sort all companies in the relevant population from largest to smallest, based on import volumes. Second, companies would be segregated into a number of strata equal to the sample size, with each stratum accounting for approximately the same share of import volume. For example, if the Department determines that it may individually examine three respondents, the companies would be divided into three strata, each accounting for approximately a third of imports. Third, one respondent from each stratum would be selected using PPS. If a single company accounts for more than 33 percent or more of imports, that company would be assigned its own stratum and the remaining companies would be divided into two strata accounting for an equal share of the remaining imports. Then, one respondent would be selected from each of these strata. If two companies each account for more than 33 percent or more of imports, each of the two companies would be assigned its own stratum and one respondent would be randomly selected from the remaining companies.

1.4 Calculating and Assigning Rates

After examination of selected respondents by the sampling method, the Department will need to assign a rate to all non-selected companies. To do so, the Department proposes to calculate a "sample rate," which will be an average of all selected respondent rates, weighted by the import share of their corresponding strata. In a market economy case, all companies in the relevant population who were not selected for individual examination would receive the sample rate. Consistent with the definition of "relevant population" above, in NME cases, only companies in the relevant population that qualify for separate rates would receive the sample rate; those that do not qualify for separate rates would receive the NME country-wide rate.

Request for Comments

In addition to comments on the methodology described above, the Department requests comments on the following issues. First, how should the Department address the case in which a selected respondent needs to be replaced, due to withdrawal or disqualification for any reason? Examples of disqualified respondents include companies in an NME case that applied for a separate rate but do not qualify for such a rate, and companies with shipment of subject merchandize in CBP data due to misclassification. Second, how should the Department treat voluntary respondents in the sampling context? Finally, how should the Department treat adverse-facts-available, *de minimis,* and zero antidumping duty rates in its calculation of the sample rate?

Submission of Comments

As specified above, to be assured of consideration, comments must be received no later than January 31, 2011. All comments must be submitted through the Federal eRulemaking Portal at *http://www.regulations.gov,* Docket No. ITA–2010–0009, unless the commenter does not have access to the Internet. Commenters that do not have access to the Internet may submit the original and two copies of each set of comments by mail or hand delivery/courier. All comments should be addressed to the Secretary of Commerce, Attention: Albert Hsu, Senior Economist, Office of Policy, Room 1870, Import Administration, U.S., Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230.

The Department will consider all comments received before the close of the comment period. The Department will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. All comments responding to this notice will be a matter of public record and will be available for inspection at Import Administration's Central Records Unit (Room 7046 of the Herbert C. Hoover Building) and on the Department's Web site at *http://www.trade.gov/ia/.*

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, *e-mail address: webmaster-support@ita.doc.gov.*

Dated: December 10, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–31643 Filed 12–15–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA088

Fisheries of the Gulf of Mexico and South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Assessment Process Webinar for Highly Migratory Species (HMS) Fisheries Sandbar, Dusky, and Blacknose Sharks

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

ACTION: Notice of SEDAR 21 HMS of sandbar, dusky, and blacknose sharks assessment webinar.

SUMMARY: The SEDAR 21 assessments of the HMS of sandbar, dusky, and blacknose sharks will consist of a series of workshops and webinars: a Data Workshop, a series of Assessment webinars, and a Review Workshop. *See* **SUPPLEMENTARY INFORMATION.**

DATES: A SEDAR 21 Assessment Process webinar will be held on Tuesday, January 11, 2011 from 10 a.m. to approximately 2 p.m. (Eastern). The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from, or completed prior to the time established by this notice.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie Neer at SEDAR (*See* **FOR FURTHER INFORMATION CONTACT**) to request an

invitation providing webinar access information.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator, 4055 Faber Place, Suite 201, North Charleston, SC 29405; *telephone:* (843) 571–4366; *e-mail: Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop, (2) Assessment Process utilizing webinars and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

SEDAR 21 Assessment webinar:

Using datasets recommended from the Data Workshop, participants will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (*see* **ADDRESSES**) at least 10 business days prior to the meeting.

Dated: December 13, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–31604 Filed 12–15–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA090

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Whiting Advisory Panel in January, 2011 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Tuesday, January 11, 2011 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886: telephone: (401) 739–3000; fax: (401) 732–9309.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Whiting Advisory Panel will discuss and provide feedback on potential accountability measures for Annual Catch Limit (ACL) management under Draft Amendment 18. Other issues related to ACL management may also be discussed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: December 13, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–31606 Filed 12–15–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA091

New England Fishery Management Council; Public Hearings

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

ACTION: Monkfish Fishery Management Plan Amendment 6; Reschedule of Scoping Hearing.

SUMMARY: The New England Fishery Management Council (Council) has rescheduled a public hearing to solicit comments on proposals to be included in the Draft Amendment 6 to the Monkfish Fishery Management Plan (FMP).

DATES: Written comments must be received on or before 5 p.m. EST, February 15, 2011. The public hearing will be held on January 19, 2011. For specific dates and times, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The Council will take comments at a public meeting in Portland, ME. For specific location, see **SUPPLEMENTARY INFORMATION**. Written comments should be sent to Patricia Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Comments may also be sent via fax to (978) 281–9135 or submitted via e-mail to *monkfisha6@noaa.gov* with "Scoping Comments on Monkfish Amendment 6" in the subject line. Requests for copies of the scoping document and other information should be directed to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The U.S. monkfish fishery is jointly managed by the NEFMC and the Mid-Atlantic Fishery Management Council (MAFMC), with the NEFMC having the administrative lead. On November 30, 2010, the NEFMC, in coordination with NMFS, published a Notice of Intent (NOI) to prepare an EIS for Amendment 6 to the Monkfish FMP (75 FR 74005). At that time only one hearing was scheduled to be held on December 15, 2010 at 4:30 p.m. in conjunction with the MAFMC meeting in Virginia Beach, VA. On December 9, 2010, the NEFMC, in coordination with NMFS, published notification of additional public scoping hearings that were scheduled following the publication of the NOI for Amendment 6 (75 CFR 76703). The purpose of this notice is to alert the interested public that the Portland, ME hearing has been rescheduled from its original 1 p.m. start time to 4 p.m. The following schedule provides the information for the rescheduled scoping hearing.

The date, time, location and telephone number of the hearing is as follows:

Wednesday, January 19, 2011 at 4 p.m.—Clarion Hotel, 1230 Congress Street, Portland, ME 04101; telephone: (207) 774–5611.

The scoping document is available on the Monkfish page of the Council's Web site (*http://www.nefmc.org*) or from the Council office.

Special Accommodations

This hearing is physically accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (*see* **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: December 13, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–31608 Filed 12–15–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA089

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Skate Committee in January, 2011 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, January 18, 2011 at 9:30 a.m.

ADDRESSES: This meeting will be held at the Clarion Hotel, 1230 Congress Street, Portland, ME 04102; *telephone:* (207) 774–5611; *fax:* (207) 871–0510.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; *telephone:* (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Oversight Committee will review the draft final Skate Framework Adjustment 1 document and analysis using best available data to recommend a change in the skate wing possession limit for fishing year 2011. The Oversight Committee may also discuss other skate management issues including but not limited to the specification setting process for fishing years 2012 and 2013, if time permits. The Council will approve a Framework Adjustment 1 alternative at the January Council meeting intended to allow implementation early in the 2011 fishing year.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: December 13, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–31605 Filed 12–15–10; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Renewal of a Currently Approved Information Collection

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation process to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. Sec. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of the collection on respondents can be properly assessed. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–3472 between 8:30 a.m. and 5 p.m. Eastern Time, Monday through Friday.

The purpose of the National Conference on Volunteering and Service (NCVS) is to advance knowledge, disseminate best practices, and analyze

innovation in the national service and volunteering community. This conference provides learning and networking experiences through multiple formats, and sharing of practical tools to strengthen volunteer and service driven programs. It is attended by professionals in the volunteer field—nonprofits and businesses; academic and faith-based organizations; as well as funders and government agencies.

Currently, the Corporation is soliciting comments concerning the Assessment of the National Conference on Volunteering and Service (formerly known as Conference Surveys). Through a partnership with the Points of Light Institute (POLI), each year, the Corporation assesses the satisfaction of participants with the conference's activities, and to gather feedback about the informational and other needs of conference attendees.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the Addresses section by February 14, 2011.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, any of the following methods:

(1) By Mail sent to: Corporation for National and Community Service, Office of Strategy; Attention Brooke Nicholas, Room 10901B; 1201 New York Ave., NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except on Federal holidays.

(3) By fax to: (202)–606–3464, Attention: Brooke Nicholas.

(4) Electronically through the Corporation's e-mail address system: *Bnicholas@cns.gov*. Individuals who use telecommunications devices for the deaf (TTY–TDD_ may call (202)–606–3472 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Brooke Nicholas, (202)–606–6627, or by e-mail at *Bnicholas@cns.gov*.

SUPPLEMENTARY INFORMATION:

Description: The Corporation is particularly interested in comments that:

- Evaluate the new title for the data collection. The Corporation is proposing an official title change to the Assessment of the National Conference on Volunteering and Service (formerly known as Conference Surveys).
- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are expected 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 submissions of responses).

Background: In partnership with the Points of Light Foundation, the Corporation hosts the annual National Conference on Volunteering and Service. The conference encourages the volunteering community to share information and practices, learn new skills and establish relationships. Attendees include leaders from: Nonprofits and civic infrastructures, academic institutions, businesses and government agencies.

Data are collected using the following surveying methods as described below.

- Registration—data collected via the Conference registration system that provides demographic data on registered attendees, expectations and previous experiences.
- Workshop Survey—onsite surveys administered in a sample of Conference sessions to learn about the workshop/session experience from attendee's perspective.
- Post-Conference Surveys—online surveys administered to registered attendees, (excluding Conference exhibitors) to gather information about participation, quality and satisfaction, as well as learning and networking experiences during the Conference.

Current Action: The Corporation seeks to renew the current data collection. The estimated time burden has not increased. The current instruments are due to expire on June 30, 2011. It is estimated that 5,000 respondents may complete up to 4 separate surveys that take up to 15 minutes each.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Assessment of the National Conference on Volunteering and Service (formerly known as National Conference Surveys).

OMB Number: #3045–0128.

Frequency: Annual.

Affected Public: Individuals and households, community and faith-based organizations, non-profits, state and local government and education institutions and businesses.

Number of Respondents: 5,000.

Estimated Time per Respondent: Fifteen minutes per survey, for up to 4 surveys, including a follow-up survey for a sample of participants.

Total Burden Hours: 5,000 hours.

Total Burden Cost (capital/startup): None.

Total Annual Cost (operating/maintaining systems or purchasing services): None.

Dated: December 10, 2010.

Heather Peeler,

Chief Strategy Officer, Strategy Office.

[FR Doc. 2010–31632 Filed 12–15–10; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Renewal of a Currently Approved Information Collection

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation process to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of the collection on respondents can be properly assessed. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–3472 between 8:30 a.m. and 5:00 p.m. Eastern time, Monday through Friday.

Currently, the Corporation is soliciting comments concerning the Corporation's AmeriCorps' Member Feedback Survey (formerly known as AmeriCorps' Performance Measurement).

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by February 14, 2011.

ADDRESSES: You may submit comments identified by the title of the information collection activity, by any of the following methods.

(1) By mail sent to: Corporation for National and Community Service, Office of Strategy; Attention Brooke Nicholas, Policy Analyst, Room 10901B, 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3464, Attention: Brooke Nicholas, Policy Analyst.

(4) Electronically through the Corporation's e-mail address system: *bnicholas@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 606–3472 between 8:30 a.m. and 5 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Brooke Nicholas, Policy Analyst, (202) 606–6627, or by e-mail at *bnicholas@cns.gov.*

SUPPLEMENTARY INFORMATION:

Description: The Corporation is particularly interested in comments that:

- Evaluate the new title for the data collection. The Corporation is proposing an official title change to the AmeriCorps' Member Feedback Survey, from AmeriCorps' Performance Measurement.
- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Propose ways to enhance the quality, utility, and clarity of the information to be collected.
- Propose 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, e.g., permitting electronic submissions of responses.

Background: The primary purpose of the AmeriCorps' Member Feedback Survey is to provide reliable and valid outcome data on members' AmeriCorps experience. As part of this effort, all exiting AmeriCorps members are surveyed regarding their service experience with AmeriCorps State and National, AmeriCorps VISTA, and the AmeriCorps National Civilian Community Corps (NCCC). Information captured in these surveys helps inform policy decisions and the management of AmeriCorps' National Service Programs, as well as help guide the development of the support provided to members and national service organizations.

Current Action: The Corporation seeks to renew the current data collection. The estimated time burden has increased because the number of AmeriCorps' members is expected to grow as a result of the recent passage of the 2009 Edward M. Kennedy Serve America Act. In addition, the Exit Member's survey instrument(s) has also expanded to include a category on self-reported personal development and community impact. The current instruments are due to expire on March 31, 2011.

All AmeriCorps members are invited to complete the survey as they exit the program. The surveys will take approximately twenty minutes to complete per respondent.

The estimated number of respondents will incrementally increase each year in parallel with the expected numbers of allotted AmeriCorps slots. The numbers of respondents that will be surveyed is estimated as follows: 2011—115,000 respondents; 2012—140,000 respondents; 2013—170,000 respondents. Accordingly, the total time burden per year is as follows: 2011—38,333 hours; 2012—46,667 hours; 2013—56,667 hours.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Member Feedback Survey (formerly known as the Performance Measurement in AmeriCorps).

OMB Number: 3045–0094.

Frequency: Ongoing.

Affected Public: Exiting AmeriCorps members.

Number of Annual Respondents: 2011—115,000 respondents; 2012—140,000 respondents; 2013—170,000 respondents.

Estimated Time per Respondent: Twenty minutes.

Total Annual Burden Hours: 2011—38,333 hours; 2012—46,667 hours; 2013—56,667 hours.

Total Burden Cost (capital/startup): $100,000.00.

Total Annual Cost (operating/maintaining systems or purchasing services): $20,000.00.

Dated: December 10, 2010.

Heather Peeler,

Chief Strategy Officer, Office of Strategy.

[FR Doc. 2010–31635 Filed 12–15–10; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0166]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Office of the Secretary of Defense is deleting a systems of record notice from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 18, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/Regulatory Information Number (RIN) and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense

Pentagon, Washington, DC 20301–1155, or Mrs. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The Office of the Secretary of Defense proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 9, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:

DSMC 01

Defense Systems Management College (DSMC) Personnel Information Files (February 22, 1993, 58 FR 10227).

REASON:

The Defense Systems Management College (DSMC) Personnel Information Files (DSMC 01) is being deleted because the records in the system are also covered under the following umbrella systems of records notices:

Civilians: OPM/Gov't–1, General Personnel Records (June 19, 2006, 71 FR 35342).

Army: A 0600–8–1046 ANRC, Official Military Personnel Record (August 8, 2004, 69 FR 51271).

Navy: N01070–3, Navy Military Personnel Records System (April 15, 2010, 75 FR 19627).

Marine Corps: M01070–6, Marine Corps Official Military Personnel Files (March 17, 2008, 73 FR 14234)

Air Force: F036 AF PC C, Military Personnel Records System (October 13, 2000, 65 FR 60916).

[FR Doc. 2010–31569 Filed 12–15–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2010–0032]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to Add a System of Records.

SUMMARY: The Department of the Air Force proposes to add a system of records to its inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 18, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by dock number and/RIN number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, *Attn:* SAF/XCPPI, 1800 Air Force Pentagon, Washington DC 20330–1800, or Mr. Charles J. Shedrick, 703–696–6488.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above. The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on December 8, 2010, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: December 9, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F065 AF FMP C

SYSTEM NAME:

Commanders' Resource Integration System

SYSTEM LOCATION:

Defense Information Services Agency, Defense Enterprise Computing Center-Ogden (DISA DECC–Ogden), 7879 Wardleigh Road, Building 891, Hill Air Force Base, UT 84056–5997.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Active duty, Reserve and National Guard military personnel, government civilians, and family members.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Commanders' Resource Integration System contains historical Air Force financial data including travel orders for service or family member and civilian payroll information. It will include name, Social Security Number (SSN), date of birth, home address including 5-digit zip codes. Non-personal information includes accounting classification data elements, appropriation data element, stage of accounting, document identifiers (*e.g.,* contract numbers, purchase request numbers, voucher numbers) and amounts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 8013, Secretary of the Air Force; 31 U.S.C. 3512, Executive agency accounting and other financial management reports and plans; 31 U.S.C. 3513, Financial reporting and accounting system; DoD Directive 5000.01, The Defense Acquisition System; DoD Instruction 5000.02, Operation of the Defense Acquisition System; DoD Instruction 7000.14, Department of Defense Financial Management Policy and Procedures; and E.O. 9397(SSN), as amended.

PURPOSE(S):

To track outstanding travel orders, analyze budget execution, track payroll costs and to help identify civilian employee demographics.

Also used to facilitate the analysis and retrieval of standard and ad hoc queries for reporting to various levels of the Air Force echelon (unit, base, command, Air Force).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Any release of information contained in this system of records outside of the DoD will be compatible with purposes for which the information is collected and maintained.

To Citibank in support of the Air Force Controlled Spend Account (CSA) as it relates to the Citibank Government Travel Card for the purpose of establishing and maintaining Government Travel Card credit limits in support of official Air Force travel.

The DoD "Blanket Routine Uses" apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Social Security Number (SSN), name and Appropriation Data Element.

SAFEGUARDS:

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know. System administrator access to computerized data is restricted by passwords, which are changed periodically. User access to computerized data is restricted and authenticated by approved DOD Public Key Infrastructure (PKI) certificates. Data transmission is via Hypertext Transfer Protocol Secure (HTTPS) using Secure Socket Layer (SSL).

RETENTION AND DISPOSAL:

Records are cut off at the end of the fiscal year, and destroyed in 6 years and 3 months after cutoff.

SYSTEM MANAGER(S) AND ADDRESS:

Program Manager, Commanders' Resource Integration System, Air Force Program Executive Office, Enterprise Information Systems, Legacy Financial Systems (AFPEO EIS/HIQG), 4225 Logistics Avenue, Building 266, Room N009, Wright-Patterson Air Force Base, OH 45433–5749.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Deputy Assistant Secretary for Financial Operations, Air Force Financial Systems Operations (SAF/FMPT (AFFSO)), 1940 Allbrook Drive, Building 1, Door 18, Wright-Patterson Air Force Base, OH 45433–5344.

For verification purposes, individual should provide their full name, Social Security Number (SSN), any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

Record access procedures:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Deputy Assistant Secretary for Financial Operations, Air Force Financial Systems Operations (SAF/FMPT (AFFSO)), 1940 Allbrook Drive, Building 1, Door 18, Wright-Patterson Air Force Base, OH 45433–5344.

For verification purposes, individuals should provide their full name, Social Security Number (SSN), any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, for contesting contents, and for appealing initial agency determinations are published in Air Force Instruction 33–332, Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From personnel and financial information systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–31575 Filed 12–15–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2010–0031]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: Department of the Army proposes to alter a system of records notices in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 18, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/Regulatory Information Number (RIN) and title, by any of the following methods:

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

**Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905, or Mr. Leroy Jones at (703) 428–6185.

SUPPLEMENTARY INFORMATION: Department of the Army notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended,

have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 8, 2010, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," February 20, 1996, 61 FR 6427.

Dated: December 9, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0680–31 DSC G–1

SYSTEM NAME:

Economic and Manpower Analysis (OEMA) Database (October 1, 2008, 73 FR 57082).

* * * * *

CHANGES:

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Name, service number, selective service number, Social Security Number (SSN), citizenship data, compensation data, demographic information such as home of record, age, sex, race, date of birth, number of family members of sponsor, and educational level; reasons given for leaving military service; training and job specialty information, work schedule (full time, part time, intermittent), annual salary rate, occupational series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier; military personnel information such as rank, assignment/deployment, length of service, military occupation, aptitude and performance scores, and training; participation in various in-service education and training programs; performance evaluations; transition assistance; home and work addresses; casualty incident information such as location of incident, date of incident, type of incident, circumstances surrounding incident, and outcome; Medicare eligibility and enrollment data, dental care eligibility codes, disability payment records, education benefit records; and Common Access Card (CAC) Photos for identification."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Name, Social Security Number (SSN), and other Personally Identifiable Information (PII) maintained in the system specific to an individual."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Director, Office of Economic and Manpower Analysis (OEMA), 607 Cullum Road, United States Military Academy, West Point, NY 10996–1798."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Office of Economic and Manpower Analysis (OEMA), 607 Cullum Road, United States Military Academy, West Point, NY 10996–1798.

Requests should contain individual's full name, Social Security Number (SSN), current address and telephone number, and other personal identifying data that would assist in locating the records. The request must be signed.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'."

RECORDS ACCESS PROCEDURE:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Office of Economic and Manpower Analysis (OEMA), 607 Cullum Road, United States Military Academy, West Point, NY 10996–1798.

Requests should contain the individual's full name, Social Security Number (SSN), current address, and telephone number, when and where they were assigned during the contingency and notarized verifying signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'."

A0680–31 DSC G–1

SYSTEM NAME:

Economic and Manpower Analysis (OEMA) Database.

SYSTEM LOCATION:

United States Military Academy, Office of Economic and Manpower Analysis (OEMA), Washington Hall (Bldg 745), West Point, NY 10996–1798.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals seeking information about the Army through advertising or marketing campaigns that may include the internet, direct mail, and marketing events from fiscal year 1990 and after;

Individuals entering into enlistment contracts with the Army (Active Component, Reserve Component, and National Guard) from fiscal year 1990 and after;

Individuals applying to, enrolled in, and commissioned from the United States Military Academy (USMA) and the Reserve Officer Training Corps (ROTC) from fiscal years 1980 and after;

Individuals serving in the Army Active Component as a commissioned officer, warrant officer, or enlisted soldier from fiscal year 1970 and after;

Individuals serving in the Army Reserve Component as a commissioned officer, warrant officer, or enlisted soldier from fiscal year 1990 and after;

Individuals serving in the Army National Guard as a commissioned officer, warrant officer, or enlisted soldier from fiscal year 1990 and after;

Individuals employed by the Department of the Army as DA Civilian Employees, Non-Appropriated Funds Employees, or Foreign National Employees from fiscal year 1991 and after;

Individuals retired from the Army Active Component, Reserve Component, or National Guard from fiscal year 1990 and after; Individuals separated from the Active Component from fiscal year 1968 and after;

Individuals retired from service as a DA Civilian from fiscal year 1997 and

after; Dependents of member of Active Component, Reserve Component, or National Guard from fiscal year 1988 and after.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, service number, selective service number, Social Security Number (SSN), citizenship data, compensation data, demographic information such as home of record, age, sex, race, date of birth, number of family members of sponsor, and educational level; reasons given for leaving military service; training and job specialty information, work schedule (full time, part time, intermittent), annual salary rate, occupational series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier; military personnel information such as rank, assignment/deployment, length of service, military occupation, aptitude and performance scores, and training; participation in various in-service education and training programs; performance evaluations; transition assistance; home and work addresses; casualty incident information such as location of incident, date of incident, type of incident, circumstances surrounding incident, and outcome; Medicare eligibility and enrollment data, dental care eligibility codes, disability payment records, education benefit records; and Common Access Card (CAC) Photos for identification.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 2358, Research and Development Projects; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To facilitate manpower and personnel studies for the DoD and DA senior leadership.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a (b) of the Privacy Act of 1974, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Name, Social Security Number (SSN), and any other Personally Identifiable Information (PII) maintained in the system specific to an individual.

SAFEGUARDS:

All records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted to those personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of locks, guards, and administrative procedures. Access to personal information is restricted to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of user identification codes and passwords, which are changed periodically.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration has approved retention and disposition of these records, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Economic and Manpower Analysis (OEMA), 607 Cullum Road, United States Military Academy, West Point, NY, 10996–1798.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Office of Economic and Manpower Analysis (OEMA), 607 Cullum Road, United States Military Academy, West Point, NY, 10996–1798.

Requests should contain individual's full name, Social Security Number (SSN), current address and telephone number, and other personal identifying data that would assist in locating the records. The request must be signed.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

RECORDS ACCESS PROCEDURE:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Office of Economic and Manpower Analysis (OEMA), 607 Cullum Road, United States Military Academy, West Point, NY, 10996–1798.

Requests should contain the individual's full name, Social Security Number (SSN), current address, and telephone number, when and where they were assigned during the contingency and notarized verifying signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORDS PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From official DoD systems such as: Total Army Personnel Database, Active Officers (TAPDB–AO); Total Army Personnel Database, Active Enlisted (TAPDB–AE); Total Army Personnel Database, Reserve (TAPDB–R); Total Army Personnel Database; National Guard (TAPDB–G); and Defense Manpower Data Center (DMDC).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–31568 Filed 12–15–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Inland Waterways Users Board; Request for Nominations

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: Section 302 of Public Law 99–662 established the Inland Waterways Users Board. The Board is an independent Federal advisory committee. The Secretary of the Army appoints its 11 members. This notice is to solicit nominations for 10 (ten) appointments or reappointments to two-year terms that will begin after June 15, 2011.

ADDRESSES: Headquarters, U.S. Army Corps of Engineers, Civil Works Directorate, *Attention:* Inland Waterways Users Board Nominations Committee, Mr. Mark Pointon, 441 G Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Headquarters, U.S. Army Corps of Engineers, Civil Works Directorate, (202) 761–4691.

SUPPLEMENTARY INFORMATION: The selection, service, and appointment of Board members are covered by provisions of Section 302 of Public Law 99–662. The substance of those provisions is as follows:

a. *Selection.* Members are to be selected from the spectrum of commercial carriers and shippers using the inland and intracoastal waterways, to represent geographical regions, and to be representative of waterborne commerce as determined by commodity ton-miles statistics.

b. *Service.* The Board is required to meet at least semi-annually to develop and make recommendations to the Secretary of the Army on waterways construction and rehabilitation priorities and spending levels for commercial navigation improvements, and report its recommendations annually to the Secretary and Congress.

c. *Appointment.* The operation of the Board and appointment of its members are subject to the Federal Advisory Committee Act (Pub. L. 92–463, as amended) and departmental implementing regulations. Members serve without compensation but their expenses due to Board activities are reimbursable. The considerations specified in Section 302 for the selection of the Board members, and certain terms used therein, have been interpreted, supplemented, or otherwise clarified as follows:

(1) *Carriers and Shippers.* The law uses the terms "primary users and shippers." Primary users have been interpreted to mean the providers of transportation services on inland waterways such as barge or towboat operators. Shippers have been interpreted to mean the purchasers of such services for the movement of commodities they own or control. Individuals are appointed to the Board, but they must be either a carrier or shipper, or represent a firm that is a carrier or shipper. For that purpose a trade or regional association is neither a shipper nor primary user.

(2) *Geographical Representation.* The law specifies "various" regions. For the purpose of selecting Board members, the waterways subjected to fuel taxes and described in Public Law 95–502, as amended, have been aggregated into six regions. They are (1) the Upper Mississippi River and its tributaries above the mouth of the Ohio; (2) the Lower Mississippi River and its tributaries below the mouth of the Ohio and above Baton Rouge; (3) the Ohio River and its tributaries; (4) the Gulf Intracoastal Waterway in Louisiana and Texas; (5) the Gulf Intracoastal Waterway east of New Orleans and associated fuel-taxed waterways including the Tennessee-Tombigbee, plus the Atlantic Intracoastal Waterway below Norfolk; and (6) the Columbia-Snake Rivers System and Upper Willamette. The intent is that each region shall be represented by at least one Board member, with that representation determined by the regional concentration of the individual's traffic on the waterways.

(3) *Commodity Representation.* Waterway commerce has been aggregated into six commodity categories based on "inland" ton-miles shown in Waterborne Commerce of the United States. These categories are (1) Farm and Food Products; (2) Coal and Coke; (3) Petroleum, Crude and Products; (4) Minerals, Ores, and Primary Metals and Mineral Products; (5) Chemicals and Allied Products; and (6) All Other. A consideration in the selection of Board members will be that the commodities carried or shipped by those individuals or their firms will be reasonably representative of the above commodity categories.

d. *Nomination.* Reflecting preceding selection criteria, the current representation by the ten (10) Board members whose terms have expired includes all Regions 1–6. Also, six (6) of these Board members represent carriers.

Five (5) of the 10 members whose terms expire are eligible for reappointment. Nominations to replace Board members whose terms expire may be made by individuals, firms or associations. Nominations will:

(1) State the region(s) to be represented.

(2) State whether the nominee is representing carriers, shippers or both.

(3) Provide information on the nominee's personal qualifications, such as a bio or a resume.

(4) Include the commercial operations of the carrier and/or shipper with whom the nominee is affiliated. This commercial operations information will show the actual or estimated ton-miles of each commodity carried or shipped on the inland waterways system in a recent year (or years) using the waterway regions and commodity categories previously listed.

Nominations received in response to **Federal Register** notices published on February 16, 2007 (72 FR 7620), on July 11, 2008 (73 FR 39952), on February 24, 2009 (74 FR 8236) and the notice published on February 4, 2010 (75 FR 5769) have been retained for consideration. Renomination is not required but highly encouraged to indicate continued interest and provide updated information.

e. *Deadline for Nominations.* All nominations must be received at the address shown above no later than February 15, 2011.

Dated: December 9, 2010.

David B. Olson,

Federal Register Liaison Officer, U.S. Army Corps of Engineers.

[FR Doc. 2010–31631 Filed 12–15–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2010–0045]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Navy proposes to amend a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on January 18, 2011 unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/Regulatory Information Number (RIN) and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, Room 3C843, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Brown-Lam, HEAD, FOIA/Privacy Act Policy Branch, the Department of the Navy, 2000 Navy Pentagon, Washington, DC 20350–2000, or at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notice subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, has been published in the **Federal Register** and is available from the **FOR FURTHER INFORMATION CONTACT** address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: December 9, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N07220–1

SYSTEM NAME:

Navy Standard Integrated Personnel System (NSIPS) (August 4, 2006, 71 FR 44266).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Policy Official: Naval Support Activity Midsouth, 5722 Integrity Drive, Bldg. 456, Millington, TN 38054–5045 for records of all active duty and reserve members.

Primary locations: Personnel Offices and Personnel Support Detachments providing administrative support for the local activity where the individual is assigned. Official mailing addresses are published in the Standard Navy Distribution List.

Secondary locations: Director, National Personnel Records Center, Military Personnel Records, 9700 Page Avenue, St. Louis, MO 63132–5100, for records of retired or former personnel 62 years after retirement or discharged from the U.S. Navy."

* * * * *

STORAGE:

Delete entry and replace with "Paper and automated records maintained by Space and Warfare Systems Center Atlantic."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Records will be maintained by the primary record holder for current U.S. Navy members, and for 62 years after retirement or discharged from the U.S. Navy. Thereafter, records will be maintained by the secondary record holder at the National Personnel Records Center."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Policy Official: Commander, Navy Personnel Command (PERS–33), 5720 Integrity Drive, Millington, TN 38055–3120.

Primary Record Holder: Personnel Office or Personnel Support Detachment that provides administrative support for the local activity where assigned. Official mailing addresses are published in the Standard Navy Distribution List.

Secondary locations: Director, National Personnel Records Center, Military Personnel Records, 9700 Page Avenue, St. Louis, MO 63132–5100, for records of retired or former personnel 62 years after retirement or discharged from the U.S. Navy."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Personnel Office or Personnel Support Detachment providing administrative support for the local activity where they are assigned. Official mailing addresses are published in the Standard Navy Distribution List.

Secondary location: Director, National Personnel Records Center, Military Personnel Records, 9700 Page Avenue, St. Louis, MO 63132–5100, for records of retired or former personnel 62 years after retirement or discharge from the U.S. Navy.

The request should include full name, Social Security Number (SSN), and address of the individual concerned and should be signed. The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records."

RECORD ACCESS PROCEDURE:

Delete entry and replace with "Individuals seeking access to records about themselves should address written inquiries to the Personnel Office or Personnel Support Detachment providing administrative support for the local activity where they are assigned. Official mailing addresses are published in the Standard Navy Distribution List.

Secondary location: Director, National Personnel Records Center, Military Personnel Records, 9700 Page Avenue, St. Louis, MO 63132–5100, for records of retired or former personnel 62 years after retirement or discharge from the U.S. Navy.

Written requests should contain full name, Social Security Number (SSN), and address of the individual concerned and should be signed. The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records."

* * * * *

RECORDS SOURCE CATEGORIES:

Delete entry and replace with "Official records and systems maintaining personnel information, professional qualifications, and educational institutions. These records and systems include the Navy Military Personnel Records System, Enlisted Master File Automated System, Officer Master File Automated System, Reserve Command Management System, On-Line Distribution Information System, and Education and Training Records."

* * * * *

N07220–1

SYSTEM NAME:

Navy Standard Integrated Personnel System (NSIPS).

SYSTEM LOCATION:

Policy Official: Naval Support Activity Midsouth, 5722 Integrity Drive, Bldg 456, Millington, TN 38054–5045 for records of all active duty and reserve members.

Primary locations: Personnel Offices and Personnel Support Detachments providing administrative support for the local activity where the individual is assigned. Official mailing addresses are published in the Standard Navy Distribution.

Secondary locations: Director, National Personnel Records Center, Military Personnel Records, 9700 Page Avenue, St. Louis, MO 63132–5100, for records of retired or former personnel 62 years after retirement or discharged from the U.S. Navy."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy military members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN), date of birth, education, training and qualifications, professional history, assignments, performance, promotions, leave and pay entitlements and deductions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy and E.O. 9397 (SSN), as amended.

PURPOSE(S):

The purpose of this system is to provide secure worldwide personnel and pay support for Navy members and their commands. To allow authorized Navy personnel and pay specialists to collect, process, modify, transmit, and store unclassified personnel and pay data. To support management of leave and pay entitlements and deductions so that this information can be provided to the Defense Finance and Accounting Service (DFAS) for payroll processing and preparation of the Leave and Earnings Statements (LES).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In additional to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper and automated records maintained by Space and Warfare Systems Center Atlantic.

RETRIEVABILITY:

Records are retrieved by name and Social Security Number (SSN).

SAFEGUARDS:

Password controlled system, file, and element access based on predefined need-to-know. Physical access to terminals, terminal rooms, buildings and activities' grounds are controlled by locked terminals and rooms, guards, personnel screening and visitor registers.

RETENTION AND DISPOSAL:

Records will be maintained by the primary record holder for current U.S. Navy members, and for 62 years after retirement or discharged from the U.S. Navy. Thereafter, records will be maintained by the secondary record holder at the National Personnel Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Personnel Command (PERS–33), 5720 Integrity Drive, Millington, TN 38055–3120.

Primary Record Holder: Personnel Office or Personnel Support Detachment that provides administrative support for the local activity where assigned. Official mailing addresses are published in the Standard Navy Distribution List.

Secondary locations: Director, National Personnel Records Center, Military Personnel Records, 9700 Page Avenue, St. Louis, MO 63132–5100, for records of retired or former personnel 62 years after retirement or discharged from the U.S. Navy.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Personnel Office or Personnel Support Detachment providing administrative support for the local activity where they are assigned. Official mailing addresses are published in the Standard Navy Distribution List.

Secondary location: Director, National Personnel Records Center, Military Personnel Records, 9700 Page Avenue, St. Louis, MO 63132–5100, for records of retired or former personnel 62 years after retirement or discharge from the U.S. Navy.

The request should include full name, Social Security Number, and address of the individual concerned and should be signed. The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves should address written inquiries to the Personnel Office or Personnel Support Detachment providing administrative support for the local activity where they are assigned. Official mailing addresses are published in the Standard Navy Distribution List.

Secondary location: Director, National Personnel Records Center, Military Personnel Records, 9700 Page Avenue, St. Louis, MO 63132–5100, for records of retired or former personnel 62 years after retirement or discharge from the U.S. Navy.

Written requests should contain full name, Social Security Number, and address of the individual concerned and should be signed. The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORDS SOURCE CATEGORIES:

Official records and systems maintaining personnel information, professional qualifications, and educational institutions. These records and systems include the Navy Military Personnel Records System, Enlisted Master File Automated System, Officer Master File Automated System, Reserve Command Management System, On-Line Distribution Information System, and Education and Training Records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–31577 Filed 12–15–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No.: BP–12]

Fiscal Year (FY) 2012–2013 Proposed Transmission Rate Adjustments Public Hearing and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of FY 2012–2013 proposed transmission rate adjustments.

SUMMARY: BPA is holding a consolidated rate proceeding, Docket No. BP–12, to establish power and transmission rates for FY 2012–2013. The purpose of this **Federal Register** Notice is to provide notice of the proposed rates for

transmission and for the two required ancillary services (listed below, part IV.C.). BPA has previously issued a separate **Federal Register** Notice to provide notice of the proposed rates for power, the other ancillary services, and all control area services.

The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) provides that BPA must establish and periodically review and revise its rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including amortization of the Federal investment in the Federal Columbia River Power System (FCRPS) over a reasonable number of years and BPA's other costs and expenses. The Northwest Power Act also requires that BPA's rates be established based on the record of a formal hearing, and for transmission rates only, that the costs of the Federal transmission system be equitably allocated between Federal and non-Federal power utilizing the system. By this notice, BPA announces the commencement of the transmission portion of a power and transmission rate adjustment proceeding, for rates to become effective on October 1, 2011.

DATES: Anyone who has previously intervened in the BP–12 rate proceeding is automatically a party to this portion of the proceeding as well. Anyone who has not intervened in the BP–12 rate proceeding and wishes to become a party to the proceeding for purposes of the transmission portion of the case only must intervene by sending notice to the addresses listed below no later than 5 p.m. on December 23, 2010. Parties that intervene at this time may not participate in the power portion of the rate proceeding.

The transmission portion of the BP–12 rate adjustment proceeding begins with a prehearing conference at 9 a.m. on December 17, 2010, in the BPA Rates Hearing Room, 2nd floor, 911 NE. 11th Avenue, Portland, Oregon 97232.

Written comments by non-party participants must be received by March 8, 2011 to be considered in the Administrator's ROD.

ADDRESSES:

1. Petitions to intervene should be directed to: Hearing Clerk—L–7, Bonneville Power Administration, 905 NE. 11th Avenue, Portland, Oregon 97232, or may be e-mailed to *rateclerk@bpa.gov.* In addition, copies of the petition must be served concurrently on BPA's General Counsel and directed to both Mr. Peter J. Burger, LP–7, and Mr. Barry Bennett, LC–7, Office of General Counsel, 905 NE. 11th Avenue, Portland, Oregon 97232, or via e-mail to *pjburger@bpa.gov* and *bbennett@bpa.gov* (*see* section III.A. for more information regarding interventions).

2. Written comments by participants should be submitted to the Public Engagement Office, DKE–7, Bonneville Power Administration, P.O. Box 14428, Portland, Oregon 97293. Participants may also submit comments by e-mail at: *http://www.bpa.gov/comment.* BPA requests that all comments and documents intended to be part of the official record in this rate proceeding contain the designation BP–12 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Heidi Y. Helwig, DKC–7, Public Affairs Specialist, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208; by phone toll free at 1–800–622–4520; or via e-mail to *hyhelwig@bpa.gov.*

Responsible Officials: Ms. Rebecca E. Fredrickson, Transmission Rates Manager, is the official responsible for the development of BPA's transmission, ancillary and control area services (ACS) rates.

SUPPLEMENTARY INFORMATION:

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Part I. Introduction and Procedural Background
Part II. Scope of 2012 Rate Proceeding
Part III. Public Participation in BP–12
Part IV. Summary of Rate Proposal
Part V. Proposed 2012 Rate Schedules

Part I—Introduction and Procedural Background

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that BPA's rates be established according to certain procedures, including publication in the **Federal Register** of this notice of the proposed rates; one or more hearings conducted as expeditiously as practicable by a Hearing Officer; opportunity for both oral presentation and written submission of views, data, questions, and arguments related to the proposed rates; and a decision by the Administrator based on the record. BPA's rate proceedings are further governed by BPA's Procedures Governing Bonneville Power Administration Rate Hearings, 51 **Federal Register** 7611 (1986), which implement and expand the statutory requirements.

This proceeding is being conducted under the rule for general rate proceedings, section 1010.4 of BPA's Procedures. A proposed schedule for the proceeding is provided below. A final schedule will be established by the Hearing Officer at the prehearing conference.

Prehearing/BPA Direct Case.	December 17.
Intervention Deadline	December 23.
Clarification	January 4–7.
Motions to Strike	January 11.
Data Request Deadline	January 11.
Answers to Motions to Strike.	January 18.
Data Response Deadline	January 18.
Parties File Direct Case	February 8.
Clarification	February 14–15.
Motions to Strike	February 22.
Data Request Deadline	February 22.
Answers to Motions to Strike.	March 1.
Data Response Deadline	March 1.
Close of Participant Comments.	March 8.
Litigants File Rebuttal	March 8.
Clarification	March 14–15.
Motions to Strike	March 17.
Data Request Deadline	March 17.
Answers to Motions to Strike.	March 25.
Data Response Deadline	March 25.
Cross-Examination	March 28–April 1.
Initial Briefs Filed	May 2.
Oral Argument	May 12.
Draft ROD Issued	June 14.
Briefs on Exceptions	June 24.
Final ROD—Final Studies	July 25.

Section 1010.7 of BPA's Procedures prohibits *ex parte* communications. The *ex parte* rule applies to all BPA and DOE employees and contractors. Except as provided below, any outside communications with BPA and/or DOE personnel regarding the merits of any issue in BPA's rate proceeding by other Executive Branch agencies, Congress, existing or potential BPA customers (including Tribes), or nonprofit or public interest groups are considered outside communications and are subject to the *ex parte* rule. The rule does not apply to communications relating to: (1) Matters of procedure only (the status of the rate proceeding, for example); (2) exchanges of data in the course of business or under the Freedom of Information Act; (3) requests for factual information; (4) matters for which BPA is responsible under statutes other than the ratemaking provisions; or (5) matters which all parties agree may be made on an *ex parte* basis. The *ex parte* rule remains in effect until the Administrator's Final ROD is issued, which is scheduled to occur on or about July 25, 2011.

Part II—Scope of 2012 Rate Proceeding

A. Joint Rate Proceeding

BPA is holding one wholesale power and transmission rate proceeding with

one schedule, one record, and one ROD. As noted above in the summary, BPA has issued a separate **Federal Register** Notice to provide notice of the proposed power rates and rates for certain ancillary services and all control area services.

B. 2010 Integrated Program Review

BPA began its 2010 Integrated Program Review (IPR) process in May 2010. The IPR process is designed to allow people interested in BPA's program levels an opportunity to review and comment on all of BPA's expense and capital spending level estimates in the same forum prior to the use of those estimates in setting rates. Concurrent with the IPR, BPA held regional conversations about risk mitigation and debt management practices.

The 2010 IPR focused on FY 2012 and 2013 program levels for BPA's Power Services and Transmission Services as well as a review of FY 2011 program levels. BPA held 19 technical workshops and two general manager meetings at which proposed spending levels were presented for each of BPA's programs. BPA carefully reviewed and considered the 26 written comments and numerous oral comments on FY 2012 and 2013 program levels that were provided during this public process.

On October 27, 2010, BPA issued the Final Close-Out Letter and accompanying final report for the IPR, which summarizes the comments received and outlines BPA's responses. The report also summarizes comments and BPA's responses on the regional conversations about risk mitigation and debt management. In the Final Close-Out Letter and report, BPA established the program level cost estimates for both power and transmission rates that are used in the Initial Proposal. BPA does not anticipate additional public review of proposed spending levels. However, an abbreviated IPR process may be held if conditions warrant. BPA would conduct this process separately from the rate proceeding to share updates and solicit feedback from customers and constituents before the final program levels are incorporated into the final rates.

C. Rate Case Workshops

In preparation for the BP–12 rate proceeding, BPA held several public rate case workshops with customers and interested parties from March through September 2010. During the workshops, BPA staff presented and discussed information about costs, load and resource forecasting, generation inputs pricing, segmentation, revenue forecasts, load forecasts, risk analysis and mitigation, products, pricing, and rate design. Customers and interested parties had extensive opportunity to participate, raise issues, present alternative proposals, and comment on the information BPA staff presented. The comments and alternatives received during these workshops have assisted in the preparation of the Initial Proposal.

D. Scope of the Rate Proceeding

This section provides guidance to the Hearing Officer as to those matters that are within the scope of the rate proceeding and those that are outside the scope.

1. Program Cost Estimates

Some of the decisions that determine program costs and spending levels have been made in the IPR public review process outside the rate proceeding. *See* section II.B. BPA's spending levels for investments and expenses are not determined or subject to review in rate proceedings.

Pursuant to section 1010.3(f) of BPA's Procedures, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that challenges the appropriateness or reasonableness of the Administrator's decisions on cost and spending levels. If, and to the extent that, any re-examination of spending levels is necessary, such re-examination will occur outside of the rate proceeding. This exclusion does not extend to portions of the revenue requirements related to interest rate forecasts, interest expense and credit, Treasury repayment schedules, forecasts of depreciation, forecasts of system replacements used in repayment studies, generation acquisition expense incurred by Transmission Services, minimum required net revenue, and the costs of risk mitigation actions resulting from the expense and revenue uncertainties included in the risk analysis. The Administrator also directs the Hearing Officer to exclude argument and evidence regarding BPA's debt management practices and policies. *See* section II.D.2.

2. Federal and Non-Federal Debt Service and Debt Management

During the 2010 IPR and in other forums, BPA provided the public with background information on BPA's internal Federal and non-Federal debt management policies and practices. While these policies and practices are not decided in the IPR forum, these discussions were intended to inform interested parties about these matters so that they would better understand BPA's debt structure. Notwithstanding the public discussions, BPA's debt management policies and practices remain outside the scope of the rate proceeding.

Pursuant to § 1010.3(f) of BPA's Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address the appropriateness or reasonableness of BPA's debt management policies and practices.

3. Potential Environmental Impacts

Environmental impacts are addressed in a concurrent National Environmental Policy Act (NEPA) process. *See* section II.E.

Pursuant to § 1010.3(f) of BPA's Procedures, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address the potential environmental impacts of the rates being developed in this rate proceeding.

E. The National Environmental Policy Act

BPA is in the process of assessing the potential environmental effects of its proposed power and transmission rates, consistent with the NEPA. The NEPA process is conducted separately from the rate proceeding. As discussed in section II.D.3., all evidence and argument addressing potential environmental impacts of rates being developed in the BP–12 rate proceeding are excluded from the rate proceeding hearing record. Rather, comments on environmental effects should be directed to the NEPA process.

Because this proposal involves BPA's ongoing business practices related to rates, BPA is reviewing the proposal for consistency with BPA's Business Plan Environmental Impact Statement (Business Plan EIS), completed in June 1995 (BOE/EIS–0183). This policy-level EIS evaluates the environmental impacts of a range of business plan alternatives for BPA that could be varied by applying various policy modules, including one for rates. Any combination of alternative policy modules should allow BPA to balance its costs and revenues. The Business Plan EIS also includes response strategies, such as adjustments to rates, that BPA could implement if BPA's costs exceed its revenues.

In August 1995, the BPA Administrator issued a ROD (Business Plan ROD) that adopted the Market-Driven Alternative from the Business Plan EIS. This alternative was selected because, among other reasons, it allows BPA to: (1) Recover costs through rates;

(2) competitively market BPA's products and services; (3) develop rates that meet customer needs for clarity and simplicity; (4) continue to meet BPA's legal mandates; and (5) avoid adverse environmental impacts. BPA also committed to apply as many response strategies as necessary when BPA's costs and revenues do not balance.

In April 2007, BPA completed and issued a Supplement Analysis to the Business Plan EIS. This Supplement Analysis found that the Business Plan EIS's relationship-based and policy-level analysis of potential environmental impacts from BPA's business practices remains valid, and that BPA's current business practices remain consistent with BPA's Market-Driven Alternative approach. The Business Plan EIS and ROD thus continue to provide a sound basis for making determinations under NEPA concerning BPA's policy-level decisions, including rates.

Because the proposed rates likely would assist BPA in accomplishing the goals identified in the Business Plan ROD, the proposal appears consistent with these aspects of the Market-Driven Alternative. In addition, this rate proposal is similar to the type of rate designs evaluated in the Business Plan EIS; thus, implementation of this rate proposal would not be expected to result in environmental impacts significantly different from those examined in the Business Plan EIS. Therefore, BPA expects that this rate proposal likely will fall within the scope of the Market-Driven Alternative that was evaluated in the Business Plan EIS and adopted in the Business Plan ROD.

As part of the Administrator's ROD that will be prepared for the BP–12 rate proceeding, BPA may tier its decision under NEPA to the Business Plan ROD. However, depending upon the ongoing environmental review, BPA may instead issue another appropriate NEPA document. Comments regarding the potential environmental effects of the proposal may be submitted to Katherine Pierce, NEPA Compliance Officer, KEC–4, Bonneville Power Administration, 905 NE 11th Avenue, Portland, OR 97232. Any such comments received by the comment deadline for Participant Comments identified in section III.A. below will be considered by BPA's NEPA compliance staff in the NEPA process that will be conducted for this proposal.

Part III—Public Participation in BP–12

A. Distinguishing Between "Participants" and "Parties"

BPA distinguishes between "participants in" and "parties to" the hearings. Apart from the formal hearing process, BPA will receive written comments, views, opinions, and information from "participants," who may submit comments without being subject to the duties of, or having the privileges of, parties. Participants' written comments will be made part of the official record and considered by the Administrator. Participants are not entitled to participate in the prehearing conference; may not cross-examine parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties. BPA customers whose rates are subject to this proceeding, or their affiliated customer groups, may not submit participant comments. Members or employees of organizations that have intervened in the rate proceeding may submit general comments as participants but may not use the comment procedures to address specific issues raised by their intervenor organizations.

Written comments by participants will be included in the record if they are received by March 8, 2011. Written views, supporting information, questions, and arguments should be submitted to the address listed in the **ADDRESSES** section of this Notice.

Entities or people become parties to the proceeding by filing petitions to intervene, which must state the name and address of the entity or person requesting party status and the entity's or person's interest in the hearing. BPA customers and affiliated customer groups will be granted intervention based on petitions filed in conformance with BPA's Procedures. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether the petitioners have a relevant interest in the hearing. Pursuant to Rule 1010.1(d) of BPA's Procedures, BPA waives the requirement in Rule 1010.4(d) that an opposition to an intervention petition be filed and served 24 hours before the prehearing conference. The time limit for opposing a timely intervention will be established at the prehearing conference. Any party, including BPA, may oppose a petition for intervention. All petitions will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to an untimely petition to intervene must be filed and received by BPA within two days after service of the petition.

B. Developing the Record

The hearing record will include, among other things, the transcripts of the hearing, written evidence and argument entered into the record by BPA and the parties, written comments from participants, and other material accepted into the record by the Hearing Officer. The Hearing Officer will then review the record and certify the record to the Administrator for final decision.

The Administrator will develop final rates based on the record and such other materials and information as may have been submitted to or developed by the Administrator. The Administrator will serve copies of the Final ROD on all parties. BPA will file its rates with the Commission for confirmation and approval after issuance of the Final ROD.

Part IV—Summary of Rate Proposal

A. Partial Settlement of Transmission Rates

Transmission Services and most of its customers are parties to a Partial Settlement Agreement that provides for Transmission Services to submit a Settlement Proposal that incorporates the provisions of the agreement. Under the Partial Settlement Agreement, Transmission Services will propose maintaining current FY 2010–2011 rates, with no rate increase for the FY 2012–2013 period, for all transmission services and for two ancillary services: Scheduling, System Control and Dispatch Service and Reactive Supply and Voltage Control from Generation Sources Service. The remaining ancillary services and all control area services are not covered by the partial settlement.

The Partial Settlement Agreement also includes changes to the Failure to Comply Penalty Charge, the Network Integration Rate, and the Integration of Resources Rate, as well as changes to several definitions in the General Rate Schedule Provisions. In addition, the agreement restricts the arguments parties to the settlement may make regarding the reliance of Power Services on reserves attributable to Transmission Services and commits BPA to various public processes regarding rates and other issues.

Under the Partial Settlement Agreement the Administrator will establish the Montana Intertie (IM) and Eastern Intertie (IE) rates, and consider revisions to the Townsend-Garrison Transmission rate, in a contested process in this rate case. However, under the agreement, BPA staff will propose that the IM and IE rates be no higher than the existing rates, and the

signatories to the settlement agreement agree not to present evidence or argument that either rate should be higher than the existing rates.

The Partial Settlement Agreement recognizes the possibility that parties to the BP–12 rate proceeding that have not signed the Partial Settlement Agreement may object to the Settlement Proposal. If any party objects to the Settlement Proposal, BPA has the right to submit a revised proposal. If BPA submits a revised proposal, signatories to the Partial Settlement Agreement may contest any aspect of the revised proposal. If BPA does not revise the Settlement Proposal, and the Administrator establishes transmission rates consistent with the Settlement Proposal, the signatories may not challenge approval of the rates by the Commission or in any judicial forum.

B. Transmission Rates

BPA is proposing four different rates for the use of its Integrated Network segment, four different rates for use of intertie segments, and several other rates for various purposes.

The four rates for use of the Integrated Network segment are:

Formula Power Transmission (FPT–12) rate—The FPT rate is based on the cost of using specific types of facilities, including a distance component for the use of transmission lines, and is charged on a contract demand basis.

Integration of Resources (IR–12) rate—The IR rate is a postage stamp, contract demand rate for the use of the Integrated Network, similar to Point-to-Point (PTP) service.

Network Integration Transmission (NT–12) rate—The NT rate applies to customers taking network integration service under the Open Access Transmission Tariff (OATT) and allows customers to flexibly serve their retail load.

Point-to-Point (PTP–12) rate—The PTP rate is a contract demand rate that applies to customers taking point-to-point service on BPA's network facilities under the OATT. It provides customers with flexible service from identified Points of Receipt to identified Points of Delivery. There are separate PTP rates for: Long-term firm service; daily firm and non-firm service; and hourly firm and non-firm service.

In addition to the four rates for network use, other proposed transmission rates include the following:

The Southern Intertie (IS–12) and the Montana Intertie (IM–12) rates are contract demand rates that apply to customers taking point-to-point service under the OATT on the Southern Intertie and Montana Intertie. These rates are structured similarly to the rate for point-to-point service on network facilities.

The Townsend-Garrison Transmission (TGT–12) and the Eastern Intertie (IE–12) rates are developed pursuant to the Montana Intertie agreement.

The Use-of-Facilities (UFT–12) rate establishes a formula for charging for the use of a specific facility based on the annual cost of that facility.

The Advance Funding (AF–12) rate allows Transmission Services to collect the capital and related costs of specific facilities through an advance-funding mechanism.

Other charges that may apply include: A Delivery Charge for the use of low-voltage delivery substations; a Power Factor Penalty Charge; a Reservation Fee for customers that postpone their service commencement dates; incremental rates for transmission requests that require new facilities; a penalty charge for failure to comply with dispatch, curtailment, redispatch, or load shedding orders; and an Unauthorized Increase Charge for customers that exceed their contracted amounts.

C. Ancillary Services Rates

In this **Federal Register** notice BPA is proposing rates for two ancillary services: Scheduling, System Control, and Dispatch Service, and Reactive Supply and Voltage Control from Generation Sources Service.

3. Changes to Transmission Rates and Rate Schedules

a. Network Integration Transmission (NT–12) rate

The NT rate applies to customers taking network integration service under the OATT and allows customers to flexibly serve their retail load. Transmission Services is proposing to delete CSL and add a Short Distance Discount (SDD) to the NT rate, applied to the NT Base Charge. The SDD would apply when a Customer has a resource that: (i) Is designated as a Network Resource in the customer's NT Service Agreement for at least 12 months; and (ii) uses FCRTS facilities for less than 75 circuit miles for delivery to the Customer's Network Load. A designated network resource that is a system sale (the designated resource is not associated with a specific generating resource) would not qualify for the SDD. Additionally, any designated resource that is eligible for the SDD must be noted as such in the NT Service Agreement to receive the billing credit.

b. Failure To Comply Penalty Charge

BPA proposes to change the rate for the Failure to Comply Penalty Charge from 1000 mills per kilowatthour to the greater of 500 mills per kilowatthour or 150% of an hourly energy index in the Pacific Northwest.

c. Integration of Resources (IR–12)—Ratchet Demand Relief

BPA proposes to add language to the section on Ratchet Demand Relief providing that relief from the Ratchet Demand is not available in the month in which the Ratchet Demand was established. For that month, the customer will be assessed charges based upon the highest hourly Scheduled Demand Billing Factor.

d. Changes to Definitions

BPA proposes to modify the definitions of *Dynamic Schedule, Dynamic Transfer, Daily Service, Monthly Service, and Weekly Service.*

Part V—Proposed 2012 Rate Schedules

BPA's proposed 2012 Transmission Rate Schedules are a part of this notice and are available for viewing and downloading on BPA's Web site at *http://www.bpa.gov/corporate/ratecase/2012/*. Copies of the proposed rate schedules also are available for viewing in BPA's Public Reference Room at the BPA Headquarters, 1st Floor, 905 NE 11th Avenue, Portland, OR 97232.

Issued this 7th day of December, 2010.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 2010–31621 Filed 12–15–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No.: REP–12]

Proposed Residential Exchange Program Settlement Agreement Proceeding (REP–12); Public Hearing and Opportunities for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Residential Exchange Program Settlement Agreement Proceeding (REP–12).

SUMMARY: BPA is conducting the 2012 Residential Exchange Program Settlement Agreement Proceeding (REP–12) to review the terms and conditions of a proposed 17-year settlement of issues regarding the implementation of

the Residential Exchange Program (REP). The REP is a statutory power exchange program established by section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). The proposed settlement under review is the 2012 REP Settlement Agreement (2012 REP Settlement). If adopted, BPA will include in its power rates for FY 2012–2028 the REP benefits stated in the proposed 2012 REP Settlement.

In addition to reviewing the terms of the proposed 2012 REP Settlement, BPA's REP–12 initial proposal will describe BPA's proposed implementation of the REP for its FY 2012–2013 rates in the event the 2012 REP Settlement is not adopted. The REP–12 initial proposal will include studies and testimony supporting BPA's proposed implementation of the section 7(b)(2) rate test for the FY 2012–2013 rate period, the section 7(b)(3) surcharge allocation, Average System Cost (ASC) forecasts, and the amount of refunds to be provided to BPA customers overcharged during the FY 2002–2006 rate period, (*i.e.,* Lookback repayments). If, at the conclusion of the REP–12 proceeding the Administrator decides not to adopt the 2012 REP Settlement, BPA will incorporate into the BP–12 rate proceeding the studies, testimony, and documentation associated with the section 7(b)(2) rate test, the section 7(b)(3) surcharge allocation, ASC forecasts, and Lookback repayment and use such studies and documentation in establishing the BP–12 rates.

DATES: Anyone wishing to become a party to the REP–12 proceeding must provide written notice, via U.S. Mail or electronic mail, which must be received by BPA no later than 3 p.m. on December 23, 2010.

The REP–12 proceeding begins with a prehearing conference at 9:00 a.m. on December 17, 2010, in the BPA Rates Hearing Room, 2nd Floor, 911 NE 11th Avenue, Portland, Oregon 97232.

ADDRESSES: 1. Petitions to intervene should be directed to: Hearing Clerk—L–7, Bonneville Power Administration, 905 NE 11th Avenue, Portland, Oregon 97232, or may be e-mailed to *rateclerk@bpa.gov.* In addition, copies of the petition must be served concurrently on BPA's General Counsel and directed to Mr. Kurt R. Casad, Office of General Counsel, 905 NE 11th Avenue, Portland, Oregon 97232, or via e-mail to *krcasad@bpa.gov* (*see* section III.A. for more information regarding interventions).

2. Written comments by participants should be submitted to the Public Engagement Office, DKE–7, Bonneville Power Administration, P.O. Box 14428, Portland, Oregon 97293. Participants may also submit comments by e-mail at: *http://www.bpa.gov/comment.* BPA requests that all comments and documents intended to be part of the Official Record in this rate proceeding contain the designation REP–12 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Heidi Y. Helwig, DKC–7, Public Affairs Specialist, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208; by phone toll free at 1–800–622–4520; or via e-mail to *hyhelwig@bpa.gov.*

Responsible Official: Mr. Raymond D. Bliven, Power Rates Manager, is the official responsible for the development of BPA's power rates.

SUPPLEMENTARY INFORMATION:

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Part VI. Proposed 2012 REP Settlement Agreement

Part I. Introduction

BPA is conducting an evidentiary hearing, Docket No. REP–12, to review the terms and conditions of a proposed 17-year settlement of issues regarding the implementation of the Residential Exchange Program (REP). The REP is a statutory power exchange program established by section 5(c) of the Northwest Power Act (Act). *See* 16 U.S.C. 839c(c). The proposed settlement under review, the 2012 REP Settlement, reflects the efforts of a broad group of regional parties to resolve litigation over BPA's implementation of the REP through a legally sustainable and equitable settlement agreement. If adopted by the Administrator, BPA will include in its power rates for FY 2012–2028 the REP benefits stated in the proposed 2012 REP Settlement.

In addition to reviewing the terms of the proposed 2012 REP Settlement, BPA's REP–12 initial proposal will describe BPA's proposed implementation of the REP for its FY 2012–2013 rates in the event the 2012 REP Settlement is not adopted. The REP–12 initial proposal will include studies and testimony supporting BPA's proposed implementation of the section 7(b)(2) rate test, the section 7(b)(3) surcharge allocation, ASC forecasts, and Lookback repayments for the FY 2012–2013 rate period. Any party wishing to contest BPA's proposed implementation of the section 7(b)(2) rate test, allocation of section 7(b)(3) surcharge amounts, development of the ASC forecasts, or determination of Lookback refund amounts must raise such arguments in the REP–12 proceeding. At the same time BPA is reviewing the proposed 2012 REP Settlement in the REP–12 proceeding, BPA is separately conducting a BP–12 rate proceeding to establish power rates for FY 2012–2013. If, at the conclusion of the REP–12 proceeding, the Administrator decides not to adopt the 2012 REP Settlement, BPA will incorporate into the BP–12 rate proceeding the studies, testimony, and documentation associated with the section 7(b)(2) rate test, the section 7(b)(3) surcharge allocation, ASC forecasts, and Lookback repayment, and use such studies and documentation in establishing the BP–12 rates.

Part II. Procedures and Scope of Hearing

A. Procedures Governing the REP–12 Proceeding

Because the proposed 2012 REP Settlement includes features that are directly related to BPA's rates and ratemaking, the proposed Settlement will be evaluated under the procedural terms of section 7(i) of the Act, 16 U.S.C. 839e(i). These procedures include, among other things: Publication of a notice of the proposed rates in the **Federal Register**; one or more hearings conducted as expeditiously as practicable by a Hearing Officer; public opportunity to provide both oral and written views related to the proposed rates; opportunity to offer refutation or rebuttal of submitted material; and a decision by the Administrator based on the record. This REP–12 proceeding is governed by § 1010 of BPA's Rules of Procedure Governing Rate Hearings, 51 FR 7611 (1986) (BPA Hearing Procedures). These procedures implement the statutory section 7(i) requirements.

Section 1010.7 of BPA's Hearing Procedures prohibits *ex parte* communications. The *ex parte* rule applies to all BPA and DOE employees and contractors. Except as provided below, any communications with BPA and/or DOE personnel regarding BPA's rate proceeding by other Executive Branch agencies, Congress, existing or potential BPA customers (including Tribes), and nonprofit or public interest groups are considered outside communications and are subject to the *ex parte* rule. The general rule does not apply to communications relating to: (1)

Matters of procedure only (the status of the rate proceeding, for example); (2) exchanges of data in the course of business or under the Freedom of Information Act; (3) requests for factual information; (4) matters for which BPA is responsible under statutes other than the ratemaking provisions; or (5) matters which all parties agree may be made on an *ex parte* basis. The *ex parte* rule remains in effect until the Administrator's Final Record of Decision (ROD) is issued.

The Flood Control Act of 1944, 16 U.S.C. 825s, the Federal Columbia River Transmission System Act, 16 U.S.C. 838, and the Northwest Power Act, 16 U.S.C. 839, provide guidance regarding BPA ratemaking. The Northwest Power Act requires BPA to set rates that are sufficient to recover, in accordance with sound business principles, the cost of acquiring, conserving and transmitting electric power, including amortization of the Federal investment in the Federal Columbia River Power System (FCRPS) over a reasonable period of years, and certain other costs and expenses incurred by the Administrator.

BPA's proposal, study documentation, and the proposed 2012 REP Settlement will be available for examination beginning December 17, 2010, on BPA's Web site at *http://www.bpa.gov/corporate/ratecase/2012/rep-12.cfm*. Hard copies of these documents will be available beginning December 17, 2010, at BPA's Public Information Center, BPA Headquarters Building, 1st Floor, 905 NE. 11th Avenue, Portland, Oregon.

A formal evidentiary rate hearing will be conducted that is open to rate proceeding parties. Interested parties that previously intervened in BPA's BP–12 rate proceeding must also file petitions to intervene in order to take part in the REP–12 formal hearing. A proposed schedule for the REP–12 proceeding is stated below. A Hearing Officer will establish a final schedule at the prehearing conference.

Intervention Deadline	December 23.
Prehearing/BPA Direct Case	December 17.
Clarification	January 4–7.
Motions to Strike	January 11.
Data Request Deadline	January 11.
Answers to Motions to Strike	January 18.
Data Response Deadline	January 18.
Parties File Direct Case	February 8.
Clarification	February 14–15.
Motions to Strike	February 22.
Data Request Deadline	February 22.
Answers to Motions to Strike	March 1.
Data Response Deadline	March 1.
Close of Participant Comments.	March 8.
Litigants File Rebuttal	March 8.
Clarification	March 14–15.
Motions to Strike	March 17.
Data Request Deadline	March 17.
Answers to Motions to Strike	March 25.
Data Response Deadline	March 25.
Cross-Examination	March 28–April 1.
Initial Briefs Filed	April 25.
Oral Argument	May 12.
Draft ROD Issued	May 23.
Briefs on Exceptions	June 6.
Final ROD—Final Studies	June 27.

No field hearings will be conducted in this proceeding.

B. Scope of the REP–12 Proceeding

This section provides guidance to the Hearing Officer regarding the matters within the scope of the REP–12 proceeding and the matters not within the scope of this proceeding.

1. Matters Within the Scope of This Proceeding

a. Proposed 2012 REP Settlement

All issues related to BPA's analysis, methodology, or review of the proposed 2012 REP Settlement, including any issues related to the models developed by BPA to evaluate the 2012 REP Settlement, are expressly within the scope of this proceeding. Parties wishing to challenge any aspect of the proposed 2012 REP Settlement, including but not limited to any term of the proposed Settlement or whether BPA should adopt the Settlement, must raise such arguments in this proceeding.

b. Section 7(b)(2) Rate Test Implementation

All issues related to BPA's implementation, interpretation, and forecast of the section 7(b)(2) rate test are within the scope of this proceeding. Parties wishing to challenge any aspect of the implementation of the section 7(b)(2) rate test for either the 2012 REP Settlement implementation period (FY 2012–2028) or the BP–12 rate period (FY 2012–2013) must raise such arguments in this proceeding.

c. Section 7(b)(3) Surcharge Implementation

All issues related to BPA's implementation, interpretation, and forecast of the section 7(b)(3) reallocations or surcharges are within the scope of this proceeding. Parties wishing to challenge any aspect of the implementation of section 7(b)(3) for either the 2012 REP Settlement implementation period (FY 2012–2028) or the BP–12 rate period (FY 2012–2013) must raise such arguments in this proceeding.

d. Lookback Assumptions

All issues related to BPA's implementation, determination, recovery, and repayment of Lookback Amounts are within the scope of this proceeding. Parties wishing to challenge any aspect of BPA's Lookback recovery or repayment for either the 2012 REP Settlement implementation period (FY 2012–2028) or the BP–12 rate period (FY 2012–2013) must raise such arguments in this proceeding.

e. ASC Forecasts

Except as provided below in section II.B.2.h, all issues related to BPA's forecast of utilities' ASCs for the BP–12 rate test period (FY 2014–2017) and the 2012 REP Settlement implementation period (FY 2012–2028) are within the scope of this proceeding. Parties wishing to challenge any aspect of BPA's ASC forecasts for these periods must raise their arguments in this proceeding. Challenges to the ASCs determined in the Draft and Final ASC reports for FY 2012–2013 are expressly excluded from the scope of this proceeding. *See* Section II.B.2.h.

2. Matters Not Within the Scope of This Proceeding

a. BP–12 Rate Proceeding Issues

As noted above, BPA is conducting a rate proceeding to establish wholesale power and transmission rates for FY 2012–2013 (BP–12) at the same time BPA is conducting the REP–12 proceeding. Although some of the information developed in the BP–12 rate proceeding will be used in the models in the REP–12 proceeding, parties may not raise arguments or issues with such data in the REP–12 proceeding. Instead, such arguments or issues should be raised in the BP–12 rate proceeding if and to the extent such issues are within the scope of that proceeding. Pursuant to section 1010.3(f) of BPA's Hearing Procedures, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address the appropriateness or reasonableness of any issue being addressed in the BP–12 rate proceeding.

b. Program Cost Estimates

BPA began its 2010 Integrated Program Review (IPR) process in May 2010. The IPR process is designed to allow people interested in BPA's program levels an opportunity to review and comment on all of BPA's expense and capital spending level estimates in the same forum prior to the use of those estimates in setting rates. Concurrent with the IPR, BPA held regional

conversations about risk mitigation and debt management practices.

The 2010 IPR focused on FY 2012 and 2013 program levels for BPA's Power Services and Transmission Services as well as a review of FY 2011 program levels. BPA held 19 technical workshops and two general manager meetings at which proposed spending levels were presented for each of BPA's programs. BPA carefully reviewed and considered the 26 written comments and numerous oral comments on FY 2012 and 2013 program levels that were provided during this public process.

On October 27, 2010, BPA issued a Final Close-Out Letter and accompanying final report for the IPR, which summarizes the comments received and outlines BPA's responses. The report also summarizes comments and BPA's responses on the regional conversations about risk mitigation and debt management. In the Final Close-Out Letter and report, BPA established the program level cost estimates for both power and transmission rates that are used in the BP–12 and REP–12 Initial Proposals. BPA does not anticipate additional public review of proposed spending levels. However, an abbreviated IPR process may be held if conditions warrant. BPA would conduct this process separately from the REP–12 and BP–12 proceedings to share updates and solicit feedback from customers and constituents before the final program levels are incorporated into BPA's final rates. BPA's spending levels for investments and expenses are not determined or subject to review in the REP–12 or BP–12 proceedings.

Pursuant to section 1010.3(f) of BPA's Hearing Procedures, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any manner to address the appropriateness or reasonableness of the Administrator's decisions on cost and spending levels. If and to the extent that any re-examination of spending levels is necessary, such re-examination will occur outside of the REP–12 and BP–12 proceedings. This exclusion does not extend to portions of BPA's revenue requirements related to REP benefits, Lookback payments, or interest on Lookback payments. The Administrator also directs the Hearing Officer to exclude argument and evidence regarding BPA's debt management practices and policies.

c. Regional Dialogue Policy Decisions

BPA's Subscription contracts expire on September 30, 2011, at the end of the current rate period. BPA previously engaged customers and interested stakeholders in an extensive Regional Dialogue process that led to new power sales contracts. BPA issued its Long-Term Regional Dialogue Final Policy and ROD on July 19, 2007; its Long-Term Regional Dialogue Contract Policy and ROD on October 31, 2008; the Tiered Rate Methodology and ROD on November 10, 2008; and the Tiered Rate Methodology Supplemental ROD on September 2, 2009. On or about December 1, 2008, BPA and its customers signed new power sales contracts under which the customers will purchase Federal power for the FY 2012–2028 period. Several aspects of the Regional Dialogue process are still ongoing, such as establishing customer contract high water marks and contract demand quantities, and these processes and decisions are outside the scope of the REP–12 proceeding.

Pursuant to § 1010.3(f) of BPA's Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address the appropriateness or reasonableness of BPA's decisions made in the Long-Term Regional Dialogue Final Policy ROD, Long-Term Regional Dialogue Contract Policy ROD, the Tiered Rate Methodology ROD, and the Tiered Rate Methodology Supplemental ROD.

d. Tiered Rate Methodology (TRM)

BPA previously established the TRM in a section 7(i) rate hearing. The issues being examined in the REP–12 proceeding are not governed by the TRM. Modifications to the TRM are not within the scope of this proceeding. Pursuant to § 1010.3(f) of BPA's Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to propose to revise the TRM developed by BPA.

e. Service to the Direct Service Industries (DSIs)

The manner and method by which BPA could provide service or financial payments to its DSI customers were evaluated in *Pacific Northwest Generating Cooperative, et al.,* v. *Bonneville Power Administration,* 580 F.3d 792 (9th Cir. 2008) (*PNGC I*) and *Pacific Northwest Generating Cooperative, et al.,* v. *Bonneville Power Administration,* 590 F.3d 1065 (9th Cir. 2010) (*PNGC II*). In BPA's BP–12 rate proceeding, BPA has assumed that it will continue to serve Alcoa, Inc. (Alcoa) as well as Port Townsend Paper Corporation (Port Townsend) during FY 2012–2013. BPA's decisions to serve the DSIs, along with the method and level of service to be provided DSIs in the FY 2012–2013 rate period, will not be determined in this proceeding.

Pursuant to § 1010.3(f) of BPA's Hearing Procedures, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to revisit the appropriateness or reasonableness of BPA's decisions regarding the service to the DSIs, including BPA's decision to offer a contract and the method or level of such service.

f. Potential Environmental Impacts

Environmental impacts are addressed in a concurrent National Environmental Policy Act (NEPA) process. Pursuant to § 1010.3(f) of BPA's Hearing Procedures, the Administrator directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address the potential environmental impacts of the rates being developed in this rate proceeding.

g. Average System Cost Methodology

Section 5(c) of the Northwest Power Act established the REP, which provides benefits to residential and small-farm consumers of Pacific Northwest utilities based, in part, on a utility's "average system cost" (ASC) of resources. Section 5(c)(7) of the Act requires the Administrator to consult with regional interests to develop an ASC Methodology (ASCM). BPA uses the ASCM to calculate utilities' ASCs. On September 4, 2009, the Federal Energy Regulatory Commission (Commission) granted final approval of BPA's 2008 ASCM. The 2008 ASCM is not subject to challenge or review in a section 7(i) proceeding.

Pursuant to § 1010.3(f) of BPA's Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address the appropriateness or reasonableness of the 2008 ASCM.

h. Average System Cost Review Processes

To receive REP benefits for FY 2012–2013, utilities must file proposed ASCs with BPA pursuant to the terms and conditions of the 2008 ASCM. These filings are reviewed by BPA staff and other interested parties in ASC review processes, which are separate administrative proceedings conducted by BPA under the terms of the 2008 ASCM. In the review processes, BPA staff and other parties evaluate the ASCs

filed by participating utilities for conformance with the requirements of the 2008 ASCM. At the conclusion of the processes, BPA issues ASC Reports, which formally establish the utilities' ASCs for the Exchange Period, which coincides with BPA's rate period.

On June 1, 2010, ten utilities filed proposed ASCs with BPA for FY 2012–2013. One utility subsequently withdrew its ASC filing. BPA staff and other parties are currently reviewing the remaining nine filings in the ASC review processes. Once these ASC review processes are complete, and BPA has issued final ASC Reports, BPA will incorporate the final ASCs into the administrative record of the REP–12 proceeding. Although these ASC determinations provide important information for setting BPA's rates, they are not made in section 7(i) hearings. Parties intending to challenge BPA's draft or final ASC determinations for FY 2012–2013 must raise such issues in the ASC review processes according to the procedures established in the 2008 ASCM.

Pursuant to § 1010.3(f) of BPA's Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address BPA's draft or final ASC determinations for FY 2012–2013.

i. Contract High Water Mark (CHWM) Process

Under the Tiered Rate Methodology (TRM), BPA will establish both CHWMs and FY 2012–2013 Rate Period High Water Mark (RHWMs) for public agency customers that signed contracts for firm requirements power service at tiered rates, referred to as CHWM contracts. The CHWMs and RHWMs will be established in the CHWM Process, which will occur mainly in Spring 2011. In this process, BPA will establish the maximum planned amount of power a customer is eligible to purchase at Tier 1 rates during the rate period. The CHWM Process provides customers an opportunity to review, comment, and, if necessary, challenge BPA's determinations regarding certain CHWM and RHWM determinations.

Pursuant to § 1010.3(f) of BPA's Hearing Procedures, the Administrator hereby directs the Hearing Officer to exclude from the record all argument, testimony, or other evidence that seeks in any way to address BPA's determination of a customer's CHWM or FY 2012–2013 RHWM.

C. The National Environmental Policy Act

BPA is in the process of assessing the potential environmental effects that could result from implementation of the proposed 2012 REP Settlement, consistent with NEPA requirements. BPA is reviewing this proposal for consistency with BPA's Business Plan Environmental Impact Statement (Business Plan EIS), completed in June 1995 (DOE/EIS–0183). This policy-level EIS evaluates the environmental impacts of a range of business plan alternatives for BPA and is intended to support a wide range of subsequent BPA business-related decisions. In the Record of Decision for the Business Plan ROD (Business Plan ROD, August 1995), the BPA Administrator adopted the Market-Driven Alternative from the Business Plan EIS. This alternative was selected because, among other reasons, it allows BPA to: (1) Recover costs through rates; (2) competitively market BPA's products and services; (3) develop rates that meet customer needs for clarity and simplicity; (4) continue to meet BPA's legal mandates; and (5) avoid adverse environmental impacts.

In April 2007, BPA completed a Supplement Analysis confirming the Business Plan EIS's environmental analysis in light of current regional conditions and BPA's current business practices. The Business Plan EIS and ROD thus continue to provide a sound basis for making determinations under NEPA concerning BPA's business-related decisions.

BPA will document its environmental evaluation for the proposed 2012 REP Settlement as part of the Administrator's Record of Decision that will be prepared for this proposal. During the public review and comment period for the proposed 2012 REP Settlement, persons interested in submitting comments regarding its potential environmental effects may do so by submitting comments to Katherine Pierce, NEPA Compliance Officer, KEC–4, Bonneville Power Administration, 905 NE. 11th Avenue, Portland, OR 97232. Any such comments received by the Close of Participant Comments deadline identified in Part II.A will be considered by BPA's NEPA compliance staff in the NEPA evaluation that will be prepared for this proposal.

Part III. Public Participation in REP–12

A. Distinguishing Between "Participants" and "Parties"

BPA distinguishes between "participants in" and "parties to" the hearings. Apart from the formal hearing process, BPA will receive written comments, views, opinions, and information from "participants," who may submit comments without being subject to the duties of, or having the privileges of, parties. Participants' written comments will be made part of the official record and considered by the Administrator. Participants are not entitled to participate in the prehearing conference; may not cross-examine parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties. BPA customers whose rates are subject to this proceeding, or their affiliated customer groups, may not submit participant comments. Members or employees of organizations that have intervened in the rate proceeding may submit general comments as participants but may not use the comment procedures to address specific issues raised by their intervenor organizations.

Written comments by participants will be included in the record if they are received by March 8, 2011. Written views, supporting information, questions, and arguments should be submitted to the address listed in the **ADDRESSES** section of this Notice.

Entities or individuals become parties to the proceeding by filing petitions to intervene, which must state the name and address of the entity or person requesting party status and the entity's or person's interest in the hearing. BPA's customers and affiliated customer groups will be granted intervention based on petitions filed in conformance with BPA's Hearing Procedures. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether the petitioners have a relevant interest in the hearing. Pursuant to Rule 1010.1(d) of BPA's Hearing Procedures, BPA waives the requirement in Rule 1010.4(d) that an opposition to an intervention petition be filed and served 24 hours before the prehearing conference. The time limit for opposing a timely intervention will be established at the prehearing conference. Any party, including BPA, may oppose a petition for intervention. All petitions will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to an untimely petition to intervene must be filed and received by BPA within two days after service of the petition.

B. Developing the Record

The hearing record will include, among other things, the transcripts of the hearing, written evidence and argument entered into the record by BPA and the parties, written comments

from participants, and other material accepted into the record by the Hearing Officer. The Hearing Officer will then review the record and certify the record to the Administrator.

The Administrator will develop the Final ROD in the REP–12 proceeding based on the record and such other materials and information as may have been submitted to or developed by the Administrator. The Administrator will serve copies of the Final ROD on all parties. BPA will incorporate the Administrator's final decision in this proceeding into its BP–12 Final Rate Proposal.

Part IV. Background of REP Litigation

A. Background on the REP

1. Section 5(c) of the Northwest Power Act

As noted previously, section 5(c) of the Northwest Power Act established the REP. 16 U.S.C. 839c(c)(1). Under the REP, any Pacific Northwest utility may sell power to BPA at the utility's ASC. A utility's ASC is determined in accordance with an ASC Methodology that BPA develops pursuant to the requirements in the Act. In calculating a utility's ASC, section 5(c)(7) of the Act mandates that BPA exclude from ASC the cost of resources in an amount sufficient to serve a new large single load (NLSL), the cost of additional resources in an amount sufficient to meet any additional load outside the region occurring after the effective date of the Act, and any costs of any generating facility which is terminated prior to initial commercial operation. 16 U.S.C. 839c(c)(7)(A)–(C).

When a utility offers to sell its power to BPA at its ASC, BPA must purchase such power and, in return, sell an equivalent amount of power to the utility at BPA's rate for purchases under the REP, known as the "PF Exchange rate." The PF Exchange rate is developed in accordance with section 7 of the Northwest Power Act. The amount of power that is bought and sold under the REP is equal to the utility's qualified residential and small farm load (exchange load). Because the purchase and sale between BPA and the utility involves the same amount of power and is simultaneous, in almost all instances no actual power is bought or sold under the REP. Instead, the REP is generally implemented as a paper transaction where the net difference between the utility's ASC and BPA's PF Exchange rate is multiplied by the utility's exchange load and converted into a cash payment to the utility. The utility is required by law to pass these payments onto its residential and small farm consumers. 16 U.S.C. 839c(c)(3). The REP is implemented through a Residential Purchase and Sale Agreement (RPSA) executed by BPA and the utility. The REP is intended to provide regional residential and small farm consumers a form of access to the power produced by the FCRPS. Although intended primarily for the benefit of consumers located in investor-owned utilities' (IOUs) service areas, any utility within the region may participate.

2. Section 7(b)(2) of the Northwest Power Act and the PF Exchange Rate

The PF Exchange rate is the rate at which BPA "sells" power to utilities participating in the REP. Section 7 of the Act prescribes the manner in which this rate is set. Under section 7(b)(1), BPA establishes the PF Exchange rate in much the same way BPA develops its PF Public rate. *See* 16 U.S.C. 839e(b)(1). Section 7(b)(2) of the Act, however, requires BPA to perform a "rate test" to determine whether the PF Public rate charged to BPA's consumer-owned utility customers (COUs) under the Act would be greater than a rate developed under five specific assumptions stated in section 7(b)(2). These five assumptions are:

(A) The [COUs'] general requirements had included during such five-year period the direct service industrial customer loads which are (i) served by the Administrator, and (ii) located within or adjacent to the geographic service boundaries of such public bodies and cooperatives;

(B) [the COUs] were served, during such five-year period, with Federal base system resources not obligated to other entities under contracts existing as of December 5, 1980 (during the remaining term of such contracts) excluding obligations to direct service industrial customer loads included in subparagraph (A) of this paragraph;

(C) No purchases or sales by the Administrator as provided in [section 5(c)] of this section were made during such five-year period;

(D) All resources that would have been required, during such five-year period, to meet remaining general requirements of the public body, cooperative and Federal agency customers (other than requirements met by the available Federal base system resources determined under subparagraph (B) of this paragraph) were (i) purchased from such customers by the Administrator pursuant to section 839d of this title, or (ii) not committed to load pursuant to section 839c(b) of this section and were the least expensive resources owned or purchased by public bodies or cooperatives; and any additional needed resources were obtained at the average cost of all other new resources acquired by the Administrator; and

(E) The quantifiable monetary savings, during such five-year period, to public body, cooperative and Federal agency customers resulting from (i) reduced public body and cooperative financing costs as applied to the total amount of resources, other than Federal base system resources, identified under subparagraph (D) of this paragraph, and (ii) reserve benefits as a result of the Administrator's actions under this chapter were not achieved.

If BPA's proposed rates developed under section 7(b)(1) are greater than the rates calculated under the section 7(b)(2) assumptions, BPA must reduce the costs included in the 7(b)(1) rate charged to COUs by assessing a surcharge pursuant to section 7(b)(3) to "all other power sold by the Administrator to all customers." 16 U.S.C. 839e(b)(3). One of the rates assessed this surcharge is the PF Exchange rate. Application of the 7(b)(3) surcharge to the PF Exchange rate has the effect of increasing the level of the PF Exchange rate and reducing the amount of REP benefits paid by COUs in their PF Public rates.

B. History of the REP

The history of BPA's implementation of the REP is marked by controversy and litigation. Shortly after the passage of the Northwest Power Act in 1980, BPA and regional parties negotiated the terms of BPA's first ASC Methodology (1981 ASC Methodology) and the provisions of 20-year RPSAs that would be used to implement the REP. After three years of experience under the 1981 ASC Methodology, BPA's DSI and COU customers requested that a consultation process be held to consider revisions to the 1981 ASC Methodology. BPA granted the requests and commenced a consultation process in 1983. In the consultation, BPA determined that the source of data used in the 1981 ASC Methodology did not include sufficient detail to ensure that BPA was excluding terminated plant costs as required by section 5(c)(7) of the Northwest Power Act. Consequently, BPA proposed to revise the ASC Methodology by expanding the procedures used to review ASCs and excluding certain costs that BPA determined were too difficult to accurately monitor. The revised ASC Methodology was completed in 1984 and received approval from the Commission shortly thereafter.

BPA's IOU customers vigorously opposed the changes to the 1981 ASC Methodology. Eight IOUs and four State regulatory agencies filed petitions with the United States Court of Appeals for the Ninth Circuit challenging the Commission's final approval of the revised ASC Methodology (1984 ASC Methodology). *See PacifiCorp* v. *FERC,* 795 F.2d 816 (9th Cir. 1986) (*PacifiCorp*). In *PacifiCorp,* the Court affirmed the Commission's approval and BPA's decision to adopt the 1984 ASC Methodology. *Id.* Even though the 1984 ASC Methodology was sustained by the Court, litigation continued over BPA's implementation of the ASC Methodology. Dozens of BPA's ASC determinations were contested before the Commission, several of which were ultimately resolved by the Court. *See Wash. Util. & Transp. Comm'n* v. *FERC,* 26 F.3d 935 (9th Cir. 1994); *CP Nat. Corp.* v. *Bonneville Power Admin.,* 928 F.2d 905 (9th Cir. 1991).

Due to the burdensome, expensive and contentious nature of implementing the 1984 ASC Methodology, BPA and regional exchanging utilities began negotiating settlements of the implementation of the REP. Throughout the late 1980s and into the 1990s, BPA and regional exchanging utilities entered into multiple REP settlements. By the late 1990s, BPA and five of the six exchanging IOUs executed REP settlement agreements that resolved the implementation of the REP until June 30, 2001.

C. The 2000 REP Settlement Agreements

In early 1996, the governors of Idaho, Montana, Oregon and Washington convened the Comprehensive Review of the Northwest Energy System. The goal of the review was to develop recommendations for changes in the region's electric utility industry, focusing on BPA, through an open public process involving a broad cross-section of regional interests. In December 1996, after over a year of intense study, the Comprehensive Review Steering Committee released its Final Report. The Final Report proposed a subscription system for purchasing specified amounts of power from BPA at cost with incentives for customers to take longer-term subscriptions (Subscription). In connection with its Subscription proposal, the Steering Committee encouraged BPA and other parties in the region to explore a settlement of the REP with the region's IOUs for the FY 2002–2011 period.

In response to the Steering Committee's recommendation, BPA and regional IOUs developed the 2000 Residential Exchange Program Settlement Agreements (2000 REP Settlement Agreements). Under the 2000 REP Settlement Agreements, the IOUs agreed to forgo their participation in the traditional REP for a period of ten years (FY 2002–2011) in return for certain payments and deliveries of firm power from BPA. To recover the costs of the 2000 REP Settlement Agreements for the FY 2002–2006 rate period, BPA proposed in its WP–02 Wholesale Power Rate Proceeding to allocate a significant portion of the costs of the 2000 REP Settlement Agreements to the rates charged to COUs.

D. Challenges to the 2000 REP Settlements: The Ninth Circuit's Decisions in Portland General Electric v. BPA, Golden Northwest Aluminum v. BPA, and Snohomish PUD v. BPA

In January of 2001, certain parties filed petitions with the Ninth Circuit challenging BPA's statutory authority to implement the REP through the 2000 REP Settlement Agreements. In September of 2003, following final Commission confirmation and approval of BPA's WP–02 rates, parties also filed challenges to BPA's decision to recover the costs of the 2000 REP Settlement Agreements from the PF rates without BPA's traditional manner of implementing the 7(b)(2) rate test.

While these challenges were pending before the Court, BPA commenced a new rate proceeding, the 2007 Wholesale Power Rate Proceeding, to establish rates for the FY 2007–2009 period (WP–07 rates). In the WP–07 rates, BPA again allocated a significant portion of the costs of the 2000 REP Settlement Agreements to the PF rates. The WP–07 rates were filed with the Commission on July 28, 2006, and received interim approval from the Commission on September 21, 2006.

On May 3, 2007, before final Commission approval of BPA's WP–07 rates, the Court issued two decisions in the pending challenges to the 2000 REP Settlement Agreements and the then-expired WP–02 rates. In *Portland General Electric* v. *Bonneville Power Admin.,* 501 F.3d 1009 (9th Cir. 2007) *(PGE),* the Court found that BPA had exceeded its settlement authority when it entered into the 2000 REP Settlement Agreements. 501 F.3d at 1037. In a companion case, *Golden Northwest Aluminum* v. *Bonneville Power Admin.,* 501 F.3d 1037 (9th Cir. 2007) *(Golden NW),* the Court also held that BPA had improperly allocated the cost of the 2000 REP Settlement Agreements to rates charged to the COUs in violation of section 7(b)(2). 501 F.3d at 1048. The Court then remanded the WP–02 rates to BPA with the instruction to "set rates in accordance with this opinion." *Id.* at 1053.

After issuing the *PGE* and *Golden NW* decisions, the Court also reviewed challenges to certain amendments to the 2000 REP Settlement Agreements signed in 2004. *See Pub. Util. Dist. No. 1 of Snohomish County, Wa.* v. *Bonneville Power Admin.,* 506 F.3d 1145 (9th Cir. 2007) *(Snohomish).* In *Snohomish,* the Court remanded the 2004 amendments to the 2000 REP Settlement Agreements and a "Reduction of Risk" provision amended by the 2004 amendments to BPA. *Id.* at 1154. The Court explained that it was remanding these amendments to BPA in order to permit BPA to determine "in the first instance" whether these amendments remained valid in light of the Court's opinions in *PGE* and *Golden NW. Id.*

E. BPA's Response to PGE, Golden NW, and Snohomish: The WP–07 Supplemental Hearing and the Development of the 2008 RPSAs

Following the issuance of the *PGE, Golden NW,* and *Snohomish* decisions, BPA ceased making payments under the 2000 REP Settlement Agreements. Thereafter, BPA commenced a series of public meetings to discuss with interested parties BPA's response to the Court's opinions. At the conclusion of these meetings, BPA announced that it was commencing a section 7(i) process to determine whether and to what extent the 2000 REP Settlement Agreements caused illegal costs to be included in rates charged to the COUs. This proceeding, referred to as the WP–07 Supplemental Rate Hearing, began in February of 2008. In the WP–07 Supplemental Rate Hearing, BPA proposed to revise its prospective WP–07 rates for FY 2009 (the third year of the rate period), replacing the costs of the 2000 REP Settlement Agreements with REP benefits calculated in accordance with sections 5(c) and 7(b)(2) of the Northwest Power Act. In addition, BPA proposed to perform an analysis, referred to as the "Lookback," to determine whether BPA had overcharged the COUs during the WP–02 rate period (*i.e.,* FY 2002–2006) and the first two years of the WP–07 rate period (*i.e.,* FY 2007–2008). The Lookback compared the payments the IOUs received or would have received under the 2000 REP Settlement Agreements with the amount of REP benefits the IOUs would have received under a traditional implementation of the REP pursuant to sections 5(c) and 7(b) of the Northwest Power Act. For those IOUs that received more in REP benefits under the 2000 REP Settlement Agreements than allowed by sections

5(c) and 7(b)(2) of the Act, BPA assessed a refund obligation known as a "Lookback Amount." BPA proposed to collect the Lookback Amounts from the IOUs by withholding future benefits owed to the IOUs under the REP and issuing refunds to the injured COUs.

At the conclusion of the WP–07 Supplemental Hearing in September of 2008, BPA presented its final findings in the WP–07 Supplemental Record of Decision (WP–07 Supplemental ROD). In the WP–07 Supplemental ROD, BPA determined that the COUs had been overcharged by approximately $1 billion during the FY 2002–2008 period. BPA proposed to return these overcharges to the injured COUs with an initial lump-sum cash payment in 2008 and then through future reductions in REP benefit payments to the applicable IOUs.

In addition to determining the refunds and overcharges caused by the 2000 REP Settlement Agreements, the WP–07 Supplemental ROD also addressed BPA's final decisions on the appropriate amount of REP benefits to pay the IOUs, and include in rates, for FY 2009. To make this determination, BPA had to address a host of controversial issues related to the section 7(b)(2) rate test. Over 270 pages of the WP–07 Supplemental ROD were dedicated to addressing the issues and arguments presented by the parties on the section 7(b)(2) rate test.

Because the traditional REP was being implemented for FY 2009, BPA also needed to negotiate and execute new RPSAs with the IOUs intending to participate in the REP. Thus, concurrent with the WP–07 Supplemental Hearing, BPA also engaged in a public process to develop a new RPSA. After taking public comment on a prototype RPSA, BPA published a final RPSA in September of 2008. Among other terms included in the RPSA, BPA adopted a provision that would allow BPA to recover the Lookback Amounts from the IOUs by reducing future REP benefit payments. BPA's justification for including this and other provisions in the RPSA were explained in the 2008 RPSA Record of Decision (2008 RPSA ROD).

F. Challenges to BPA's WP–07 Supplemental ROD and RPSA Decisions: The Assoc. of Pub. Agency Customers v. Bonneville Power Admin., Idaho Pub. Util. Comm'n v. Bonneville Power Admin, and Avista Corp. v. Bonneville Power Admin

BPA's decisions in the WP–07 Supplemental ROD and the 2008 RPSA ROD were vigorously opposed by both COUs and IOUs. The COUs and entities supporting the COUs' position claimed that BPA had grossly underestimated the IOUs' refund obligation and that the actual overcharge to COUs for the FY 2002–2008 period was at least $2 billion. The IOUs, public utility commissions, and ratepayer advocacy groups, in contrast, argued that no refunds were owed at all because the Court did not direct BPA to provide refunds and because the terms of the 2000 REP Settlement Agreements specifically prohibited BPA from recouping REP benefits paid under those agreements. The IOUs and COUs also opposed BPA's interpretation and implementation of the section 7(b)(2) rate test for both the Lookback period and for setting rates in FY 2009.

In December 2008, fourteen petitions were filed in the Ninth Circuit challenging the Lookback-related findings and decisions BPA reached in the WP–07 Supplemental ROD. These challenges were consolidated into *The Assoc. of Pub. Agency Customers* v. *Bonneville Power Admin., et al.* (*APAC*). Also in December 2008, seven petitions were filed by a number of IOUs and public utility commissions challenging BPA's decision to adopt the final RPSAs. These challenges were consolidated into *Idaho Pub. Util. Comm'n* v. *Bonneville Power Admin.* (*IPUC*). On July 16, 2009, the Commission granted final approval to BPA's WP–07 rates for FY 2009. Shortly thereafter, fifteen more petitions challenging BPA's final WP–07 rates were filed with the Ninth Circuit and consolidated into *Avista Corp., et al.* v. *Bonneville Power Admin.* (*Avista*). Briefing on the issues in the *APAC* and *IPUC* cases began in August of 2009 and concluded in March of 2010. Briefing on the rate issues in *Avista* has yet to occur.

Shortly after petitions were filed in the *APAC* and *IPUC* cases, BPA commenced a rate proceeding to establish rates for the FY 2010–2011 period (WP–10 Rate Proceeding). In the WP–10 Rate Proceeding, BPA proposed to continue to implement its Lookback remedy by reducing the IOUs' prospective REP benefit payments and paying refunds to the COUs based on the determinations made in the WP–07 Supplemental ROD. BPA also proposed to implement the section 7(b)(2) rate test in the same manner as in the WP–07 Supplemental ROD. On July 21, 2009, BPA issued its final ROD in the WP–10 Rate Proceeding (WP–10 ROD.) In October and November of 2009, five IOUs filed precautionary petitions for review with the Ninth Circuit challenging BPA's decision to continue to implement the Lookback remedy in the WP–10 ROD. These appeals were consolidated in *Portland General Elec. et al.* v. *Bonneville Power Admin.* (*PGE II*). On August 6, 2010, the Commission granted final approval to BPA's WP–10 rates. Subsequently, in November of 2010, fifteen petitions were filed with the Ninth Circuit challenging the ratemaking decisions BPA reached in the WP–10 ROD. The petitions challenging BPA's WP–10 rate making decision have yet to be consolidated.

Following the completion of the briefing in the *APAC* and *IPUC* cases, the litigants in *APAC, IPUC, Avista,* and *PGE II* agreed to engage in mediation in an attempt to resolve their numerous disputes. Because many of the issues in the mediation would affect the prospective implementation of the REP, the litigants invited regional parties not involved in the litigation to participate in the mediation. The mediation sessions commenced in early April of 2010 and continued through May of 2010. Over fifty litigants and other parties participated in the mediation. Although by the conclusion of the scheduled mediation sessions the litigants and parties had not achieved a settlement, significant progress had been made toward reaching a compromise on all existing claims and the future implementation of the REP. Principals from most of the litigants agreed to continue meeting through August and September in an attempt to achieve a settlement.

In mid-September 2010, with assistance from the mediator, a large contingent of COUs and IOUs agreed to pursue resolution of the outstanding litigation and the future implementation of the REP pursuant to the terms of a non-binding Agreement in Principle (AIP). The AIP committed the negotiated parties to work in good faith on a final settlement of the REP that adhered to certain terms and conditions. From September to December of 2010, the parties worked to transform the AIP into a final settlement document. The final version of the proposed 2012 REP Settlement is expected to be completed by mid-December.

G. Proposed 2012 REP Settlement Agreement

The proposed 2012 REP Settlement would resolve challenges over BPA's implementation of the REP in return for a stream of REP benefits to the IOUs for a term of 17 years. The COUs' obligation to pay REP benefits in rates would be limited to the COUs' share of the stream of REP benefits as set forth in the agreement. The distribution of these REP payments to the IOUs would depend on each IOU's respective ASC and exchange load. The IOUs would continue to file ASCs with BPA

pursuant to the 2008 ASCM. In addition to the stream of REP benefits, the IOUs would receive a percentage of certain BPA Renewable Energy Credits (RECs) and the payment of certain outstanding interim payments due under the interim REP payment agreements between BPA and the IOUs.

The 2012 REP Settlement reflects a compromise by a substantial majority of BPA's customers and most of the litigants to the litigation on the outstanding REP-related issues. It was developed after extensive negotiations by representatives of COU customers, IOU customers, public utility commissions, and ratepayer advocacy groups. Many of these entities signed the AIP and are expected to sign the 2012 REP Settlement once it is completed. These parties have requested that BPA review the proposed settlement, and, if consistent with law, execute the Agreement and set rates consistent with its terms.

Part V. Summary of Proposal and Description of Major Studies

A. Summary of Proposal

Although BPA firmly believes that settlement of the existing REP litigation is in the interest of all BPA ratepayers, BPA must ensure that the terms and conditions in the 2012 REP Settlement are reasonable and comply with all relevant statutory provisions before executing the Agreement. BPA is conducting a section 7(i) proceeding to provide a forum in which BPA and other interested parties can evaluate the reasonableness and legal sufficiency of the proposed 2012 REP Settlement.

At the conclusion of the REP–12 proceeding, the Administrator will determine, after reviewing all evidence and arguments contained in the record, whether the terms of the proposed 2012 REP Settlement comport with BPA's statutory duties and authorities. If the Administrator determines that the settlement is consistent with applicable law, and is broadly supported by BPA's customers and other interested parties, he will sign the proposed 2012 REP Settlement and set BPA's FY 2012–2013 rates in accordance with the terms of the 2012 REP Settlement. In such case, the 2012 REP Settlement would replace BPA's current construct of withholding REP benefits due the IOUs and paying Lookback refund credits to eligible COUs as described in the WP–07 Supplemental ROD. In addition, the 2012 REP Settlement would settle the amount of rate protection afforded to COUs for the term of the agreement, obviating the need to continue the litigation over the section 7(b)(2) decisions BPA reached in the WP–07 Supplemental ROD and the WP–10 ROD.

If the Administrator determines the proposed 2012 REP Settlement is not consistent with BPA's statutory duties or is otherwise unreasonable, the Administrator will not sign the 2012 REP Settlement but will instead continue to set rates, recover Lookback Amounts and issue refunds consistent with his decisions in the WP–07 Supplemental ROD and the WP–10 ROD.

B. 2012 REP Settlement Analysis Initial Proposal

To test the reasonableness of the proposed 2012 REP Settlement, BPA will perform an analysis that will develop a range of forecast REP benefits reflecting the likely amount of REP benefits the IOUs would receive (and conversely the amount of rate protection the COUs would likely receive) in the absence of the 2012 REP Settlement. The range of REP benefits will be developed by quantifying the major issues being litigated by BPA, the IOUs, and the COUs in the current and pending litigation. Broadly speaking, the major issues being litigated today are the implementation of the section 7(b)(2) rate test, allocation of rate protection costs under section 7(b)(3), and the development and calculation of the Lookback Amounts. For each of these main issues, BPA will develop a 17-year forecast of REP benefits that is based on the parties' respective legal positions. The amount of REP benefits allowed under these various assumptions will then be compared to the REP benefits afforded to the IOUs under the 2012 REP Settlement to test whether the terms of the 2012 REP Settlement are reasonable and consistent with the protections provided by law.

BPA has modified the near-term Rate Analysis Model and has developed a new long-term section 7(b)(2) rate test model to quantify the parties' various litigation positions on rates and forecast REP benefits. The models will be used in tandem to quantify the near-term and long-term financial impacts on REP benefits under a variety of different litigation scenarios. Specifically, the models will evaluate the following contested issues: Rate test treatment of conservation resources and their effect on loads; treatment of conservation costs in the rate test; rate test accounting and financing treatment of conservation resource costs; rate test repayment study; treatment of Mid-Columbia resources; treatment of secondary energy credit; discounting of the stream of rate projections; elasticity of DSI loads; and allocation of rate protection costs to surplus power sales. Other scenarios may be added during the course of the proceeding. In addition to the rate modeling, the quantitative analysis will include the effect of parties' positions on the amount of Lookback Amounts owed on future REP benefits.

For purposes of the REP–12 Initial Proposal, BPA will use the above-noted issues to produce future REP benefits under different litigation scenarios. These scenarios are presented in the 2012 REP Settlement Agreement Study and Analysis. The models also quantify the impacts of non-litigation issues on future REP benefits, such as future growth in ASCs and BPA program costs.

C. Implementation of 2012 REP Settlement in Rates

In addition to the settling of the various REP issues in litigation, the 2012 REP Settlement also specifies certain ratemaking treatment of REP-related costs. Implementing the 2012 REP Settlement in ratemaking will affect the PF Exchange rate, the Industrial Firm Power rate (IP), and the New Resources rate (NR). While these ratemaking treatments have been already incorporated into the initial rate proposal in the BP–12 proceeding, the REP–12 proceeding will be examining these various ratemaking specifications to test whether the ratemaking treatments of the 2012 REP Settlement are reasonable and consistent with law.

D. Initial Proposal for the Section 7(b)(2) Rate Test and Lookback Amount Determinations in the Absence of Settlement

As noted above, BPA is evaluating the reasonableness and sustainability of the 2012 REP Settlement in the REP–12 proceeding. If the Administrator determines that the 2012 REP Settlement is not reasonable or is otherwise unlawful, the 2012 REP Settlement will not be executed and BPA will set rates assuming no settlement of the REP. Consequently, as an alternative to the 2012 REP Settlement, BPA is also proposing to implement the section 7(b)(2) rate test, the section 7(b)(3) allocations and surcharges, and the Lookback recovery and return for FY 2012–2013 in accordance with the decisions BPA reached in the WP–07 Supplemental ROD and WP–10 ROD, unless otherwise stated. If the 2012 REP Settlement is not adopted, the final decisions BPA reaches on these issues in this case will be incorporated into the BP–12 rate proceeding.

E. Major Studies

1. 2012 REP Settlement Agreement Study and Analysis

The 2012 REP Settlement Agreement Study and Analysis (REP Study) describes the terms of the 2012 REP Settlement and provides the analytical work BPA staff is performing to test the reasonableness of the 2012 REP Settlement. The REP Study is comprised of two major parts.

Part I of the REP Study reviews the history of the REP and the background underlying the current litigation. This portion of the REP Study also contains an overview of the section 7(b)(2) rate test and a description of how rate protection works in BPA ratemaking. Part I also describes the terms of the proposed 2012 REP Settlement and explains how BPA staff intends to implement the terms of the proposed settlement in BPA's rates.

Part II of the REP Study contains BPA staff's evaluation and analysis of the 2012 REP Settlement. This portion of the REP Study begins with an explanation of the criteria BPA staff is using to evaluate the 2012 REP Settlement. This section is followed by an overview of the models BPA staff developed to create a variety of near- and long-term forecasts of REP benefits under various scenarios. Part II of the REP Study also describes the various factors that will have an effect on REP benefits, such as the current and future issues in litigation and issues related to ASCs and the PF Exchange rate. At the end of Part II of the REP Study, BPA staff presents its scenario analysis. In this section, BPA staff presents near- and long-term REP benefits under different scenarios. These scenario REP benefits are compared to the REP benefits provided under the proposed 2012 REP Settlement to determine, from an analytical perspective, whether the 2012 REP Settlement affords rate protection to COUs and is otherwise reasonable.

2. FY 2012–2013 7(b)(2) Rate Test and Documentation

This Study will be used only if the 2012 REP Settlement is not adopted.

BPA has interpreted the Northwest Power Act and described how the section 7(b)(2) rate test will be performed in the *Section 7(b)(2) Legal Interpretation* (*Legal Interpretation*) and *Section 7(b)(2) Implementation Methodology* (*Implementation Methodology*) published in August, 2008. The Section 7(b)(2) Rate Test Study explains and documents the results of the rate test.

The 7(b)(2) rate test triggers in this proposal if no REP settlement is assumed, creating rate protection for preference customers and causing test period costs to be reallocated to others. The PF Public rate applied to the general requirements of COUs has been reduced by the rate protection amount and reallocated to other rates pursuant to section 7(b)(3). BPA's other rates, the PF Exchange rate and the NR and IP rates, have been increased by an allocation of the rate protection amount. An allocation of the rate protection amount has also been assigned to surplus power sales.

3. FY 2012–2013 Lookback Study

This Study will only be used if the 2012 REP Settlement is not adopted.

This Study explains and documents BPA's proposed modifications to the amounts to be recovered from the IOUs and applied to the Lookback Amounts determined in the final WP–07 Supplemental Proposal. The Study also sets forth the accounting of the Lookback Amounts expected to be recovered from IOUs and repaid to COUs during the FY 2012–2013 rate period. BPA also explains in this Study what amount of Lookback will be recovered from IOUs and returned to applicable COUs for the FY 2012–2013 rate period.

Part VI—Proposed 2012 REP Settlement Agreement

On December 17, 2010, a draft of the proposed 2012 REP Settlement will be available for viewing and downloading on BPA's Web site at *http://www.bpa.gov/corporate/ratecase/2012/rep-12.cfm*. Copies of the draft 2012 REP Settlement will also be available for viewing in BPA's Public Reference Room at the BPA Headquarters, 1st Floor, 905 NE. 11th Avenue, Portland, OR 97232.

Issued this 7th day of December 2010.

Stephen J. Wright,

Administrator and Chief Executive Officer.

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BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC10–542–001, FERC–542]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

December 9, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (FERC or the Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of August 2010 (75 FR 45609) and has notified OMB of this in its submission.

DATES: Further comments on this collection of information are due by January 18, 2011.

ADDRESSES: Address further comments on this collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include OMB Control Number 1902–0070 for reference. The Desk Officer may be reached by telephone at 202–395–4638.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket No. IC10–542–001. Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at *http://www.ferc.gov/help/submission-guide.asp*. To file the document

electronically, access the Commission's Web site and click on Documents & Filing, E-Filing *(http://www.ferc.gov/docs-filing/efiling.asp),* and then follow the instructions for each screen. First-time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

For paper filings, the comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. IC10–542–001.

Users interested in receiving automatic notification of activity in FERC Docket Number IC10–542 may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp.* All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the "eLibrary" link. For user assistance, contact *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by e-mail at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–542 "Gas Pipeline Rates: Rate Tracking" (OMB No. 1902–0070) is used by the Commission to implement the statutory provisions of Title IV of the Natural Gas Policy Act (NGPA), 15 U.S.C. 3301–3432, and Sections 4, 5 and 16 of the Natural Gas Act (NGA) (P.L. 75–688) (15 U.S.C. 717–717w). These statutes empower the Commission to collect natural gas transmission cost information from interstate natural gas transporters for the purpose of verifying that these costs, which are passed on to pipeline customers, are just and reasonable.

Interstate natural gas pipeline companies are required by the Commission to track their transportation-associated costs to allow for the Commission's review and, where appropriate, approve the pass-through of these costs to pipeline customers. These FERC–542 tracking filings are accountings of the cost of (1) Research, development, and deployment expenditures; (2) annual charge adjustments; and (3) periodic rate adjustments.

ACTION: The Commission is requesting a three-year extension of the FERC–542 reporting requirements, with the burden and cost estimates published in its August 2010 Notice. There is no change to the reporting requirements.

Burden Statement: The public reporting burden for this collection is estimated as:

FERC data collection	Annual number of respondents (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
FERC–542	95	3.5	40	13,300

The FERC's estimated cost burden to respondents is $881,598 (13,300 hours/2080 hours [1] times $137,874 [2]). The cost per respondent is $9,280.

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. 2010–31564 Filed 12–15–10; 8:45 am]

BILLING CODE 6717–01–P

[1] Number of hours an employee works each year.

[2] Average annual salary per employee.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2594–013–MT]

Northern Lights, Inc.; Notice of Availability of Environmental Assessment

December 9, 2010.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for a new license for the existing Lake Creek Hydroelectric Project, located on Lake Creek in Lincoln County, Montana, near the City of Troy and prepared a final environmental assessment (EA). The project does not occupy federal lands.

The Final EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the Final EA is on file with the Commission and is available for public inspection. The Final EA may

also 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 at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–31565 Filed 12–15–10; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Issuance of Exposure Drafts on Implementation Guidance on the Accounting for the Disposal of G–PP&E and Implementation Guidance for Estimating the Historical Cost of G–PP&E

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 2010, notice is hereby given that the Accounting and Auditing Policy Committee (AAPC) has issued two new Federal Financial Accounting Technical Release exposure drafts entitled *Implementation Guidance on the Accounting for the Disposal of G–PP&E and Implementation Guidance for Estimating the Historical Cost of G–PP&E.*

The Exposure Drafts are available on the FASAB home page *http://www.fasab.gov/exposure.html.* Copies can be obtained by contacting FASAB at (202) 512–7350.

Respondents are encouraged to comment on any part of the exposure draft. Written comments are requested by February 11, 2011, and should be sent to: Wendy M. Payne, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Wendy Payne, Executive Director, at (202) 512–7350.

Authority: Federal Advisory Committee Act, Public Law 92–463.

Dated: December 10, 2010.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. 2010–31538 Filed 12–15–10; 8:45 am]

BILLING CODE 1610–02–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 January 3, 2011.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Jeffrey J. Heiman and Jerod J. Heiman,* both of Wichita, Kansas; to retain control of Norcon Financial Corp., and thereby indirectly retain control of Conway Bank, National Association, both in Conway Springs, Kansas.

Board of Governors of the Federal Reserve System, December 13, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–31618 Filed 12–15–10; 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 January 10, 2011.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Connemara Bancorp, Inc.,* Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First Amherst Bancshares, Inc., and thereby indirectly acquire voting shares of First National Bank, both in Amherst, Texas.

Board of Governors of the Federal Reserve System, December 13, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–31617 Filed 12–15–10; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3241–N]

Medicare Program; Request for Nominations for Members for the Medicare Evidence Development & Coverage Advisory Committee

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: This notice announces the request for nominations for consideration for membership on the Medicare Evidence Development & Coverage Advisory Committee (MEDCAC). Among other things, the MEDCAC advises the Secretary of the

Department of Health and Human Services (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS), as requested by the Secretary, whether medical items and services are "reasonable and necessary" and therefore eligible for coverage under Title XVIII of the Social Security Act.

We are requesting nominations for both voting and nonvoting members to serve on the MEDCAC. Nominees are selected based upon their individual qualifications and not as representatives of professional associations or societies. We have a special interest in ensuring that the interests of both women and men, members of all racial and ethnic groups, and physically challenged individuals are adequately represented on the MEDCAC. Therefore, we encourage nominations of qualified candidates who can represent these interests.

The MEDCAC reviews and evaluates medical literature, reviews technology assessments, and examines data and information on the effectiveness and appropriateness of medical items and services that are covered or eligible for coverage under Medicare.

DATES: Nominations will be considered if postmarked by Monday, January 31, 2011 and mailed to the address specified in the **ADDRESSES** section of this notice.

ADDRESSES: You may mail nominations for membership to the following address: Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, Attention: Maria Ellis, 7500 Security Boulevard, Mail Stop: South Building 3–02–01, Baltimore, MD 21244.

FOR FURTHER INFORMATION CONTACT: Maria Ellis, Executive Secretary for the MEDCAC, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, Coverage and Analysis Group, S3–02–01, 7500 Security Boulevard, Baltimore, MD 21244 or contact Ms. Ellis by phone (410–786–0309) or via e-mail at *Maria.Ellis@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On December 14, 1998, we published a notice in the **Federal Register** (63 FR 68780) announcing establishment of the Medicare Coverage Advisory Committee (MCAC). The Secretary signed the initial charter for the Medicare Coverage Advisory Committee on November 24, 1998. On January 26, 2007 the Secretary published a notice in the **Federal Register** (72 FR 3853), changing the Committee's name to the MEDCAC. The charter for the committee was recently renewed by the Secretary and will terminate on November 24, 2012, unless renewed again by the Secretary.

The MEDCAC is governed by provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2), which sets forth standards for the formulation and use of advisory committees, and is authorized by section 222 of the Public Health Service Act as amended (42 U.S.C. 217A).

The MEDCAC consists of a pool of 100 appointed members including: 6 patient advocates, who are standard voting members, and 6 representatives of industry interests, who are nonvoting members. Members are selected from authorities in clinical medicine of all specialties, administrative medicine, public health, biologic and physical sciences, health care data and information management and analysis, patient advocacy, the economics of health care, medical ethics, and other related professions such as epidemiology and biostatistics, and methodology of trial design.

The MEDCAC functions on a committee basis. The committee reviews and evaluates medical literature, reviews technology assessments, and examines data and information on the effectiveness and appropriateness of medical items and services that are covered or eligible for coverage under Medicare. The Committee works from an agenda provided by the Designated Federal Official that lists specific issues, and develops technical advice to assist us in determining reasonable and necessary applications of medical services and technology when we make national coverage decisions for Medicare. The Committee also advises CMS as part of Medicare's "coverage with evidence development" activities.

II. Provisions of the Notice

As of June 2011, there will be 19 terms of membership expiring, 2 of which are nonvoting industry representatives and 2 of which are voting patient advocates.

Accordingly, we are requesting nominations for both voting and nonvoting members to serve on the MEDCAC. Nominees are selected based upon their individual qualifications and not as representatives of professional associations or societies. We have a special interest in ensuring that women, minority groups, and physically challenged individuals are adequately represented on the MEDCAC. Therefore, we encourage nominations of qualified candidates from these groups.

All nominations must be accompanied by *curricula vitae.* Nomination packages must be sent to Maria Ellis at the address listed in the **ADDRESSES** section of this notice. Nominees for voting membership must also have expertise and experience in one or more of the following fields:

- Clinical medicine of all specialties
- Administrative medicine
- Public health
- Patient advocacy
- Biologic and physical sciences
- Health care data and information management and analysis
- The economics of health care
- Medical ethics
- Other related professions such as epidemiology and biostatistics, and methodology of clinical trial design

We are looking for experts in a number of fields. Our most critical needs are for experts in hematology; genomics; end of life care; Bayesian statistics; clinical epidemiology; clinical trial methodology; knee, hip, and other joint replacement surgery; ophthalmology; psychopharmacology; registries; rheumatology; screening and diagnostic testing analysis; and vascular surgery. We also need experts in biostatistics in clinical settings, cardiovascular epidemiology, dementia, endocrinology, geriatrics, gynecology, minority health, observational research design, stroke epidemiology, and women's health.

The nomination letter must include a statement that the nominee is willing to serve as a member of the MEDCAC and appears to have no conflict of interest that would preclude membership. We are requesting that all curricula vitae include the following:

- Date of birth
- Place of birth
- Social security number
- Title and current position
- Professional affiliation
- Home and business address
- Telephone and fax numbers
- E-mail address
- List of areas of expertise

In the nomination letter, we are requesting that the nominee specify whether they are applying for a voting patient advocate position, for another voting position, or as a nonvoting industry representative. Potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

Members are invited to serve for overlapping 2-year terms. A member

may serve after the expiration of the member's term until a successor takes office. Any interested person may nominate one or more qualified persons. Self-nominations are also accepted.

The current Secretary's Charter for the MEDCAC is available on the CMS Web site at: *http://www.cms.hhs.gov/FACA/Downloads/medcaccharter.pdf*, or you may obtain a copy of the charter by submitting a request to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Authority: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.)

Dated: December 13, 2010.

Barry M. Straube,

CMS Chief Medical Officer, Director, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–31642 Filed 12–15–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1573–N]

Medicare Program; First Semi-Annual Meeting of the Advisory Panel on Ambulatory Payment Classification Groups—February 28, 2011 Through March 2, 2011

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the first semi-annual meeting of the Advisory Panel on Ambulatory Payment Classification (APC) Groups (the Panel) for 2011. The purpose of the Panel is to review the APC groups and their associated weights and to advise the Secretary of the Department of Health and Human Services (DHHS) (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) (the Administrator) concerning the clinical integrity of the APC groups and their associated weights established under the Medicare hospital Outpatient Prospective Payment System (OPPS). We will consider the Panel's advice as we prepare the proposed rule to update the Medicare hospital Outpatient Prospective Payment System (OPPS) for CY 2012.

DATES: *Meeting Dates:* We are scheduling the first semi-annual meeting in 2011 for the following dates and times:

- Monday, February 28, 2011, 1 p.m. to 5 p.m. eastern standard time (e.s.t.)
- Tuesday, March 1, 2011, 8 a.m. to 5 p.m. (e.s.t.)
- Wednesday, March 2, 2011, 8 a.m. to 12 Noon (e.s.t.)

Note 1: The times listed in this notice are approximate times; consequently, the meetings may last longer than listed in this notice, but it will not begin before the posted times.

Note 2: If the Panel's business concludes by COB on Tuesday (3/1/2011), there will be no meeting on Wednesday (3/2/2011).

Deadlines

Deadline for Hardcopy Comments (including the comment in electronic format)/Suggested Agenda Topics—
5 p.m. (e.s.t.), Monday, February 7, 2011.

Deadline for Hardcopy Presentations, including the required electronic documents as discussed below—
5 p.m. (e.s.t.), Monday, February 7, 2011.

Deadline for Attendance Registration—
5 p.m. (e.s.t.), Wednesday, February 23, 2011.

Deadline for Special Accommodations—
5 p.m. (e.s.t.), Wednesday, February 23, 2011.

Submission of Materials to the Designated Federal Officer (DFO)

Because of staffing and resource limitations, we cannot accept written comments and presentations by FAX, nor can we print written comments and presentations received electronically for dissemination at the meeting.

Only hardcopy comments and presentations can be reproduced for public dissemination. All hardcopy presentations must be accompanied by Form CMS–20017 (revised 01/07). The form is now available through the CMS Forms Web site. The Uniform Resource Locator (URL) for linking to this form is as follows: *http://www.cms.hhs.gov/cmsforms/downloads/cms20017.pdf.*

Presenters must use the most recent copy of CMS–20017 (updated 01/07) at the above URL. Additionally, presenters must clearly explain the action(s) that they are requesting CMS to take in the appropriate section of the form. They must also clarify their relationship to the organization that they represent in the presentation.

(**Note:** Issues that are vague, or that are outside the scope of the APC Panel's purpose, will not be considered for presentations and comments. There will be no exceptions to this rule. We appreciate your cooperation on this matter.)

We are also requiring electronic versions of the written comments and presentations, in addition to the hardcopies.

In summary, presenters and/or commenters must do the following:

- Send both electronic and hardcopy versions of their presentations and written comments by the prescribed deadlines.
- Send electronic transmissions to the e-mail address below.
- Do not send pictures of patients in any of the documents unless their faces have been blocked out.
- Do not send documents electronically that have been archived.
- Mail (or send by courier) to the DFO all hardcopies, accompanied by Form CMS–20017 (revised 01/07), if they are presenting, as specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice.
- Commenters are not required to send Form CMS–20017 with their written comments.

ADDRESSES: The meeting will be held in the Auditorium, CMS Central Office, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Shirl Ackerman-Ross, DFO, CMS, CM, HAPG, DOC, 7500 Security Boulevard, Mail Stop C4–05–17, Baltimore, MD 21244–1850. *Phone:* (410) 786–4474. *E-mail: SAckermanross@cms.hhs.gov.*

(**Note:**) We recommend that you advise couriers of the following information: When delivering hardcopies of presentations to CMS, if no one answers at the above phone number, call (410) 786–4532 or (410) 786–9316.)

The e-mail address for comments, presentations, and registration requests is *CMS APCPanel@cms.hhs.gov.*

(**Note:** There is NO underscore in this e-mail address; there is a SPACE between CMS and APCPanel.)

News media representatives must contact our Public Affairs Office at (202) 690–6145.

Advisory Committees' Information Lines: The phone numbers for the CMS Federal Advisory Committee Hotline are 1–877–449–5659 (toll free) and (410) 786–9379 (local).

Web Sites: Access the CMS Web site at: *http://www.cms.hhs.gov/FACA/05_AdvisoryPanelonAmbulatoryPaymentClassificationGroups.asp#TopOfPage* to obtain the following information:

(**Note:** There is an UNDERSCORE after FACA/05(like this_); there is no space.)

- Additional information on the APC meeting agenda topics.
- Updates to the Panel's activities.
- Copies of the current Charter.
- Membership requirements.

You may also search information about the APC Panel and its membership in the FACA database at the following URL: *https://www.fido.gov/facadatabase/public.asp.*

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary is required by section 1833(t)(9)(A) of the Social Security Act (the Act) to consult with an expert, outside advisory panel on the clinical integrity of the Ambulatory Payment Classification (APC) groups and their associated weights established under the Medicare hospital OPPS.

The APC Panel meets up to three times annually. The Charter requires that the Panel must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed. The Panel consists of up to 15 members who are representatives of providers and a Chair.

Each Panel member must be employed full-time by a hospital, hospital system, or other Medicare provider subject to payment under the OPPS. The Secretary or Administrator selects the Panel membership based upon either self-nominations or nominations submitted by Medicare providers and other interested organizations.

All members must have technical expertise to enable them to participate fully in the Panel's work. Such expertise encompasses hospital payment systems; hospital medical care delivery systems; provider billing and accounting systems; APC groups; Current Procedural Terminology codes; Health Care Common Procedure Coding System (HCPCS) codes; the use of, and payment for, drugs, medical devices, and other services in the outpatient setting; and other forms of relevant expertise. Details regarding membership requirements for the APC Panel are found on the FACA and CMS Web sites as listed above.

The Panel presently consists of the following members:

- E. L. Hambrick, M.D., J.D., Chair, Medical Officer, CMS.
- Ruth L. Bush, M.D., M.P.H.
- Kari S. Cornicelli, C.P.A., F.H.F.M.A.
- Dawn L. Francis, M.D., M.H.S.
- Kathleen Graham, R.N., M.S.H.A., C.P.H.Q., A.C.M.
- Patrick A. Grusenmeyer, Sc.D., F.A.C.H.E.
- David A. Halsey, M.D.
- Brian D. Kavanagh, M.D., M.P.H.
- Judith T. Kelly, R.H.I.T., R.H.I.A., C.C.S.
- Scott Manaker, M.D., Ph.D.
- John Marshall, C.R.A., F.A.H.R.A., R.C.C., R.T.®
- Agatha L. Nolen, D.Ph., M.S., F.A.S.H.P.
- Randall A. Oyer, M.D.
- Daniel J. Pothen, M.S., R.H.I.A., C.H.P.S., C.P.H.I.M.S., C.C.S.–P.
- Gregory Przybylski, M.D.
- Neville B. Sarkari, M.D., F.A.C.P.

II. Agenda

The agenda for the August 2010 meeting will provide for discussion and comment on the following topics as designated in the Panel's Charter:

- Addressing whether procedures within an APC group are similar both clinically and in terms of resource use.
- Reconfiguring APCs (for example, splitting of APCs, moving HCPCS codes from one APC to another, and moving HCPCS codes from new technology APCs to clinical APCs).
- Evaluating APC group weights.
- Reviewing packaging the cost of some items and services, including drugs and devices, into procedures and services, including the methodology and the impact on APC group structure and payment.
- Removing procedures from the inpatient list for payment under the OPPS.
- Using claims and cost report data for CMS' determination of APC group costs.
- Addressing other technical issues concerning APC group structure.

(**Note:** The subject matter before the Panel will be limited to these and related topics. Unrelated topics are not subjects for discussion. Unrelated topics include, but are not limited to, the conversion factor, charge compression, revisions to the cost report, pass-through payments, correct code usage, and provider payment adjustments. Therefore, these issues will not be considered for presentations and/or comments. There will be no exceptions to this rule. We appreciate your cooperation on this matter.)

The Panel may use data collected or developed by entities and organizations, other than the Department of Health and Human Services (DHHS) and CMS, in conducting its review. We recommend organizations to submit data for the Panel's and CMS staff's review.

III. Written Comments and Suggested Agenda Topics

Hardcopy and electronic written comments and suggested agenda topics should be sent to the DFO as specified in the **ADDRESSES** section of this notice. The DFO must receive these items by 5 p.m. (e.s.t.), Monday, February 7, 2011. There will be no exceptions. We appreciate your cooperation on this matter.

The written comments and suggested agenda topics submitted for the winter 2011 APC Panel meeting must fall within the subject categories outlined in the Panel's Charter and as listed in the Agenda section of this notice.

IV. Oral Presentations

Individuals or organizations wishing to make 5-minute oral presentations must submit hardcopy and electronic versions of their presentations to the DFO by 5 p.m. (e.s.t.), Monday, February 7, 2011, for consideration.

The number of oral presentations may be limited by the time available. Oral presentations should not exceed 5 minutes in length for an individual or an organization.

The Chair may further limit time allowed for presentations due to the number of oral presentations, if necessary. Presentation times listed in the public agenda are approximate and presenters should be prepared to present earlier and later than indicated.

V. Presenter and Presentation Information

All presenters must submit Form CMS–20017 (revised 01/07). Hardcopies are required for oral presentations; however, electronic submissions of Form CMS–20017 are optional. The DFO must receive the following information from those wishing to make oral presentations:

- Form CMS–20017 completed with all pertinent information identified on the first page of the presentation.
- One hardcopy of presentation.
- Electronic copy of presentation.
- Personal registration information as described in the "Meeting Attendance" section below.
- Those persons wishing to submit comments only must send hardcopy and electronic versions of their comments, but they are not required to submit Form CMS–20017.

VI. Collection of Information Requirements

This document does not impose any information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VII. Oral Comments

In addition to formal oral presentations, there will be opportunity

during the meeting for public oral comments, which will be limited to 1 minute for each individual and a total of 3 minutes per organization.

VIII. Meeting Attendance

The meeting is open to the public; however, attendance is limited to space available. Attendance will be determined on a first-come, first-served basis.

Persons wishing to attend this meeting, which is located on Federal property, must e-mail the DFO to register in advance no later than 5 p.m. (e.s.t.), Wednesday, February 23, 2011. A confirmation will be sent to the requester(s) by return e-mail.

The following personal information must be e-mailed to the DFO by the date and time above:

- Name(s) of attendee(s).
- Title(s).
- Organization.
- E-mail address(es).
- Telephone number(s).

IX. Security, Building, and Parking Guidelines

The following are the security, building, and parking guidelines:

- Persons attending the meeting including presenters must be registered and on the attendance list by the prescribed date.
- Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting.
- Attendees must present photographic identification to the Federal Protective Service or Guard Service personnel before entering the building.
- Security measures include inspection of vehicles, inside and out, at the entrance to the grounds.
- All persons entering the building must pass through a metal detector.
- All items brought into CMS including personal items, such as laptops, cell phones, and palm pilots, are subject to physical inspection.
- The public may enter the building 30 to 45 minutes before the meeting convenes each day.
- All visitors must be escorted in areas other than the lower and first-floor levels in the Central Building.
- The main-entrance guards will issue parking permits and instructions upon arrival at the building.

X. Special Accommodations

Individuals requiring sign-language interpretation or other special accommodations must send a request for these services to the DFO by 5 p.m. (e.s.t.), Wednesday, February 23, 2011.

XI. Panel Recommendations and Discussions

The Panel's recommendations at any APC Panel meeting generally are not final until they have been reviewed and approved by the Panel on the last day prior to final adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 2, 2010.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–31542 Filed 12–15–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Public Comment on the Draft Tribal Consultation Policy

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: On November 5, 2009, President Obama signed the "Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation." The President stated that his Administration is committed to regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications, including, as an initial step, through complete and consistent implementation of Executive Order 13175.

The United States has a unique legal and political relationship with Indian tribal governments, established through and confirmed by the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions. In recognition of that special relationship, pursuant to Executive Order 13175 of November 6, 2000, executive departments and agencies are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, and are responsible for strengthening the government-to-government relationship between the United States and Indian Tribes.

The Department of Health and Human Services (HHS) has taken its responsibility to comply with Executive Order 13175 very seriously over the past decade, including the initial implementation of a Department-wide policy on tribal consultation and coordination in 1997, and through multiple evaluations and revisions of that policy, most recently in 2008. Many HHS agencies have already developed their own agency-specific consultation policies that complement the Department-wide efforts.

Since 2005, the Administration for Children and Families (ACF) has been working under the guidance of the HHS policy issued in 2005, and updated in 2008. Due to the various programs administered by ACF and the many requests from Tribes for consultation for specific programs, as well as specific program mandates for tribal consultation, ACF has decided to create an ACF Tribal Consultation Policy to help ACF program and regional offices better engage Federally recognized Indian Tribes in the development or revision of policies, regulations, and proposed legislation that impact American Indians. ACF firmly believes that to create a good policy, ACF needs input from Tribes to ensure that ACF is meeting tribal needs and to establish a partnership that can carry into the future. ACF solicited membership for an ACF Tribal/Federal Workgroup to develop the initial draft policy. The Workgroup met August 23 and 24, 2010, in Washington, DC, and again in Minneapolis, Minnesota, on September 16 and 17, 2010. The draft was reviewed by tribal leaders attending the ACF Tribal Consultation Session held in Washington, DC on September 29, 2010, and the Workgroup met again to address the comments heard at the Tribal Consultation Session. ACF will convene the Tribal/Federal Workgroup again to review and address the comments received from this publication.

DATES: The deadline for receipt of comments is January 31, 2011.

ADDRESSES: Comments made in response to this notice should be addressed to Lillian Sparks, Commissioner, Administration for Native Americans, 370 L'Enfant Promenade, SW., Mail Stop: Aerospace 2—West, Washington, DC 20447. Delays may occur in mail delivery to Federal offices; therefore, a copy of comments should be faxed to (202) 690–7441. Comments will be available for inspection by members of the public at the Administration for Native Americans, 901 D Street, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Lillian Sparks, Commissioner, Administration for Native Americans, (877) 922–9262.

SUPPLEMENTARY INFORMATION: The draft Tribal Consultation Policy is provided below.

Dated: December 7, 2010.

David A. Hansell,

Acting Assistant Secretary for Children and Families.

U.S. Department of Health and Human Services

Administration for Children and Families

Tribal Consultation Policy

1. Introduction

On November 5, 2009, President Obama signed an Executive Memorandum reaffirming the government-to-government relationship between Indian Tribes and the Federal Government, and directing each executive department and agency to consult with Tribal Governments prior to taking actions that affect this population. The importance of consultation with Indian Tribes was affirmed through Presidential Memoranda in 1994, 2004, and 2009, and Executive Order 13175 in 2000.

The U.S. Department of Health and Human Services (HHS) and Indian Tribes share the goal of eliminating health and human service disparities of American Indians and Alaska Natives (AI/AN) and ensuring that access to critical health and human services is maximized.

2. Purpose

The Administration for Children and Families, as an Operating Division within the Department of Health and Human Services, hereby establishes a consultation policy with Federally recognized Indian Tribes in accordance with the HHS consultation policy. The purpose of the ACF tribal consultation policy is to build meaningful relationships with Federally recognized Tribes by engaging in open, continuous, and meaningful consultation. True consultation leads to information exchange, mutual understanding, and informed decision-making.

This ACF Tribal Consultation Policy document was developed based upon:

- Executive Order 13175, reaffirmed in 2009;
- HHS Tribal Consultation Policy (established in 2005, and amended in 2010);
- Input from an ACF Tribal/Federal Workgroup convened to develop the ACF Draft Consultation Policy;
- Input from Tribes to ensure a consultation policy that reflects the goals of all partners involved; and
- Input of all of the programs and regions within ACF, many of which already consult with American Indians and Alaska Natives (AI/ANs).

3. Background

Since the formation of the Union, the United States (U.S.) has recognized Indian Tribes as sovereign nations. A unique nation-to-nation relationship exists between AI/AN Indian Tribes and the Federal Government. This relationship is grounded in the U.S. Constitution, numerous treaties, statutes, and executive orders, as well as political, legal, moral, and ethical principles. This relationship is derived from the political relationship that Tribes have with the Federal Government and is not based upon race. The Federal Government has enacted numerous regulations that establish and define a trust relationship with Indian Tribes.

An integral element of this government-to-government relationship is that consultation occurs with Indian Tribes. This policy applies to all offices of ACF. Offices shall provide an opportunity for meaningful consultation between Tribes and ACF in policy development, as set forth in this policy. Executive Memorandum entitled "Government-to-Government Relationship with Tribal Governments" reaffirmed this government-to-government relationship with Indian Tribes on November 5, 2009. The implementation of this policy is in recognition of this special relationship.

This special relationship is affirmed in statutes and various Presidential Executive Orders including, but not limited to:

- Older Americans Act, Public Law 89–73, as amended (42 U.S.C. 3001 *et seq.*);
- Indian Self-Determination and Education Assistance Act, Public Law 93–638, as amended (25 U.S.C. 450 *et seq.*);
- Native American Programs Act, Public Law 93–644, as amended (42 U.S.C. 2991 *et seq.*);
- Indian Health Care Improvement Act, Public Law 94–437, as amended (25 U.S.C. 1601 *et seq.*);
- Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193 (42 U.S.C. 1305 *et seq.*);
- Head Start for School Readiness Act of 2007, Public Law 110–134, as amended (42 U.S.C. 9801 *et seq.*);
- Patient Protection and Affordable Care Act (PPACA), Public Law 111–148 (42 U.S.C. 18001 *et seq.*);
- Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law 110–351 (42 U.S.C. 1305 *et seq.*);
- Presidential Executive Memorandum to the Heads of Executive Departments dated April 29, 1994;
- Presidential Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, November 6, 2000; and
- Presidential Memorandum, Government-to-Government Relationship with Tribal Governments, September 23, 2004 and November 5, 2009.

4. Tribal Sovereignty

This policy does not waive any Tribal Governmental rights, including treaty rights, sovereign immunities or jurisdiction. Additionally, this policy does not diminish any rights or protections afforded other AI/AN persons or entities under Federal law.

Our Nation, under the law of the U.S. and in accordance with treaties, statutes, Executive Orders, and judicial decisions has recognized the right of Indian Tribes to self-government and self-determination. Indian Tribes exercise inherent sovereign powers over their members and territory. The U.S. continues to work with Indian Tribes on a government-to-government basis to address issues concerning tribal self-government, tribal trust resources, tribal treaties and other rights.

The constitutional relationship among sovereign governments is inherent in the very structure of the Constitution, and is formalized in and protected by Article I, Section 8. Self-determination and meaningful involvement for Indian Tribes in Federal decision-making through consultation in matters that affect Indian Tribes have been shown to result in improved program performance and positive outcomes for tribal communities. The involvement of Indian Tribes in the development of public health and human services policy allows for locally relevant and culturally appropriate approaches to public issues.

Tribal self-government has been demonstrated to improve and perpetuate the government-to-government relationship and strengthen tribal control over Federal funding that it receives, and its internal program management.

5. Background on ACF

ACF provides national leadership and direction to plan, manage, and coordinate the nationwide administration of comprehensive and supportive programs for vulnerable and at-risk children and families. ACF oversees and finances a broad range of

programs for children and families, including Native Americans, persons with developmental disabilities, refugees, and legal immigrants, to help them develop and grow toward a more independent, self-reliant life. These programs, carried out by State, county, city, and Tribal Governments, and public and private local agencies, are designed to promote stability, economic security, responsibility, and self-sufficiency.

ACF coordinates development and implementation of family-centered strategies, policies, and linkages among its programs, and with other Federal, tribal and State programs serving children and families. ACF's programs assist families in financial crisis, emphasizing short-term financial assistance, and education, training, and employment for the long term. Its programs for children and youth focus on those children and youth with special problems, including children of low-income families, abused and neglected children, those in institutions or requiring adoption or foster family services, runaway youth, children with disabilities, migrant children, and Native American children. ACF promotes the development of comprehensive and integrated community and home-based modes of service delivery where possible. The following offices are located in ACF:

- Administration on Children, Youth, and Families (ACYF)
  - Children's Bureau (CB)
  - Family and Youth Services Bureau (FYSB)
- Administration on Developmental Disabilities (ADD)
- Administration for Native Americans (ANA)
- Office of Administration
- Office of Community Services (OCS)
- Office of Child Care (OCC)
- Office of Child Support Enforcement (OCSE)
- Office of Family Assistance (OFA)
  - Temporary Assistance for Needy Families Bureau (TANF)
- Office of Head Start (OHS)
- Office of Human Services Emergency Preparedness and Response (OHSEPR)
- Office of Legislative Affairs and Budget (OLAB)
- Office of Planning, Research, and Evaluation (OPRE)
- Office of Refugee Resettlement (ORR)
- Office of Regional Operations (ORO)
- President's Committee for People with Intellectual Disabilities (PCPID), an advisory Committee to the President of the United States and Health and Human Services Secretary.

In June 2010, ACF established the Native American Affairs Advisory Council (NAAAC). This Council will function as an internal agency work group to support the Assistant Secretary for Children and Families, the Commissioner of ANA, and all ACF program and regional offices that provide services to Native Americans. On behalf of the Assistant Secretary, Administration for Children and Families, the Commissioner of ANA is the Chair of the NAAAC and ANA is the lead office to coordinate the activities. One of the responsibilities of the Council is to facilitate the development of the ACF Tribal Consultation Policy, in conjunction with the Office of the Assistant Secretary for Children and Families.

The members of the Council are the ACF program and regional offices that have Native American constituents or work with Native American communities. These offices include the Administration on Children, Youth, and Families (Children's Bureau, and the Family and Youth Services Bureau); the Administration on Developmental Disabilities; the Administration for Native Americans; the Office of Child Care; the Office of Child Support Enforcement; the Office of Community Services; the Office of Family Assistance (Tribal Temporary Assistance for Needy Families [Tribal TANF]); the Office of Head Start; the Office of Planning, Research, and Evaluation; and the Office of Regional Operations. The following Regions will be represented: Region I, Region II, Region IV, Region V, Region VI, Region VII, Region VIII, Region IX, and Region X.

6. Consultation Principles

Consultation is an enhanced form of communication that emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinion among parties, which leads to mutual understanding and comprehension. Consultation is integral to a deliberative process that results in effective collaboration and informed decision-making with the ultimate goal of reaching consensus on issues.

The ACF policy is to conduct timely communication and meaningful consultation with Tribes wherein elected officials and other authorized representatives of the Tribal Governments have an opportunity to provide meaningful and timely input prior to a legislative proposal, new rule adoption, or other policy change that ACF determines may significantly affect Indian Tribes, or where one or more Tribes has communicated that such action will significantly affect one or more Indian Tribes. An action is considered to significantly affect Tribes if it has substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

7. Consultation Parties

Consultation parties are:

A. The ACF Assistant Secretary, ACF Deputy Assistant Secretaries, ACF Central Office Principals, or their designee, and

B. Tribal President, Tribal Chair, or Tribal Governor, or an elected or appointed Tribal Leader, or their authorized representative(s).

Each party will identify their authorized representatives with delegated authorities to negotiate on their behalf.

8. Consultation Process

A. Consultation is initiated when either the ACF or a Tribe(s) makes a written request for a consultation to discuss issue(s) concerning a legislative proposal, new rule adoption, or other policy change that ACF determines may significantly affect the Tribe(s).

B. A consultation request by a Tribe should:

1. Identify the subject issue(s) for resolution.

2. Identify the applicable program(s), policy, rule, regulation, statute, and authorizing legislation.

3. Identify the related concerns such as State-tribal relations, related programs, complexity, time constraints, funding and budget implications.

4. Identify the affected and potentially affected Indian Tribe(s).

ACF will acknowledge receipt of the tribal consultation request within 14 calendar days after receipt of the letter.

C. Proper notice of the tribal consultation and the level of consultation, as determined by ACF, shall be communicated to all affected and all potentially affected Indian Tribes within 45 calendar days after receipt of the tribal request. Appropriate forms of notice include a "Dear Tribal Leader Letter" signed by the Assistant Secretary, broadcast e-mail, **Federal Register** (FR), and other outlets.

D. The following are Levels of Consultation: Consultation will occur through a combination of one or more levels of consultation, defined below, and will include additional actions and participants as determined by the parties.

1. Meeting(s): One or more meetings with affected and potentially affected Indian Tribes to discuss all pertinent issues related to the legislative proposal, new rule adoption, or other policy change that ACF determines may significantly affect the Tribe(s) using a single purpose meeting, or a national or regional forum, if appropriate, when the consultation is determined to include all Tribes. Meetings can be face-to-face or by teleconference call.

2. Correspondence: Written communications exchanged between ACF and the Indian Tribe(s) that provide affected and potentially affected Indian Tribes an opportunity to identify concerns, potential impacts, proposed alternatives or flexibilities, and provide ACF with the opportunity to identify resources and other considerations relevant to the issue(s) raised. All correspondence will identify the manner in which tribal comments will be solicited.

3. **Federal Register**: When one or more meetings are not practicable, notices in the **Federal Register** will represent the level of consultation to solicit comment from Tribes about concerns, potential impacts, proposed alternatives or flexibilities. Such notices will include clear and explicit instructions for the submission of comments that provide adequate time for tribal responses.

E. Reporting of Outcome: All national and regional consultation meetings and recommended actions shall be recorded and made available to Indian Tribes.

ACF program offices will provide a detailed report on their consultation sessions, which summarizes the discussions, specific recommendations, and responses and solicits tribal feedback on the consultation process, within forty-five (45) calendar days of the conclusion of the consultation process. The ACF report will be available on the program offices' Web sites.

Once the consultation process is complete and a proposed policy is approved and issued, the final policy must be broadly distributed to all Indian Tribes and it will be independently posted on the ACF webpage and also linked to several appropriate tribal and inter-tribal organization Web sites.

F. Meaningful Outcomes: The consultation process and activities conducted within the scope of the ACF policy should result in a meaningful outcome for both ACF and Tribes. Before any final policy decisions are adopted, the proposed outcome of a consultation shall be widely publicized and circulated for review and comment to affected Indian Tribes, inter-tribal organizations, and within HHS.

Good faith implementation of ACF programs and a cooperative working relationship with Tribes in support of ACF programs is the primary meaningful outcome. ACF will work with States to emphasize the importance of providing progam services and funding on an equitable basis to tribal members.

ACF shall facilitate meaningful consultations and outcomes between Tribe(s) and one or more States administering ACF programs, shall measure State performance in serving tribal populations, report the outcome of its efforts to affected Tribes, and shall make a good faith effort to ensure all parties fully comply with ACF program requirements.

G. Waivers and Elevation of Issue(s): The intent of this policy is to provide increased ability to address issues impacting Indian Tribes. ACF will, to the extent practicable and permitted by law, utilize flexible approaches to enable Tribes to achieve established ACF program objectives, including consideration of waivers of statutory and regulatory requirements and other alternatives that preserve the prerogatives and authority of Indian Tribes.

In cases where a Tribe(s) is not satisfied with the resolution of an issue or issues after consultation with the program office, a Tribe(s), consistent with the government-to-government relationship, may elevate an issue of importance to the Assistant Secretary of ACF. If the Tribe is still not satisfied with the resolution of an issue after consultation with the Assistant Secretary of ACF, a Tribe(s), consistent with the government-to-government relationship, may elevate an issue of importance to the Department, through the Office of Intergovernmental Affairs (IGA), for decision.

9. ACF Consultation and Communication Responsibilities

ACF will conduct an annual agency-wide tribal consultation each year, in addition to the tribal consultations required by several ACF program offices. The following will guide ACF's coordination of the various sessions. The NAAAC will work with the program offices to coordinate ACF required consultations, on required topics and in required regions, to maximize the time and resources of Indian Tribes and program offices.

A. ACF Annual Tribal Consultation Session

1. ACF will hold, at a minimum, an agency-wide annual tribal consultation session to discuss ACF programs and policies impacting tribal programs. ANA, working through NAAAC, will be the lead agency to coordinate the annual tribal consultation session.

2. Every ACF program office Principal, or their designee, will be required to participate in the annual ACF tribal consultation.

3. NAAAC will coordinate with the program offices to prepare and disseminate a written report within forty-five (45) calendar days of the annual ACF tribal consultation.

4. ACF will post this report on its Web site.

5. The annual ACF tribal consultation session will not supplant any tribal consultation sessions that are required by law to be conducted by ACF program offices.

B. Special Statutory Consultation Requirements

1. The following ACF Offices have programs that require consultation with Indian Tribes in accordance with their authorizing statutes.

- Office of Head Start
- Children's Bureau
- Family and Youth Services Bureau

2. ACF program offices will conduct tribal consultation sessions that are required by law, including in conjunction with the Annual ACF Tribal Consultation Session.

3. Individual Program Consultation Responsibilities

(a) Each individual program office will meet with Indian Tribes and AI/AN grantees regarding programmatic concerns at the request of the Indian Tribe or AI/AN grantee.

(b) An official staff contact will be designated as responsible for the initial coordination and facilitation of the program office interaction with Tribes and Native American organizations and to serve as the program single point of contact for interaction with offices and workgroups within HHS on AI/AN issues.

(c) ACF program offices will acknowledge requests for consultation within fourteen (14) calendar days of receipt of the request.

(d) ACF program offices will acknowledge and report on unresolved issues with the Tribe in a timely manner. ACF program offices will acknowledge issues within fourteen (14) calendar days after the consultation.

(e) Feedback will be provided by ACF program offices to Tribes on the

resolution of issues for which consultation has been requested within forty-five (45) calendar days of the consultation.

(f) ACF program offices will ensure intra-agency coordination with Regional Offices to facilitate communication and outreach on consultations held in the Region. Regional Offices will facilitate State participation as appropriate.

(g) ACF program offices will provide assistance to States in their efforts to develop policies and plans to ensure consultation with Indian Tribes.

(h) ACF program offices will provide a written report on the consultations, which summarizes the discussions, recommendations, and responses, within forty-five (45) calendar days of the last consultation.

4. HHS Tribal Consultations

(a) ACF will participate in the Annual Budget Consultation Session and Annual Regional Tribal Consultations.

10. ACF Performance and Accountability

A. Implementation of this policy shall be made part of the Annual Performance Plan for ACF Senior Management as a critical performance element, in those offices where there are specific tribal activities.

B. ACF program offices will design indicators to ensure accountability among program managers, central office and regional offices staff, and various partners in carrying out the HHS and ACF tribal consultation policies.

C. ACF will ensure that all personnel working with Tribes receive appropriate training on consultation, this policy, and working with Tribal Governments.

D. As part of the Department's annual measurement of the level of satisfaction of Indian Tribes with the consultation process and the activities conducted under this policy, Indian Tribes' satisfaction with ACF will be recorded and evaluated to determine whether the intended results were achieved and to solicit recommendations for improvement from Tribes.

11. ACF–Tribal Conflict Resolution

In compliance with the HHS Consultation Policy, each Operating Division shall develop a conflict resolution process. The following shall serve as the ACF tribal conflict resolution process until further defined. Should an impasse arise between ACF and a Tribe(s) concerning ACF compliance with consultation policy, a Tribe may invoke the conflict resolution process by filing a written notice of conflict resolution. Using the timelines under Section 8B, ACF will initiate the conflict resolution process. As determined by the Assistant Secretary, authorized tribal representatives shall meet with the Assistant Secretary for Children and Families, and/or a Deputy Assistant Secretary, and/or the Commissioner for the Administration for Native Americans and/or the ACF Regional Administrator(s) for the regional offices that provide services to the affected Tribes. The goal is to accomplish the following:

A. Clarify all aspects of the issue(s) at an impasse;

B. Explore the alternative position(s) available to resolve the impasse;

C. Establish language about the issue(s) that the parties can accept on the record;

D. Create acceptance of recommended actions; and

E. Facilitate coordination of resolution(s) for parties.

12. Workgroups and Advisory Committees

A. To maximize the expertise and knowledge of individuals working in tribal communities, ACF may convene Tribal/Federal Workgroups (TFWG) to develop and discuss agency-wide policies that impact Indian Tribes, prior to formal tribal consultation sessions on the policies.

B. The TFWG will work in accordance with the HHS policy on tribal workgroups and will follow procedures to ensure compliance with the Federal Advisory Committee Act (FACA). Groups with membership composed of Federal, State employees, or elected officials of a Federally recognized Indian Tribe are exempt from FACA.

C. ACF retains the right to meet with various representatives of organizations on an individual basis.

D. For policies that impact more than Federally recognized Indian Tribes, ACF will develop forums to provide opportunities for input and dialogue for State-recognized Tribes; Native American organizations, including Native Hawaiians and Native American Pacific Islanders; urban Indian centers; tribally controlled community colleges and universities; Alaska Region Corporations; and others as defined in program office guidance.

E. Program offices may still convene their individual working groups to work on program specific policies. Program offices will ensure that these working groups operate within the FACA guidelines and requirements.

13. Definitions

A. *Agency*—Any authority of the United States that is an "agency" under 44 U.S.C. 3502(1) other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

B. *Communication*—The exchange of ideas, messages, or information by speech, signals, writing, or other means.

C. *Consortia of Tribes*—Two or more Federally recognized Indian Tribes.

D. *Consultation*—An enhanced form of communication, which emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinion among parties, which leads to mutual understanding and comprehension. Consultation is integral to a deliberative process, which results in effective collaboration and informed decision-making with the ultimate goal of reaching consensus on issues.

E. *Coordination and Collaboration*—Working and communicating together in a meaningful government-to-government effort to create a positive outcome.

F. *Deliberative Process Privilege*—Privilege exempting the government from disclosure of government-agency materials containing opinions, recommendations, and other communications that are part of the decision-making process within the agency.

G. *Executive Order*—An order issued by the government's executive on the basis of authority specifically granted to the Executive Branch (as by the U.S. Constitution or a Congressional Act).

H. *Federally Recognized Tribal Governments*—Indian Tribes with whom the Federal Government maintains an official government-to-government relationship; usually established by a Federal treaty, statute, executive order, court order, or a Federal Administrative Action. The Bureau of Indian Affairs (BIA) maintains and regularly publishes the list of Federally recognized Indian Tribes.

I. *Indian Organization*—Any group, association, partnership, corporation, or legal entity owned or controlled by Indians, or a majority whose members are Indians.

J. *Indian Tribe*—Any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [*43 U.S.C. 1601 et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians [25 U.S.C. Sec 450b(e)].

K. *Indian*—A person who is a member of an Indian Tribe [25 U.S.C. 450b(d)]. Throughout this policy, Indian is

synonymous with American Indian/Alaska Native.

L. *Native American (NA)*—Broadly describes the people considered indigenous to North America.

M. *Native American Affairs Advisory Council (NAAAC)*—An internal agency work group to support the Assistant Secretary for Children and Families, the Commissioner of the Administration for Native Americans, and all ACF program and regional offices that provide services to Native Americans.

N. *Native Hawaiian*—Any individual whose ancestors were natives of the area, which consists of the Hawaiian Islands prior to 1778 (42 U.S.C. 3057k).

O. *Inter-Tribal Organization*—A nongovernmental body organized and operated to represent the interests of a group of individuals considered indigenous to North American countries. Organizations that represent the interests of individuals do not fall under the intergovernmental committee exemption to FACA found in 2 U.S.C. Sec 1534. Therefore, the Department is required to adhere to FACA if representatives of those organizations are included on advisory committees or workgroups.

P. *Non-Recognized Tribe*—Any Tribe with whom the Federal Government does not maintain a government-to-government relationship, and to which the Federal Government does not recognize a trust responsibility.

Q. *Policies that have Tribal Implications*—Refers to regulations, legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

R. *Public Participation*—When the public is notified of a proposed or actual action, and is provided meaningful opportunities to participate in the policy development process.

S. *Reservation*—Lands reserved with the Federal Government for tribal use and are usually held in trust by the Federal Government or within certain defined boundaries.

T. *Self Government*—Government in which the people who are most directly affected by the decisions make decisions.

U. *Sovereignty*—The ultimate source of political power from which all specific political powers are derived.

V. *State Recognized Tribes*—Tribes that maintain a special relationship with the State government and whose lands and rights are usually recognized by the State. State recognized Tribes may or may not be Federally recognized.

W. *Substantial Direct Compliance Costs*—Those costs incurred directly from implementation of changes necessary to meet the requirements of a Federal regulation. Because of the large variation in Tribes, "substantial costs" is also variable by Indian Tribe. Each Indian Tribe and the Secretary shall mutually determine the level of costs that represent "substantial costs" in the context of the Indian Tribe's resource base.

X. *To the Extent Practicable and Permitted by Law*—Refers to situations where the opportunity for consultation is limited because of constraints of time, budget, legal authority, *etc.*

Y. *Treaty*—A legally binding and written agreement that affirms the government-to-government relationship between two or more nations.

Z. *Tribal Government*—An American Indian or Alaska Native Tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally recognized Indian Tribe List Act of 1994, (25 U.S.C. 479a).

AA. *Tribal Officials*—Elected or duly appointed officials of Indian Tribes or authorized inter-tribal organizations.

BB. *Tribal Organization*—The recognized governing body of any Indian Tribe; any legally established organization of American Indians and Alaska Natives which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the community to be served by such organization and which includes the maximum participation of Indian Tribe members in all phases of its activities (25 U.S.C. 450b).

CC. *Tribal Resolution*—A formal expression of the opinion or will of an official tribal governing body which is adopted by vote of the tribal governing body.

DD. *Tribal Self-Governance*—The governmental actions of Tribes exercising self-government and self-determination.

14. Acronyms

ACF Administration for Children and Families
AI/AN American Indian/Alaska Native
AI/AN/NA American Indian/Alaska Native/Native American
ANA Administration for Native Americans
BIA Bureau of Indian Affairs
Division Staff Division and/or Operating Division
EO Executive Order
FACA Federal Advisory Committee Act
FR **Federal Register**
HHS U.S. Department of Health and Human Services
NAAAC Native American Affairs Advisory Council
OPDIV Operating Divisions of HHS
SPOC Single Point of Contact
TFWG Tribal/Federal Workgroup
U.S. United States
U.S.C. United States Code

15. Policy Review

ACF shall review, and if necessary revise, its Tribal Consultation Policy no less than every 2 years. Should ACF determine that the policy requires revision, the Tribal/Federal Workgroup will be convened to develop the revisions.

16. Retention of Executive Branch Authorities

Nothing in this policy waives the Government's deliberative process privilege, including when the Department is specifically requested by Members of Congress to respond to or report on proposed legislation. The development of such responses and related policy documents is a part of the deliberative process by the Executive Branch and should remain confidential.

Nothing in the Policy creates a right of action against the Department for failure to comply with this Policy nor creates any right, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any individual.

17. Effective Date

This policy is effective on the date of signature by the Assistant Secretary for Children and Families and shall apply to all ACF Program Offices.

[FR Doc. 2010–31465 Filed 12–15–10; 8:45 am]

BILLING CODE 4184–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2001–E–0027]

Determination of Regulatory Review Period for Purposes of Patent Extension; ANGIOMAX

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ANGIOMAX and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the

Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA approved for marketing the human drug product ANGIOMAX (bivalirudin). ANGIOMAX is indicated for use as an anticoagulant in patients with unstable angina undergoing percutaneous transluminal coronary angioplasty. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ANGIOMAX (U.S. Patent No. 5,196,404) from The Medicines Company, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 6, 2001, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period, that the approval of ANGIOMAX represented the first permitted commercial marketing or use of the product, and that the patent term restoration application was untimely within the meaning of 35 U.S.C. section 156(d)(1).

On August 3, 2010, in *The Medicines Company* v. *David Kappos et al.,* Civil Action No. 01:10-cv-286, the United States District Court for the Eastern District of Virginia, Alexandria Division, ordered the United States Patent and Trademark Office to consider The Medicines Company's patent term restoration application for ANGIOMAX to have been timely filed. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ANGIOMAX is 3,665 days. Of this time, 2,576 days occurred during the testing phase of the regulatory review period, while 1,089 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* December 5, 1990. The applicant claims November 2, 1990, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was December 5, 1990, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* December 23, 1997. FDA has verified the applicant's claim that the new drug application (NDA) for ANGIOMAX (NDA 20–873) was submitted on December 23, 1997.

3. *The date the application was approved:* December 15, 2000. FDA has verified the applicant's claim that NDA 20–873 was approved on December 15, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,773 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments and ask for a redetermination by February 14, 2011. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by June 14, 2011. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (*See* H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. It is no longer necessary to send three copies of mailed comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on regulations.gov may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 22, 2010.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2010–31583 Filed 12–15–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0605]

Small Entity Compliance Guide: Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary

Supplements—Small Entity Compliance Guide." The small entity compliance guide (SECG) is being issued for a final rule and an interim final rule published in the **Federal Register** of June 25, 2007, and is intended to set forth in plain language the requirements of that final rule and interim final rule and to help small businesses understand the regulations. In addition, the SECG includes several recommendations made by FDA in that final rule so that the guidance in those recommendations will be readily accessible to small businesses.

DATES: Submit either electronic or written comments on the SECG at any time.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written comments on the SECG to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit written requests for single copies of the SECG to the Division of Dietary Supplement Programs (HFS–810), Office of Nutrition, Labeling, and Dietary Supplements, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your requests. *See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the SECG.

FOR FURTHER INFORMATION CONTACT: Bradford Williams, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1440.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 25, 2007 (72 FR 34752), FDA issued a final rule establishing current good manufacturing practice (CGMP) regulations for dietary supplements (21 CFR part 111) (the DS CGMP final rule). The DS CGMP final rule requires persons who manufacture, package, label, or hold a dietary supplement to establish and follow current good manufacturing practice to ensure the quality of the dietary supplement and to ensure that the dietary supplement is packaged and labeled as specified in the master manufacturing record. In that same issue of the **Federal Register** (72 FR 34959), FDA also issued an interim final rule (the identity testing interim final rule) that sets forth a procedure for requesting an exemption from a requirement for the manufacturer to conduct at least one appropriate test or examination to verify the identity of any dietary ingredient that is a component of a dietary supplement. The final rule and the identity testing interim final rule became effective August 24, 2007. The compliance date of the DS CGMP final rule and the identity testing interim final rule is June 25, 2008; except that for businesses employing fewer than 500, but 20 or more full-time equivalent employees, the compliance date is June 25, 2009; and except that for businesses that employ fewer than 20 full-time equivalent employees, the compliance date is June 25, 2010.

FDA examined the economic implications of the DS CGMP final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612) and determined that the DS CGMP final rule would have a significant economic impact on a substantial number of small entities. In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121), FDA is making available this SECG stating in plain language the requirements of the regulations. We also examined the economic implications of the identity testing interim final rule as required by the Regulatory Flexibility Act and determined that the identity testing interim final rule would not have a significant economic impact on a substantial number of small entities. However, because the identity testing interim final rule revises the DS CGMP final rule, the SECG includes the provisions of the identity testing interim final rule.

FDA is issuing this SECG as level 2 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115(c)(2)).[1] The SECG restates, in simplified format and language, FDA's requirements for Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements, including the requirements for a Petition to Request an Exemption from 100 Percent Identity Testing of Dietary Ingredients. In addition, the SECG includes several recommendations made by FDA in the DS CGMP rule so that the guidance in those recommendations will be readily accessible to small businesses.

The SECG represents FDA's current thinking on current good manufacturing practice in manufacturing, packaging, labeling, or holding operations for dietary supplements. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations. We note, however, that the regulations that serve as the basis for this guidance document establish requirements for all covered activities. For this reason, we recommend that affected parties consult the regulations at 21 CFR part 111 in addition to reading the SECG.

[1] We note that the American Herbal Products Association submitted a petition for reconsideration on July 25, 2007, under 21 CFR 10.33, requesting reconsideration of certain provisions of the DS CGMP final rule. FDA is currently considering this petition and the SECG does not represent a response to such petition.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 111 have been approved under 0910–0606.

III. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments on the SECG. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the SECG at *http://www.fda.gov/FoodGuidances.html* or *http://www.regulations.gov.*

Dated: December 13, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–31613 Filed 12–15–10; 8:45 am]

BILLING CODE 4160–01–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: Renal Disease.
Date: January 7, 2011.
Time: 2 p.m. to 5 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: Ryan G. Morris, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892. 301–435–1501. *morrisr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel. Member Conflict: BGES Member.
Date: January 14, 2011.
Time: 1:30 p.m. to 2:30 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: J Scott Osborne, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892. (301) 435–1782. *osbornes@csr.nih.gov.*

Name of Committee: Oncology 1—Basic Translational Integrated Review Group. Cancer Etiology Study Section.
Date: January 18, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Washington Marriott Wardman Park, 2660 Woodley Road, NW., Washington, DC 20008.
Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779. *riverase@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group. Biochemistry and Biophysics of Membranes Study Section.
Date: January 26–27, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.
Contact Person: Nuria E. Assa-Munt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892. (301) 451–1323. *assamunu@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group. Hepatobiliary Pathophysiology Study Section.
Date: January 31–February 1, 2011.
Time: 8 a.m.to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Rass M. Shayiq, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892. (301) 435–2359. *shayiqr@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group. Basic Mechanisms of Cancer Therapeutics Study Section.
Date: January 31–February 1, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.
Contact Person: Lambratu Rahman, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892. 301–451–3493. *rahmanl@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 10, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–31594 Filed 12–15–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Central Repositories Non-Renewable Sample Access (PAR–10–90)–Type 1 Diabetes.
Date: January 24, 2011.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Najma Begum, PhD, Scientific Review Officer, Review Branch, Dea, Niddk, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, Md 20892–5452. (301) 594–8894. *begumn@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PO1 Vascular Complications in Diabetes.
Date: January 25, 2011.
Time: 2 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: D.G. Patel, PhD, Scientific Review Officer, Review Branch, Dea, Niddk, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, Md 20892–5452. (301) 594–7682. *pateldg@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 10, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–31607 Filed 12–15–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Health, Behavior, and Context Subcommittee.

Date: February 25, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Michele C. Hindi-Alexander, PhD, Division of Scientific Review, National Institues of Health, Eunice Kennedy Shriver National Institute of Child Health & Human Development, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20812–7510, 301–435–8382. *hindialm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: December 10, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–31610 Filed 12–15–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of a meeting of the Board of Scientific Counselors, Lister Hill Center for Biomedical Communications.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL LIBRARY OF MEDICINE, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, Lister Hill Center for Biomedical Communications.

Date: April 7–8, 2011.

Open: April 7, 2011, 9 a.m. to 12 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill Center for Biomedical Communications.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: April 7, 2011, 12 p.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: April 8, 2011, 10 a.m. to 11:30 a.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill Center for Biomedical Communications.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Karen Steely, Program Assistant, Lister Hill Center for Biomedical Communications, National Library of Medicine, Building 38A, Room 7S709, Bethesda, MD 20892. 301–435–3137. *ksteely@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: December 10, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–31612 Filed 12–15–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Regents of the National Library of Medicine EP Subcommittee.

Date: February 7, 2011.

Closed: 4 p.m. to 5:30 p.m.

Agenda: Grant Applications.

Place: National Library of Medicine, Building 38, 2nd Floor, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20892. 301–496–6221. *lindberg@mail.nih.gov.*

Name of Committee: Board of Regents of the National Library of Medicine Subcommittee on Outreach and Public Information.

Date: February 8, 2011.

Open: 7:30 a.m. to 8:45 a.m.

Agenda: Outreach Activities.

Place: National Library of Medicine, Building 38, 2nd Floor, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20892. 301–496–6221. *lindberg@mail.nih.gov.*

Name of Committee: Board of Regents of the National Library of Medicine.

Date: February 8–9, 2011.

Open: February 8, 2011, 9 a.m. to 4:30 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: February 8, 2011, 4:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: February 9, 2011, 9 a.m. to 12 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20892. 301–496–6221. *lindberg@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel and airport shuttles, will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nlm.nih.gov/od/bor/bor.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 10, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–31611 Filed 12–15–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel. Health and Lifestyle Needs Assessment Study.

Date: January 6, 2011.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709. (Telephone Conference Call).

Contact Person: Sally Eckert-Tilotta, PhD, Scientific Review Administrator, Nat. Institute of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233 MD EC–30, Research Triangle Park, NC 27709. (919) 541–1446. *eckertt1@niehs.nih.gov*.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel. Method Development for Laboratory Animal Pain Assessment.

Date: January 10, 2011.

Time: 9 a.m. to 10 a.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS National Institute of Environmental Sciences Keystone Building, 530 Davis Drive, 3094, Research Triangle Park, NC 27709. (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709. (919) 541–0752. *mcgee1@niehs.nih.gov*.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel. Improved Biomarkers as Humane Endpoints for Ocular Safety Assessment.

Date: January 10, 2011.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709. (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709. (919) 541–0752. *mcgee1@niehs.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: December 9, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–31609 Filed 12–15–10; 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 Conflicts—Topics in Infectious Diseases and Microbiology.

Date: January 6, 2011.

Time: 1 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: Liangbiao Zheng, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892. 301–402–5671. *zhengli@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel. Member Conflict: Metabolic Regulation and Obesity.

Date: January 19–20, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: David Weinberg, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892. 301–435–1044. *David.Weinberg@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel. Muscle Biology.

Date: January 24–25, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Rajiv Kumar, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892, 301–435–1212. *kumarra@csr.nih.gov*.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group. Clinical, Integrative and Molecular Gastroenterology Study Section.

Date: January 31–February 1, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mushtaq A. Khan, DVM, PhD, Chief, Digestive, Kidney and Urological Systems, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892. 301–435–1778. *khanm@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 10, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–31601 Filed 12–15–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of a meeting of the Board of Scientific Counselors, National Center for Biotechnology Information.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Center for Biotechnology Information.

Date: April 12, 2011.

Open: 8:30 a.m. to 12 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: 12 p.m. to 2 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: 2 p.m. to 3 p.m

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: David J. Lipman, MD, Director, National Center of Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Building 38A, Room 8N805, Bethesda, MD 20892. 301–435–5985, *dlipman@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: December 10, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–31623 Filed 12–15–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Proposed Project: 2011–2014 National Survey on Drug Use and Health: Methodological Field Tests (OMB No. 0930–0290)–Revision

The National Survey on Drug Use and Health (NSDUH) is a survey of the civilian, non-institutionalized population of the United States 12 years old and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal Government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

In March 2008, SAMHSA received a 3-year renewal of its generic clearance for methodological field tests. This will be a request for another renewal of the generic approval to continue methodological tests over the next 3 years, with conditions similar to the previous clearance. These methodological tests will continue to be designed to examine the feasibility, quality, and efficiency of new procedures or revisions to existing survey protocol. Specifically, the tests will measure the reliability and validity of certain questionnaire sections and items through multiple measurements on a set of respondents; assess new methods for gaining cooperation and participation of respondents with the goal of increasing response and decreasing potential bias in the survey estimates; and assess the impact of new sampling techniques and technologies on respondent behavior and reporting. Research will involve focus groups, cognitive laboratory testing, field tests, and customer surveys.

The next wave of methodological tests will continue to examine ways to increase data quality, lower operating costs, and gain a better understanding of

sources and effects of nonsampling error on the NSDUH estimates. Particular attention will be given to minimizing the impact of design changes so that survey data continue to remain comparable over time. If these tests provide successful results, current procedures or data collection instruments may be revised.

The number of respondents to be included in each field test will vary, depending on the nature of the subject being tested and the target population. However, the total estimated response burden is 8,251 hours. The exact number of subjects and burden hours for each test are unknown at this time, but will be clearly outlined in each individual submission. The table below, however, describes the anticipated burden for each of the major testing activities for which generic approval is being tested.

ESTIMATED BURDEN FOR NSDUH METHODOLOGICAL FIELD TESTS

Activity	Number of respondents	Responses per respondent	Total number of responses	Average burden per response (hrs.)	Total burden (hrs.)
a. Focus Groups	270	1	270	2.0	540
b. Cognitive laboratory testing	200	1	200	1.0	200
c. Field Tests	6,600	1	6,600	1.0	6,600
d. Customer Satisfaction Surveys	300	1	300	0.25	75
Household screening for c	8,910	1	8,910	0.083	740
Screening Verification for c	445	1	445	0.067	30
Interview Verification for c	990	1	990	0.067	66
Total	17,715		17,715		8,251
Annual Average (Total divided by 3 years)	5,905		5,905		2,750

Written comments and recommendations concerning the proposed information collection should be sent by January 18, 2011 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–7285.

Dated: December 1, 2010.

Elaine Parry,

Director, Office of Management, Technology and Operations.

[FR Doc. 2010–31585 Filed 12–15–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Screening, Brief Intervention, Brief Treatment and Referral to Treatment (SBIRT) Cross-Site Evaluation—New

SAMHSA is conducting a cross-site external evaluation of the impact of programs of screening, brief intervention (BI), brief treatment (BT) and referral to treatment on patients presenting at various health care delivery units with a continuum of severity of substance use. SAMHSA's SBIRT program is a cooperative agreement grant program designed to help States and Tribal Councils expand the continuum of care available for substance misuse and use disorders. The program includes screening, brief intervention, brief treatment and referrals to treatment for persons at risk for dependence on alcohol or drugs. The cross-site evaluation will provide a comprehensive assessment of the effects of SBIRT on patient outcomes, performance site practices, and treatment systems. This information will allow SAMHSA to determine the extent to which SBIRT has met its objectives of implementing a comprehensive system of identification and care to meet the needs of individuals at all points along the substance use continuum.

A paper and pencil survey will be administered to practitioners in sites where SBIRT services are being delivered. The practitioner survey is designed to evaluate the implementation of proposed SBIRT models by measuring their penetration and practitioners' willingness to adopt. Furthermore, the survey will document moderating factors related to practitioner and health care delivery unit characteristics.

The 93 question practitioner survey includes collection of demographic information as well as questions that attempt to assess barriers to implementation encountered by the practitioners and to gauge the effectiveness of the training they received. These measures were developed and used by Babor et al. (2005) in their comparable study comparing different implementation strategies for primary care screening and brief intervention programs for hazardous and harmful drinkers. The practitioner survey also includes an instrument developed by Panzano and Roth (2006) to measures an organization's willingness to adopt new innovative practices.

TOTAL BURDEN HOURS FOR THE CROSS-SITE PATIENT SURVEY

Instrument/activity	Number of respondents	Responses per respondent	Hours per response	Total burden hours	Hourly wage	Total respondent cost [a]
Practitioner Survey	1,075	1	.30	322.5	$32	$10,320

Written comments and recommendations concerning the proposed information collection should be sent by January 18, 2011 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–5806.

Dated: December 6, 2010.

Elaine Parry,

Director, Office of Management, Technology and Operations.

[FR Doc. 2010–31586 Filed 12–15–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–1104]

Intent To Prepare Programmatic Environmental Assessment Statement for the Nationwide Implementation of the Interagency Operations Centers

AGENCY: Coast Guard, DHS.

ACTION: Notice of intent and request for comments.

SUMMARY: The Coast Guard announces its intent to prepare a Programmatic Environmental Assessment (PEA) for the proposed nationwide implementation of the Interagency Operations Centers (IOC) Project and requests public comments on the scope of the PEA.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before January 18, 2011 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2010–1104 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, please contact CAPT Alan Arsenault, Coast Guard, telephone 202–475–3717 or e-mail *alan.n.arsenault@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to submit comments and related material on the scope of this PEA. Specifically, the Coast Guard requests input on any environmental concerns that the public may have related to the development of IOCs throughout the United States, sources of relevant data or information, and any suggested analysis methods for inclusion in the PEA. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number for this notice (USCG–2010–1104) and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Notices" and insert "USCG–2010–1104" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing the comments: To view the comments, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–1104" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Background and Purpose

SAFE Port Act and the IOC Project

The Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109–347, 120 Stat. 1884, was enacted to improve maritime and United States port security through enhanced layered defenses. Section 108 of the SAFE Port Act directs the establishment of IOCs at all high priority ports that "utilize, as appropriate, the compositional and operations characteristics of existing centers" and are "organized to fit the security needs, requirements, and resources of the individual port area at which each is operating."

The Coast Guard IOC Project will satisfy this mandate through the development and transformation of approximately 35 existing Coast Guard Sector Command Centers (SCCs) over the next 12 years into coordinated planning and operations centers.

Purpose of the IOC Project

The purpose of the proposed nationwide implementation of the IOC Project is to improve unity of effort among Federal, State, tribal, and local port partners with shared port security responsibilities by providing interagency command and control

facilities to monitor approaching waterborne traffic at high priority ports in the United States and United States territories. The IOC's information systems, facilities, and sensor networks will provide the partner organizations with the ability to coordinate planning and operational activities to gain a proactive posture in preventing, protecting, responding, and recovering from emergency and illicit activities in the ports. In addition, the IOC Project will facilitate collaboration to gain efficiencies in operations execution, reduce redundant activities (*e.g.,* multiple boardings of a vessel by different agencies), and share resources. The IOCs will improve tactical decision-making, situational awareness, operations monitoring/interoperability, rules-based processing, and joint planning in a coordinated interagency environment.

IOC Implementation

The Coast Guard plans to implement the development of the IOCs through upgrades or reconfiguration of current facilities, and through leasing or building new facilities to increase the capacity and space provided for security operations and interagency partners. Each IOC will be tailored to the individual needs of the ports, and will be operated in coordination with multiple partner agencies and organizations including Federal agencies, State, tribal, and local law enforcement, and port authorities.

The following table lists existing SCC locations being considered for reconfiguration to IOCs.

Addresses of SCC Locations Considered for Transformation to IOC			
Hampton Roads, 4000 Coast Guard, Boulevard, Portsmouth, VA 23703–2199	San Francisco, 1 Yerba Buena Island, San Francisco, CA 94130–9309	Boston, 427 Commercial Street, Boston, MA 02109–1027	Charleston, 196 Tradd St., Charleston, SC 29401–1817
Tampa-St. Petersburg, 600 8th Avenue SE, St. Petersburg, FL 33701–5099	San Diego, 2710 Harbor Drive, N. San Diego, CA 92101–1028	New York, 212 Coast Guard Drive, Staten Island, NY 10305	Sault Ste. Marie, 337 Water St., Sault Ste., Marie, MI 49783–9501
Los Angeles/Long Beach, 1001 S. Seaside Ave., Bldg. 20, San Pedro, CA 90731–0208	Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134–1192	Baltimore, 2401 Hawkins Point Rd., Baltimore, MD 21226–1797	Long Island, 120 Woodward Ave., New Haven, CT 06512–3698
Ohio Valley, 600 Martin Luther King Jr., Mazzoli Federal Bldg., Rm 421, Louisville, KY 40202–2251	Columbia River, 2185 SE Airport Rd., Warrenton, OR 97146–9693	Delaware Bay, 1 Washington Avenue, Philadelphia, PA 19147–4395	Mobile, South Broad St., Mobile, AL 36615
Northern New England, 259 High St., South Portland, ME 04106–0007	Corpus Christi, 8930 Ocean Dr., Corpus Christi, TX 78419–5220	Buffalo, 1 Fuhrmann Boulevard, Buffalo, NY 14203–3189	Jacksonville, 4200 Ocean St., Atlantic Beach, FL 2233–2416
Southern New England, Little Harbor Rd., Woods Hole, MA 02543–1099	Houston-Galveston, 9640 Clinton Dr., Houston, TX 77029–4328	Detroit, 110 Mt. Elliot Ave., Detroit, MI 48207–4380	Juneau, 2760 Sherwood Lane, Suite 2A, Juneau, AK 99801–8545
Lower Mississippi, 2 A W Wills Ave., Memphis, TN 38105–1502	Key West, 100 Trumbo Rd., Key West, FL 33040–0005	New Orleans, 201 Old Hammond Hwy., Metairie, LA 70005	Anchorage, 510 L Street, Suite 100, Anchorage, AK 99501–1946
Lake Michigan, 2420 S. Lincoln Memorial Dr., Milwaukee, WI 53207–1997	Miami, 100 MacArthur Causeway, Rm. 201, Miami Beach, FL 33139–5101	Guam, PSC 455, Box 176, FPO, AP 96540–1056	San Juan, 5 Calle La Puntilla Final, San Juan, PR 00901–1800
Upper Mississippi, 1222 Spruce St., Suite 7.103, St. Louis, MO 63103–2832	Honolulu, 400 Sand Island Parkway, Honolulu, HI 96819–4398	North Carolina, 2301 East Fort Macon Rd., Atlantic Beach, NC 28512–5633	

The IOC Project will complement the maritime component of the Secure Border Initiative, a comprehensive, multi-year plan to help secure America's borders and will link capabilities across Federal, State, local, tribal, and private organizations.

IOCs will provide information systems, facilities, and sensors needed to conduct daily, 24/7 tactical coordination of port-level activities. They will deliver capabilities to automate and increase throughput of information for achieving Maritime Domain Awareness (MDA). Improving MDA will boost interagency communications and decision-makers' level of knowledge, and will help the Coast Guard make informed command and control decisions. Information throughput improvements will be achieved by networking Coast Guard and interagency partner sensors and then expanding these sensor networks to monitor vessel activities and detect anomalies from a distance. The Coast Guard will use an information management toolset, called *WatchKeeper*, to compile, organize, and apply data and knowledge collected by the expanded sensor network.

Preparation of the PEA

In accordance with Section 102(2)(c) of NEPA as implemented by the Council on Environmental Quality regulations (40 CFR 1500–1508), Department of Homeland Security Management Directive 023.1 (Environmental

Planning Program), and Coast Guard National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts, (COMDTINST M16475.1D), the Coast Guard intends to prepare a PEA for the implementation of the IOC Project.

The PEA will provide a general level of analysis of the Proposed Action and No Action alternative and the potential environmental impacts of implementation. Upon completion and acceptance of the PEA, the Coast Guard will conduct a site-specific Environmental Assessment (EA) or Categorical Exclusion (CATEX) at individual IOC locations that may warrant additional examination due to unique environmental characteristics.

Proposed Action

The IOC Project is currently not fully funded. However, as funding allows, the Coast Guard plans to implement the IOC Project in four phases or segments:

Segment 1 will establish processes and systems to link operations and data information between interagency partners and the Coast Guard. The Coast Guard will implement the *WatchKeeper* tool in Segment 1 to integrate vessel targeting, operations, monitoring, and operational planning. The Coast Guard Operations System Center will host *WatchKeeper,* with a minimal increase in computer infrastructure installed at the Operations System Center. Interagency partners will be allowed access to the information technology network to establish initial improved coordination efforts.

Segment 2 will establish an integrated interagency sensor network to link and enhance the Coast Guard's information management capability with that of its interagency partners. The Coast Guard plans to install hardware and software at each IOC location throughout Segment 2 to establish this interagency sensor network. The Coast Guard plans to survey existing remote sensors, currently mounted on short platforms, towers, rooftops, and poles for inclusion in the sensor network upgrade as part of Segment 2 implementation.

Segment 3 will expand the interagency sensor network and provide extended sensor network and components to fill critical situational awareness gaps and increase knowledge and data collected by the Coast Guard. The Coast Guard plans to acquire and install new sensors and the required network infrastructure to support the sensors, including wireless and wired hardware. The Coast Guard plans to install between 1 and 15 new sensors at each IOC location. New sensors will be mounted on existing short platforms, towers, rooftops, and poles similar to the installation of existing sensors. If the broad activities analyzed in the PEA do not adequately cover the site-specific actions required to install and mount new sensors or hardware, then the Coast Guard will tier follow-on EAs and CATEXs as appropriate on a case-by-case basis.

Segment 4 will expand existing facilities through upgrades to existing SCCs and lease or build new facilities to allocate additional work space capacity to the Coast Guard and its interagency partners, and through enhancing the existing information technology and electronics infrastructure at these locations. Segment 4 will require 4 new leases, 3 relocations, and 28 construction projects at existing SCCs to accommodate the space, infrastructure, and security requirements of the Coast Guard and its interagency partners. Facilities modifications to transform SCCs into IOCs will include increasing the capacity of the spaces used by Coast Guard personnel operating the IOC equipment, ensuring the co-location of the Sector Commander and the Command Center, and providing space to support Coast Guard surge-operations staff and interagency partner staff.

If the broad activities analyzed in the PEA do not adequately cover the site-specific actions required to construct, lease, or relocate IOC facilities, then the Coast Guard will tier follow-on EAs and CATEXs as appropriate on a case-by-case basis. The Coast Guards plans to implement Segment 4 in a parallel effort with Segments 1, 2, and 3, as funding allows.

The PEA will address the general environmental impacts of the Proposed Action and the No Action Alternative. The No Action Alternative will serve as a baseline against which to compare the potential impacts of the Proposed Action. The Coast Guard defines the No Action Alternative as not implementing the IOC Project, not complying with the mandate of the SAFE Port Act, and preventing the existing approximately 35 SSC facilities from being upgraded. The Proposed Action is the full implementation of Segments 1 through 4 described above.

The broad analysis of the PEA will not cover site-specific actions. The Coast Guard will address site-specific actions on a case-by-case basis as actions during the implementation of the four Segments and across the approximately 35 various SCC locations. The Coast Guard will conduct site-specific NEPA analyses and produce subsequent NEPA documentation coincident with project implementation during any Segment and in any SCC location to address environmental or human health impacts from any sensor mounting, installation, or facility construction project if necessary. Although the Coast Guard does not foresee major site-specific impacts at this time, the Coast Guard expects that the PEA will serve to facilitate and expedite the preparation of follow-on, project-specific NEPA documents, if applicable, at the SCC locations.

The Coast Guard does not expect that the Proposed Action will result in significant environmental or human health impacts. The Coast Guard plans to establish the IOC facilities and install the required sensors in previously developed sites within Coast Guard installations or other similar Federal or private locations. Any major infrastructure changes will be addressed in future site-specific NEPA documents. Any potentially significant impacts to any aspect of the affected environment including cultural resources, biological resources, water and marine resources, air quality, and public safety will be addressed and analyzed by the Coast Guard on a case-by-case basis in future site-specific NEPA documents.

Scoping Process

The Coast Guard encourages public participation in the PEA process. The scoping period will start with publication of this notice in the **Federal Register.** Please see the section on Public Participation and Request for Comments above for instructions on how to submit comments.

Following the scoping process, the Coast Guard will prepare the draft PEA and will publish a Notice of Availability in the **Federal Register** to make it available to the public and solicit comments on the draft PEA.

Authority

This notice is issued under authority of 42 U.S.C. 4321, *et seq.,* and 40 CFR 1508.22.

Dated: December 9, 2010.

Alan Arsenault,

Captain, U.S. Coast Guard, Project Manager, Interagency Operation Centers Project.

[FR Doc. 2010–31639 Filed 12–15–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–1066]

Recreational Boating Safety Projects, Programs and Activities Funded Under Provisions of the Transportation Equity Act for the 21st Century; Accounting of

ACTION: Notice.

SUMMARY: In 1999, the Transportation Equity Act for the 21st Century made $5 million available to the Secretary of Homeland Security for payment per year of Coast Guard expenses for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. In 2005, the law was amended, and the amount was increased to $5.5 million. The Coast Guard is publishing this notice to satisfy a requirement of the Act that a detailed accounting of the projects, programs, and activities funded under the national recreational boating safety program provision of the Act be published annually in the **Federal Register**. In this notice, we have specified the amount of monies the Coast Guard has committed, obligated, or expended during fiscal year 2010, as of September 30, 2010.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, call Jeff Ludwig, Regulations Development Manager, telephone 202–372–1061.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Transportation Equity Act for the 21st Century became law on June 9, 1998 (Pub. L. 105–178; 112 Stat. 107). The Act required that of the $5 million made available to carry out the national recreational boating safety program each year, $2 million shall be available only to ensure compliance with Chapter 43 of Title 46, U.S. Code—Recreational Vessels. On September 29, 2005, the Sportfishing and Recreational Boating Safety Amendments Act of 2005 was enacted (Pub. L. 109–74; 119 Stat. 2031). This Act increased the funds available to the national recreational boating safety program from $5 million to $5.5 million annually, and stated that "not less than" $2 million shall be available only to ensure compliance with Chapter 43 of Title 46, U.S. Code—Recreational Vessels.

These funds are available to the Secretary for payment of expenses of the Coast Guard for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. Subsection (c) of section 7405 of the Transportation Equity Act for the 21st Century directs that no funds available to the Secretary under this subsection may be used to replace funding traditionally provided through general appropriations, nor for any purposes except those purposes authorized; namely, for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. Amounts made available each fiscal year from 1999 through 2010 shall remain available until expended.

Use of these funds requires compliance with standard Federal contracting rules with associated lead and processing times resulting in a lag time between available funds and spending. The total amount of funding transferred to the Coast Guard from the Sport Fish Restoration and Boating Trust Fund and committed, obligated, and/or expended during fiscal year 2010 for each activity is shown below.

Factory Visit Program/Boat Testing Program: Funding was provided to continue the national recreational boat factory visit program, initiated in January 2001. The factory visit program currently allows contractor personnel, acting on behalf of the Coast Guard, to visit 2,000 recreational boat manufacturers each year to either inspect for compliance with Federal regulations, communicate with the manufacturers as to why they need to comply with Federal regulations, or educate them, as necessary, on how to comply with Federal regulations. Funding was also provided for testing of certain associated equipment and in-water testing of atypical and used recreational boats for compliance with capacity and flotation standards. This funding satisfies the legal requirements that "not less than" $2 million be available to ensure compliance with Chapter 43 of Title 46, U.S. Code—Recreational Vessels. ($2,313,078).

New Recreational Boating Safety Associated Travel: Travel by members of the Boating Safety Division's strategic planning panel was undertaken to attend meetings to develop the next iteration of the national recreational boating safety program strategic plan. ($18,882).

Boating Accident News Clipping Services: Funding was provided to continue to gather daily news stories of recreational boating accidents nationally for more real time accident information and to identify accidents that may involve regulatory non-compliances or safety defects. ($26,000).

Accident Investigation Tiger Team: Funding was provided to continue to provide on-call expert accident investigative services for any boating accident that appeared to involve a regulatory non-compliance or safety defect. ($17,335).

Web-based Document Management System: Funding was provided to continue to provide a web-based document management system to better enable the handling of thousands of recreational boating recall case and campaign reports. ($60,000).

Recreational Boating Safety (RBS) Outreach Program: Funding was provided for this program which provides full marketing, media, public information, and program strategy support to the nation-wide RBS effort. The goal is to coordinate the RBS outreach initiatives and campaigns, some of which include: National Boating Under the Influence Campaign (BUI), "Boat Responsibly!", Life Jacket Wear, Vessel Safety Check Program (VSC), Boating Safety Education Courses, Propeller Strike Avoidance, Carbon Monoxide Poisoning, and other recreational boating safety issues on an as needed basis. ($597,621).

Web site Support: Funding for this initiative provides a full range of public media and boating safety information at *http://www.uscgboating.org* for a worldwide audience. It covers a wide spectrum of boating safety related topics and is dedicated to reducing loss of life, injuries, and property damage that occur on U.S. waterways by improving the knowledge, skills, and abilities of recreational boaters. ($104,723).

Boating Accident Report Database (BARD) Web System: BARD Web System funding enables reporting authorities in the 50 States, five U.S. Territories, and the District of Columbia to submit their accident reports electronically over a secure Internet connection. The system also enables the user community to generate statistical reports that show the frequency, nature, and severity of boating accidents. Fiscal year 2010 funds supported system maintenance, development, and technical (hotline) support. ($128,305).

Personnel Support: Funding was provided for personnel to support the development of new regulations and to conduct boating safety-related research and analysis ($669,338).

Printing: Funding was provided for printing the brochure "A GUIDE TO THE FEDERAL REQIREMENTS FOR RECREATIONAL BOATS." This publication is used to educate boaters on the safety equipment carriage requirements for recreational boats, and proper and safe boating practices. The Coast Guard, USCG Auxiliary, U.S. Power Squadrons, and State agencies

distribute this product to the public at local boating events, during classroom instruction, and during Vessel Safety Checks. ($101,420).

Reimbursable Salaries: Funding was provided to carry out the work as prescribed in 46 U.S.C. 13106(c) and as described herein. The first position was that of a professional mathematician/statistician to conduct necessary national surveys and studies on recreational boating activities as well as to serve as a liaison to other Federal agencies that are conducting boating surveys so that we can pool our resources and reduce costs. The second position was that of Outreach coordinator with responsibility of overseeing and managing RBS projects related to carbon monoxide poisoning, propeller injury mitigation, manufacturer compliance initiatives, etc. ($320,518).

Of the $5.5 million made available to the Coast Guard in fiscal year 2010, $2,726,496 has been committed, obligated, or expended and an additional $1,630,723 of prior fiscal year funds have been committed, obligated, or expended, as of September 30, 2010. Approximately $10.6 million has not been committed, obligated, or expended from previous years and is being reserved for a multi-year national boating survey.

This notice is issued under the authority of 46 U.S.C. 13106(c)(4).

Dated: December 10, 2010.

Kevin S. Cook,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. 2010–31558 Filed 12–15–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: North American Free Trade Agreement Duty Deferral

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information: 1651–0071.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the North American Free Trade Agreement (NAFTA) Duty Deferral. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 14, 2011, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: NAFTA Duty Deferral.

OMB Number: 1651–0071.

Abstract: The provisions of North American Free Trade Agreement (NAFTA) were adopted by the U.S. with the enactment of the North American Free Trade Agreement Implementation Act of 1993 (Pub. L. 103–182). The objectives of NAFTA are to eliminate barriers between countries, to facilitate conditions of fair competition within the free trade area, and to liberalize conditions for investments with the free trade area.

19 CFR 181.53 sets forth procedures and documentation required for those seeking a reduction in duties when merchandise is withdrawn from a U.S. duty deferral program for exportation to another NAFTA country. Claimants must provide this information to CBP so a determination can be made to reduce or waive duties on imported merchandise. Information on how to file claims under NAFTA duty deferral can be found at: *http://www.cbp.gov/xp/cgov/trade/trade_programs/international_agreements/free_trade/nafta/duty_deferral/.*

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information being collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 50.

Estimated Number of Annual Responses per Respondent: 28.

Estimated Number of Total Annual Responses: 1,400.

Estimated Time per Response: 12 minutes.

Estimated Total Annual Burden Hours: 280.

Dated: December 13, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–31636 Filed 12–15–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning the Fairplay Hoss and the Fairplay Eve Electric Vehicles

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection ("CBP") has issued a final determination concerning the country of origin of the Fairplay Hoss and the Fairplay Eve lines of electric vehicles. Based upon the facts presented, CBP has concluded in the final determination that the United States is the country of origin of the Fairplay Hoss and Eve lines of electric vehicles for purposes of U.S. Government procurement.

DATES: The final determination was issued on December 9, 2010. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR § 177.22(d), may seek judicial review of this final determination on or before January 18, 2011.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Valuation and Special Programs Branch: (202) 325–0034.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on December 9, 2010, pursuant to subpart B of part 177, Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of the Fairplay Hoss and Eve lines of electric vehicles which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, in HQ H133455, was issued at the request of Fairplay Electric Cars, LLC ("Fairplay"), under procedures set forth at 19 CFR Part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP concluded that, based upon the facts presented, the Fairplay Hoss and Eve lines of electric vehicles, assembled to completion in the United States from parts made in non-TAA countries and TAA countries and/or the United States, are substantially transformed in the United States, such that the United States is the country of origin of the finished articles for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: December 9, 2010.

Harold Singer,

Acting Executive Director, Regulations and Rulings, Office of International Trade.

Attachment

HQ H133455

December 9, 2010
CLA–2 OT:RR:CT:VS H133455 HkP

CATEGORY: Marking

Mr. Keith Andrews, President
Fairplay Electric Cars
743 Horizon Ct., Suite 333
Grand Junction, CO 81506

RE: Government Procurement; Country of Origin of Fairplay "Hoss" and "Eve" Electric Vehicles; Substantial Transformation

Dear Mr. Andrews:

This is in response to your letter dated July 20, 2010, requesting a final determination on behalf of Fairplay Electric Cars, LLC ("Fairplay"), pursuant to subpart B of part 177 of the U.S. Customs and Border Protection Regulations (19 CFR Part 177).

Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (TAA), as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of the Fairplay Hoss line of industrial and commercial vehicles and the Fairplay Eve line of low speed vehicles. We note that as a U.S. importer and manufacturer, Fairplay is a party-at-interest within the meaning of 19 CFR § 177.22(d)(1) and is entitled to request this final determination. In reaching our decision, we have taken into account additional information submitted to this office on August 31, 2010.

FACTS:

For the Hoss line, the models of vehicles at issue are the following: Hoss LD, Hoss XD, and Hoss Quad. For the Eve line, the models of vehicles at issue are the Eve Deluxe 2P, Eve Deluxe XR 2P, Eve Deluxe LTD 2P, Eve Deluxe 4P, Eve Eco 2P, and the Eve Eco XR 2P.

According to the information submitted, Fairplay imports parts for both these lines of vehicles from China. These include chassis, plastic body parts and various miscellaneous pieces of plastic trim, which are assembled together in the United States with U.S.-made battery packs, motors, electronics, wiring assemblies, seats, and chargers.

For the Hoss line of vehicles, the bill of materials (BOM) submitted with the request indicates that, depending on the model, a vehicle may have between approximately 50 and 72 inputs, when items such as logos/decals, and warranty registration cards are counted along with the parts. Of these, between 11 and 15 inputs are of U.S. origin or are performed in the U.S. Between 48.1% and 58.9% of actual manufacturing costs are attributed to U.S. or TAA country manufacturing operations.

For the Eve line of vehicles, the bill of materials (BOM) submitted with the request indicates that, depending on the model, a vehicle may have between approximately 67 and 78 inputs, when items such as logos/decals, and warranty registration cards are counted along with the parts. Of these, between 21 and 27 inputs are of U.S. origin or are performed in the U.S. Between 52.2% and 64.8% of actual manufacturing costs are attributed to U.S. or TAA country manufacturing operations.

For both the Hoss and Eve lines of vehicles, assembly in the U.S. takes place at five different stations, the operations performed at each station being described as follows:

Station 0: The electronic controller plate is assembled and tested.
Station 1: The chassis is unloaded and given a vehicle identification number. Wheels, tires, and the steering column are installed on the chassis using rivets, nuts, bolts, screws, and plastic push-ins.
Station 2: The batteries, motor, controller, solenoid, wiring harness and other crucial electronic parts are installed using rivets, nuts, bolts, and screws or special Molex connectors and plastic push-ins that must be soldered.
Station 3: The plastic front and rear body, bumpers and dashboard are installed over the chassis and electronic assembly, which gives the vehicle its finished appearance. Parts are attached with rivets, nuts and bolts. The vehicle is then removed from the assembly rack.
Station 4: The deep cycle batteries, upright canopy supports, canopy top, seat bottom and back, seat belts, lights, reflectors, decals, logos and final wiring are installed and tested. The parts are installed using rivets, Molex connectors, nuts, bolts, screws, and/or plastic push-ins, as required.

Testing of the fully assembled vehicle lasts between 90 and 195 minutes, depending on the vehicle. In addition, quality control inspections are performed at each station as well as randomly. Packing and shipping operations last between 30 and 45 minutes. The Standard Operating Procedures to assemble the vehicles are designed by staff engineers, who also select, approve and advise on the appropriate parts to be used for the manufacture of the vehicles.

ISSUE:

What is the country of origin of the Fairplay Hoss line of industrial and commercial electric vehicles and of the Eve line of low speed vehicles for

purposes of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 CFR § 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 C.F.R. § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Procurement Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 C.F.R. § 25.403(c)(1). The Federal Procurement Regulations define "U.S.-made end product" as:

[A]n article that is mined, produces, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States,* 573 F. Supp. 1149 (Ct. Int'l Trade 1983), *aff'd,* 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. *See* C.S.D. 80–111, C.S.D. 89–110, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97. By contrast, in C.S.D. 85–25, 19 Cust. Bull. 844 (1985), CBP held that for purposes of the Generalized System of Preferences ("GSP"), the assembly of a large number of fabricated components onto a printed circuit board in a process involving a considerable amount of time and skill resulted in a substantial transformation. In that case, in excess of 50 discrete fabricated components (such as resistors, capacitors, diodes, integrated circuits, sockets, and connectors) were assembled. Whether an operation is complex and meaningful depends on the nature of the operation, including the number of components assembled, number of different operations, time, skill level required, attention to detail, quality control, the value added to the article, and the overall employment generated by the manufacturing process.

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

You believe that the assembly operations that take place in the U.S. result in a substantial transformation of the imported parts. You note that these parts, by themselves, cannot function and must be assembled with the U.S.-made parts to constitute a working electric self-propelled vehicle. Given these considerations, you argue that the U.S. content along with the fact that 100% of the assembly operations takes place in the U.S. warrants a determination that the U.S. is the country of origin of the vehicles. In support of your argument, you cite Headquarters Ruling Letter ("HQ") H022169 (May 2, 2008) and HQ 558919 (Mar. 20, 1995).

In HQ H022169, CBP found that an imported mini-truck glider was substantially transformed as a result of assembly operations performed in the United States to produce an electric mini-truck. Our decision was based on the fact that, under the described assembly process, the imported glider lost its individual identity and became an integral part of a new article possessing a new name, character and use. In addition, a substantial number of the components added to the imported glider were of U.S. origin.

In HQ 558919, a country of origin marking case relied upon in HQ H022169, U.S. Customs (now CBP) held that an extruder assembly manufactured in England was substantially transformed in the United States when it was wired and combined with U.S. components (motor, electric controls and extruder screw) to create a vertical extruder. In reaching that decision, Customs emphasized that the imported extruder subassembly and the U.S. components each had important attributes that were functionally necessary to the operation of the extruder. Consequently, we found that the imported subassemblies should be excepted from individual marking, provided that the cartons in which the U.S. manufacturer received them were properly marked with their country of origin.

In both HQ 558919 and HQ H022169, CBP found that assembly of the imported parts together with the U.S. made components were "functionally necessary" to the operation of the finished product. The same is true in this situation. None of the imported parts, on their own, can function as an electric vehicle but must be assembled with other necessary U.S. components, such as the battery pack, motor, electronics, wiring assemblies and charger. Moreover, given the complexity and duration of the U.S. manufacturing process, we consider those operations to be more than mere assembly.

Based on the information before us, and consistent with the CBP rulings cited above, we find that the Chinese-origin chassis, plastic body parts and plastic pieces of trim are substantially transformed by the assembly operations performed in the United States to produce both the Hoss and Eve lines of electric vehicles. Under the described assembly process, the imported parts lose their individual identities and become integral parts of a new article possessing a new name, character and use. Further, components crucial to the making of an electric vehicle (the battery pack, motor, electronics, wiring assemblies, and charger) are of U.S. origin. We conclude, based upon these specific facts, that the country of origin of the Fairplay Hoss and Eve lines of electric vehicles for purposes of U.S.

Government procurement is the United States.

HOLDING:

The chassis, plastic body parts and plastic pieces of trim imported from China are substantially transformed when they are assembled in the United States with domestic components. As a result, the country of origin of Fairplay's Hoss line of industrial and commercial electric vehicles, specifically the Hoss LD, Hoss XD, and Hoss Quad, for purposes of U.S. Government procurement is the United States. The country of origin of Fairplay's Eve line of low speed electric vehicles, specifically the Eve Deluxe 2P, Eve Deluxe XR 2P, Eve Deluxe LTD 2P, Eve Deluxe 4P, Eve Eco 2P, and the Eve Eco XR 2P, for purposes of U.S. Government procurement is the United States.

Notice of this final determination will be given in the Federal Register, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days of publication of the Federal Register Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Harold Singer
Acting Executive Director
Regulations and Rulings
Office of International Trade

[FR Doc. 2010–31638 Filed 12–15–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5443–N–02]

Notice of Availability of a Draft Environmental Impact Statement for the Sunset Area Community Planned Action, City of Renton, WA

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development (HUD) gives this notice to the public, agencies and Indian Tribes on the availability for public review and comment of the Draft Environmental Impact Statement (Draft EIS) for the redevelopment of the Sunset Terrace public housing community in Renton, WA. HUD gives this notice on behalf of the City of Renton acting as the Responsible Entity for compliance with the National Environmental Policy Act (NEPA). Pursuant to the authority granted by section 26 of the U.S. Housing Act of 1937 (42 U.S.C. 1437x) in connection with projects assisted under section 9 of that Act (42 U.S.C. 1437g), the City of Renton has assumed responsibility for compliance with NEPA (42 U.S.C. 4321) in accordance with 24 CFR 58.1 and 58.4, and is the lead agency for compliance with the Washington State Environmental Policy Act (SEPA, RCW 43.21C). The Draft EIS is a joint NEPA and SEPA document intended to satisfy requirements of Federal and State environmental statutes. This notice is given in accordance with the Council on Environmental Quality regulations at 40 CFR parts 1500–1508.

Notice is also given that the City of Renton as Responsible Entity has decided to combine the National Historic Preservation Act, Section 106 process with the NEPA Environmental Impact Statement (EIS) in accordance with 36 CFR 800.8(c). Comments are also being requested on the Section 106 information presented in the Draft EIS as well as on the Section 106 process itself.

DATES: Written comments on the Draft EIS must be received January 31, 2011. Written comments should be addressed to the individual named below under the heading **FOR FURTHER INFORMATION CONTACT**.

Public Hearing: A public hearing will be held for the public to provide verbal or written comment on the Draft EIS as well as on the proposed planned action ordinance. The public hearing will be held on January 5, 2011, at 6 p.m. before the Renton Planning Commission. The meeting will be held at the Council Chambers, 1055 S. Grady Way, Renton, WA 98057.

FOR FURTHER INFORMATION CONTACT: Erika Conkling, AICP, Senior Planner, City of Renton Department of Community and Economic Development, 1055 S. Grady Way, Renton, WA 98057, 425–430–6578 (voice) 425–430–7300 (fax), or e-mail: *econkling@rentonwa.gov*.

Copies of the Draft EIS are available at the above address for reference, and copies may be purchased for the cost of reproduction. The Draft EIS is also available on the Internet and can be viewed or downloaded at: *http://rentonwa.gov/business/default.aspx?id=2060*.

SUPPLEMENTARY INFORMATION: The proposal includes redevelopment of the Renton Housing Authority's (RHA's) Sunset Terrace public housing community, a 7.3-acre property with 100 existing units contained in 27 buildings that are 50-year-old, two-story structures, located at the intersection of NE. Sunset Boulevard and Harrington Avenue, NE. RHA also owns additional vacant land (approximately 3 acres with two dwelling units) along Edmonds Avenue, NE., Glenwood Avenue, NE., and Sunset Lane, NE., and intends to purchase additional property adjacent to Sunset Terrace, along Harrington Avenue, NE. (which contains about 8 dwellings); RHA plans to incorporate these additional properties into the Sunset Terrace redevelopment for housing and associated services. The Sunset Terrace public housing community units, facilities, and infrastructure are antiquated and the project is dilapidated.

Conceptual plans propose redevelopment of Sunset Terrace and adjacent properties with mixed-income, mixed-use residential and commercial space and public amenities. The redevelopment would include a 1-to-1 unit replacement for all 100 existing public housing units. All existing public housing units will be replaced either on-site or off-site, at locations within the existing Sunset Terrace site, and the Planned Action Study Area within the City; no net loss of low income housing units would occur. The project will require relocation of all existing residents and RHA is developing a relocation plan. It is expected that, with the Sunset Terrace property and associated properties owned or purchased by RHA, up to 479 additional new units could be constructed with a portion of the total units being public, affordable, and market rate. Public amenities would be integrated with the residential development and could include the following: A community gathering space or "third place;" civic facilities such as a community center, senior center, and/or public library space; a new park/open space; retail shopping and commercial space; and green infrastructure.

Sunset Terrace's redevelopment provides the opportunity to evaluate the neighborhood as a whole and determine what future land use redevelopment is possible and what public service and infrastructure improvements should be made in order to make this a more vibrant and attractive community for residents, businesses and property owners. The Draft EIS addresses the primary proposal of the Sunset Terrace area redevelopment as well as evaluate secondary proposals such as neighborhood redevelopment and

supporting services and infrastructure improvements.

The City of Renton is also proposing to adopt a Planned Action Ordinance pursuant to SEPA. A Planned Action Ordinance, if adopted, would not require future SEPA threshold determinations or EISs for future projects that are consistent with EIS assumptions and mitigation measures.

The proposal is reviewed in terms of three alternatives.

Alternative 1, No Action. RHA would develop affordable housing on two vacant properties, but it would not redevelop the Sunset Terrace public housing property. Very limited public investment would be implemented (*e.g.,* some community services but no NE Sunset Boulevard or drainage improvements), resulting in lesser redevelopment across the Planned Action study area. A Planned Action would not be designated. The No Action Alternative is required to be studied under NEPA and SEPA.

Alternative 2. This alternative represents a moderate level of growth in the Planned Action Study Area based on investment in mixed-income housing and mixed uses in the Potential Sunset Terrace Redevelopment Subarea, targeted infrastructure and public services throughout the Planned Action study area, and adoption of a Planned Action Ordinance.

Alternative 3. This alternative represents the highest level of growth in the Planned Action study area, based on investment in the Potential Sunset Terrace Redevelopment Subarea with a greater number dwellings developed in a mixed-income, mixed-use style, major public investment in study area infrastructure and services, and adoption of a Planned Action Ordinance.

The lead agency has addressed the following areas in the Draft EIS: Aesthetics; air quality, including greenhouse gas emissions; earth; energy; environmental health; environmental justice; historic/cultural resources; housing; land use; noise; parks and recreation; plants and animals; public services, including public education, safety, health, and social services; socioeconomics, including demographic, employment, and displacement; transportation; utilities, including wastewater, stormwater, water supply, telecommunication, natural gas, power, electrical; and water resources, including groundwater and surface water. Mitigation measures are identified in the Draft EIS.

Questions may be directed to the individual named above under the heading of **FOR FURTHER INFORMATION CONTACT**.

Dated: November 23, 2010.

Mercedes M. Márquez,

Assistant Secretary for Community Planning and Development.

[FR Doc. 2010–31654 Filed 12–15–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5450–N–02]

Federal Housing Administration (FHA): Notice of FHA PowerSaver Home Energy Retrofit Loan Pilot Program: Extension of Period Soliciting Expressions of Interest

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: On November 10, 2010, HUD published a notice that announced its proposal to conduct an FHA Home Energy Retrofit Loan Pilot Program (Retrofit Pilot Program or Pilot Program) known as FHA PowerSaver. The Consolidated Appropriations Act, 2010 directs HUD to conduct an Energy Efficient Mortgage Innovation pilot program targeted to the single family housing market, and the Retrofit Pilot Program is designed by HUD to meet this statutory directive and provides funding to support that effort. The November 10, 2010, notice solicited public comment and invited lenders interested in participating in the Pilot Program to submit Expressions of Interest. The deadline for both the submission of public comments and expressions of interest from lenders is December 27, 2010.

This notice extends the date for submission of Expressions of Interest to January 31, 2011. The public comment deadline, however, remains December 27, 2010.

DATES: *Due Date for Expressions of Interest:* January 31, 2011.

ADDRESSES: As provided in the November 10, 2010, notice, lenders interested in participating in this Pilot Program must email their Expressions of Interest to *FHAPowerSaver@hud.gov* in accordance with Appendix A of the November 10, 2010, notice.

FOR FURTHER INFORMATION CONTACT: Patricia McBarron, Office of Single Family Housing Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000; telephone number 202–708–2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: HUD published a notice in the **Federal Register** on November 10, 2010 (75 FR 69112) that announced its proposal to conduct an FHA Home Energy Retrofit Loan Pilot Program (Retrofit Pilot Program or Pilot Program) known as FHA PowerSaver. The Consolidated Appropriations Act, 2010 (Pub. L. 111–117, approved December 16, 2009, 123 Stat. 3034) (2010 Appropriations Act), which appropriated Fiscal Year (FY) 2010 funds for HUD, among other agencies, appropriated $50 million for an Energy Innovation Fund to enable HUD to catalyze innovations in the residential energy efficiency sector that have the promise of replicability and help create a standardized home energy efficient retrofit market. Of the $50 million appropriated for the Energy Innovation Fund, the 2010 Appropriations Act stated that "$25,000,000 shall be for the Energy Efficient Mortgage Innovation pilot program directed at the single family housing market." (*See* Pub. L. 111–117, at 123 Stat. 3089.)

Under the Retrofit Pilot Program, HUD, through FHA-approved lenders, will insure loans for homeowners who are seeking to make energy improvements to their homes. As provided in the November 10, 2010, notice, HUD intends to select a limited number of lenders to participate in the Retrofit Pilot Program. The Pilot Program will be for loans originated during a 2-year period, will be restricted to lenders approved by HUD to participate in the Pilot Program, and will be conducted in geographic areas identified by HUD as optimum locations to conduct the Pilot Program. In making these determinations, HUD will consider the factors and criteria proposed in the November 10, 2010, notice to establish the framework for the Pilot Program, and the public comments received in response to HUD's solicitation of comment. In addition to seeking comments on the proposed Pilot Program, HUD invited lenders interested in participating in this Pilot Program to notify HUD of such interest as provided in Appendix A to the November 10, 2010, notice.

This notice extends the period in which lenders may submit expressions of interest to January 31, 2010. HUD, however, is not extending the public comment deadline. In order to be in a position to make final determinations

on the framework of the Pilot Program, it is important for the public comment deadline to come to an end so that HUD can commence the review of comments and consideration of issues and suggestions raised.

Dated: December 10, 2010.

David H. Stevens,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 2010–31507 Filed 12–15–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–Rx-XX–2010–N274; 97320–1661–0040–92]

Proposed Information Collection; OMB Control Number 1018–0115, Application for Training, National Conservation Training Center

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on December 31, 2011. We 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.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by February 14, 2011.

ADDRESSES: Send your comments on the IC to the Service Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *infocol@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Dana Dennison, National Conservation Training Center, at (304) 876–7481 (telephone) or *dana_dennison@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Fish and Wildlife Service National Conservation Training Center in Shepherdstown, West Virginia, provides natural resource and other professional training for Service employees, employees of other Federal agencies, and other affiliations, including State agencies, private individuals, not-for-profit organizations, and university personnel. FWS Form 3–2193 (Training Application) is a quick and easy method for prospective non-Department of the Interior students to request training. We encourage applicants to use FWS Form 3–2193 and to submit their requests electronically. However, we do not require applicants to complete both a training form required by their agency and FWS Form 3–2193. NCTC will accept any single training request as long as each submission identifies the name, address, and phone number of the applicant, sponsoring agency, class name, start date, and all required financial payment information.

NCTC uses data from the form to generate class rosters, class transcripts, and statistics, and as a budgeting tool for projecting training requirements. It is also used to track attendance, mandatory requirements, tuition, and invoicing for all NCTC-sponsored courses both on- and off-site.

II. Data

OMB Control Number: 1018–0115.

Title: Application for Training, National Conservation Training Center.

Service Form Number: 3–2193.

Type of Request: Extension of a currently approved collection.

Description of Respondents: Persons who wish to participate in training given at or sponsored by the National Conservation Training Center (NCTC).

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion when applying for training at NCTC.

Estimated Annual Number of Respondents: 500.

Estimated Total Annual Responses: 500.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 83.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 7, 2010.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 2010–31619 Filed 12–15–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2010–N279; 96300–1671–0000–P5]

Endangered Species; Marine Mammals; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species, marine mammals, or both. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibit activities with listed species unless a Federal permit is issued that allows such activities. Both laws require that we invite public comment before issuing these permits.

DATES: We must receive comments or requests for documents or comments on or before January 18, 2011. We must receive requests for marine mammal permit public hearings, in writing, at the same address by January 18, 2011.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (*see* **DATES**) or comments delivered to an address other than those listed above (*see* **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, the Endangered Species Act of 1973, section 10(a)(1)(A), as amended (16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 18 require that we invite public comment before final action on these permit applications. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: Earl Bruno, Eden, TX; PRT 28015A

The applicant requests a permit for interstate and foreign commerce, export and cull of excess barasingha (*Rucervus duvauceli*) from their captive herd for the purpose of enhancement of the survival of the species in the wild. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Los Angeles Zoo, Los Angeles, CA; PRT–106091

The applicant requests renewal of their permit to import live captive born juvenile peninsular pronghorns (*Antilocapra americana peninsularis*) from Mexico, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period

Applicant: Natural History Museum of Los Angeles, Los Angeles, CA; PRT–30660A

The applicant requests a permit to export and re-import nonliving museum specimens of endangered and threatened species previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: John Estes, Abilene, TX; PRT–29150A

Applicant: Timothy Reiger; Leesport, PA; PRT–28789A

Applicant: Gary Bailey, Williams, MN; PRT–23847A

B. Endangered Marine Mammals and Marine Mammals

Applicant: Thomas A. Postel, Minneola, FL; PRT–19806A

On September 23, 2010, we published a **Federal Register** notice inviting the public to comment on this application for a permit to conduct certain activities with endangered species (75 FR 57977). The applicant subsequently submitted additional information in support of his application; therefore, we are reopening the comment period. The applicant requests a permit to photograph Florida manatees (*Trichechus manatus*) above and underwater for commercial and educational purposes. This notification covers activities to be conducted by the applicant over a 1-year period. Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: December 10, 2010.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2010–31591 Filed 12–15–10; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–725]

In the Matter of Certain Caskets; Notice of Commission Issuance of a Limited Exclusion Order Against Infringing Products of Respondent Found in Default; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order against infringing products of Ataudes Aguilares, S. de R.L. de C.V. of Guadalajara, Mexico ("Ataudes Aguilares"), which was previously found in default, and has terminated the above-captioned

investigation under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337).

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2301. 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 July 8, 2010, based on a complaint filed by Batesville Services, Inc. of Batesville, Indiana ("Batesville"). 75 FR 16837–38 (July 8, 2010). 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 caskets by reason of infringement of certain claims of U.S. Patent Nos. 5,611,124; 5,727,291; 6,836,936; 6,976,294; and 7,340,810. The Commission's notice of investigation named Ataudes Aguilares as the lone respondent.

On August 12, 2010, Batesville moved, pursuant to Commission Rule 210.16(b) (19 CFR 210.16(b)), for an order to show cause why Ataudes Aguilares should not be found in default for failure to respond to the Complaint and Notice of Investigation and for a finding of default upon the failure to show cause. On August 19, 2010, the Commission investigative attorney ("IA") filed a response in support of the motion. The presiding administrative law judge ("ALJ") issued the requested order, instructing Ataudes Aguilares to show cause, no later than the close of business on September 21, 2010, why it should not be found in default. Order No. 4 (Aug. 31, 2010). No response to Order No. 4 was filed, and the ALJ subsequently issued an initial determination ("ID") finding Ataudes Aguilares in default. Order No. 5 (Sept. 24, 2010). The Commission determined not to review the ID and issued a Notice requesting briefing from interested parties on remedy, the public interest, and bonding. 75 FR 65379–80 (Oct. 22, 2010).

The IA and Batesville submitted briefing responsive to the Commission's request on November 3 and 4, 2010, respectively. Each proposed a limited exclusion order directed to Ataudes Aguilares's accused products and recommended allowing entry under a bond of 100 percent of the entered value during the period of Presidential review.

The Commission found that the statutory requirements of section 337(g)(1)(A)–(E) (19 U.S.C. 1337(g)(1)(A)–(E)) were met with respect to the defaulting respondent. Accordingly, pursuant to section 337(g)(1) (19 U.S.C. 1337(g)(1)) and Commission rule 210.16(c) (19 CFR 210.16(c)), the Commission presumed the facts alleged in the complaint to be true.

The Commission has determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of certain caskets that are manufactured abroad by or on behalf of, or imported by or on behalf of, respondent Aguilares by reason of infringement of claims 1, 13, 27, and 44–53 U.S. Patent No. 5,611,124; claims 1, 6, 8, 9, 16, 17, 19, and 21 of U.S. Patent No. 5,727,291; claims 1 and 2 of U.S. Patent No. 6,836,936; claims 1, 2, 5–8, 11, and 12 of U.S. Patent No. 6,976,294; and claims 1, 2, 4, and 5 of U.S. Patent No. 7,340,810. The Commission further determined that the public interest factors enumerated in section 337(g)(1) (19 U.S.C. 1337(g)(1)) do not preclude issuance of the limited exclusion order. Finally, the Commission determined that the bond for importation during the period of Presidential review shall be in the amount of 100 percent of the entered value of the imported subject articles. The Commission's order was delivered to the President and the United States Trade Representative on the day of its issuance.

The Commission has terminated this investigation. 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 210.16(c) and 210.41 of the Commission's Rules of Practice and Procedure (19 CFR 210.16(c) and 210.41).

By order of the Commission.

Issued: December 13, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–31647 Filed 12–15–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on December 10, 2010, a proposed Consent Decree (the "Decree") in United States and *Puget Sound Clean Air Agency* v. *U.S. Oil & Refining Co.,* Case No. 3:10–cv–05899, was lodged with the United States District Court for the Western District of Washington.

In a complaint filed on the same day, the United States alleged that U.S. Oil & Refining Co. ("U.S. Oil") was liable for violations at its refinery in Tacoma, Washington, pursuant to Section 113(b), 42 U.S.C. 7413(b). Specifically, the complaint alleges that U.S. Oil violated the National Emission Standards for Hazardous Air Pollutants for Benzene Waste Operations (the "Benzene NESHAP"), 40 CFR part 61, Subpart FF, the National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries concerning leak detection and repair (the "LDAR regulations"), 40 CFR part 63, Subpart CC, and the National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries concerning emissions from catalytic reforming units and sulfur recovery plants, 40 CFR part 63, Subpart UUU. The complaint also alleges violations of Title V of the Clean Air Act, 42 U.S.C. 7661–7661f.

Pursuant to the Decree, U.S. Oil will: (1) Pay a civil penalty of $230,000; (2) implement at least $746,000 in supplemental environmental projects; (3) enhance U.S. Oil's Benzene NESHAP compliance program; and (4) implement measures, in addition to compliance with the LDAR regulations, to minimize or eliminate fugitive emissions from components in the light liquid and gaseous service in its refinery.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to United States and *Puget Sound Clean Air*

Agency v. *U.S. Oil & Refining Co.,* D.J. Ref. 90–5–2–1–09514.

During the public comment period, the Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $19.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–31551 Filed 12–15–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 06–63]

R & M Sales Company, Inc.; Revocation of Registration

On June 1, 2006, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA, or "the Government"), issued an Order to Show Cause to R & M Sales Company, Inc. (Respondent), of Blountville, Tennessee. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, 004413RAY, which authorizes it to distribute List I chemicals, as well as the denial of any pending application to renew its registration, on the ground that Respondent's continued registration is "inconsistent with the public interest." OTSC at 1 (citing 21 U.S.C. 823(h) & 824(a)(4)).

More specifically, the Show Cause Order alleged that during an inspection for its initial registration, Respondent received copies of DEA notices and cites to the Code of Federal Regulations pertinent to listed chemical distributors. *Id.* Relatedly, the Order alleged that "Mr. Mitchell was further advised by DEA personnel on proper record-keeping procedures for a DEA registrant, including, but not limited to, the requirement of maintaining records of the destruction of out of date listed chemical products." *Id.*

Next, the Show Cause Order alleged that many of Respondent's customers are convenience stores, gas stations and small independent grocers located in the Cumberland Plateau area of Tennessee, which is known for its problem with illicit methamphetamine production, and that Respondent distributes pseudoephedrine and ephedrine products in both tablet and gel-capsule form, which are precursor chemicals used in the illicit manufacture of methamphetamine. *Id.* at 2–3.

The Show Cause Order further alleged that on June 8 and 9, 2005, DEA Investigators (DIs) conducted an inspection of Respondent, during which they performed an accountability audit of its handling of two ephedrine products, MaxBrand 25 mg. ephedrine tablets (48-count bottles) and Ephedrine Multi-Action 25 mg. (also 48-count bottles), which revealed a shortage of each product. *Id.* at 3–4. The Order thus alleged that Respondent "failed to maintain complete and accurate records of a regulated transaction as required by 21 CFR 1310.06(a)." *Id.* at 4. The Order also alleged that Respondent "stores List I chemical products in its delivery trucks and/or trailers * * * creat[ing] the potential for the diversion of List I chemicals." *Id.* (citing 21 U.S.C. 823(h)(1) and 21 CFR 1309.71).

Next, the Show Cause Order alleged that based on its June 2005 inspection, DEA "developed additional information regarding [Respondent's] sale of large quantities of ephedrine to various convenience stores and related establishments," and that these "sales were vastly in excess of the amounts of this over-the-counter product needed to meet the medical and scientific needs of the community." *Id.* The Order also alleged that Respondent engaged in 35 regulated transactions with seven different customers in which it distributed 24-count, 36-count, and 48-count bottles of ephedrine products, "knowing or having reason to believe that its product would be used in the illicit manufacture of controlled substances in violation of 21 U.S.C. 841(d)(2)." [1] *Id.*, at 4–6. In addition, the Order alleged that Respondent failed "to provide notification of 'suspicious' activity pursuant to 21 U.S.C. 830(b)(1)(A) and 21 CFR 1310.05(a)(1) with respect to" these 35 transactions. *Id.* Finally, the Order alleged that DEA "conducted [a] customer verification" at the Fast Stop Covington, a convenience store located in Covington, Virginia, during which the owner informed a DI "that he purchased one case (144 bottles) of ephedrine products from [Respondent] every two to four weeks"; the Order then alleged that these purchases were "far in excess of legitimate demand for these products." *Id.* at 6.

On June 26, 2006, Respondent requested a hearing in the matter. ALJ Ex. 2. The matter was assigned to a DEA Administrative Law Judge (ALJ), who conducted a hearing in Arlington, Virginia on May 15 and 16, 2007. During the hearing, both parties called witnesses to testify and introduced documentary evidence. Following the hearing, both parties submitted briefs containing proposed findings of fact, conclusions of law, and argument.

On February 13, 2009, the ALJ issued her recommended decision (ALJ), which concluded that Respondent's continued registration would be inconsistent with the public interest. With respect to factor one—the maintenance of effective controls against diversion—the ALJ found that Respondent violated 21 CFR 1309.71(b) by storing listed chemicals in trucks away from its premises, that it sold "excessive quantities of listed chemicals to some customers and failed to report suspicious order[s] for these chemicals to DEA," and that it "failed to ascertain whether [its] customers purchased listed chemicals from other distributors." *Id.* at 36. She therefore concluded that "Respondent does not maintain adequate controls against the diversion of the listed chemicals it sells," and that "this factor weighs in favor of a finding that Respondent's continued registration would be inconsistent with the public interest." *Id.*

With respect to factor two—Respondent's compliance with applicable Federal, State and local law—the ALJ concluded that Respondent's storage of chemicals away from its premises and its failure to report suspicious transactions constituted violations of Federal law and DEA regulations. *Id.* She also found that Respondent had failed to provide prior notification to DEA of mail shipments of listed chemical products, in violation of 21 CFR 1310.03(c), and that, having "sold excessive quantities of listed chemicals," Respondent further violated 21 U.S.C. 841(c)(2) in that it "should have known that some of those chemicals were likely to be diverted to the illicit manufacture of the controlled substance methamphetamine." *Id.* at 36–37. The ALJ thus concluded that this factor supported a finding that

[1] The correct statutory citation is actually 21 U.S.C. 841(c)(2).

Respondent's continued registration was inconsistent with the public interest. *Id.* at 37.

Finding that neither Mr. Mitchell (Respondent's owner), nor any of its employees had ever been convicted of a crime related to controlled substances or listed chemicals (factor three), the ALJ concluded that this factor "weigh[ed] in favor of a finding that Respondent's continued registration would not be inconsistent with the public interest." *Id.* As to factor four—Respondent's past experience in the distribution of listed chemicals—the ALJ referenced Respondent's inadequate controls against diversion and its violations of applicable Federal law and found that "this factor weigh[ed] in favor of a finding that Respondent's continued registration would not be consistent with the public interest." *Id.*

As to the fifth factor—such other factors as are relevant to and consistent with public health and safety—the ALJ found that "it is likely that chemicals purchased in Virginia are used to make methamphetamine in Tennessee" and that "methamphetamine can be produced from liquid-filled dosage form products as well as the sol[i]d form products." *Id.* at 37–38. The ALJ thus reasoned that this factor also supported the conclusion that Respondent's continued registration would be inconsistent with the public interest. *Id.* at 38.

Based on her consideration of all the factors, the ALJ found "that a preponderance of the evidence * * * demonstrates that Respondent's continued registration would not be consistent with the public interest." *Id.* The ALJ thus recommended that Respondent's registration be revoked and that all pending applications for renewal or modification be denied. *Id.*

Neither party filed exceptions to the ALJ's decision. Thereafter, the record was forwarded to me for final agency action.

Having reviewed the record as a whole, I hereby issue this Decision and Final Order. I adopt the ALJ's findings of fact and conclusions of law except as explained herein. I further find that Respondent violated Federal law by knowingly selling drug paraphernalia. I further concur with the ALJ's ultimate conclusion that Respondent's continued registration would be inconsistent with the public interest and adopt her recommendation that its registration be revoked and that any pending applications be denied. I make the following findings.

Findings

Methamphetamine and List I Chemicals

Both pseudoephedrine and ephedrine have therapeutic uses and are lawfully marketed as non-prescription (OTC) drug products under the Federal Food, Drug and Cosmetic Act. GX 4, at 3. Pseudoephedrine is approved for marketing as a decongestant; ephedrine (in combination with guaifenesin) is approved for marketing as a bronchodilator.[2] *Id.* at 3–4. Both pseudoephedrine and ephedrine are, however, regulated as list I chemicals under the Controlled Substances Act because they are precursor chemicals that are easily extracted from OTC products and used in the illicit manufacture of methamphetamine, a schedule II controlled substance.[3] *Id.; see* GX 4, at 7 (noting that pseudoephedrine and ephedrine can be converted into methamphetamine in a simple one-step reaction which can be accomplished with little or no chemistry expertise).

Methamphetamine "is a powerful and addictive central nervous system stimulant."[4] *T. Young Associates, Inc.,* 71 FR 60567 (2006). Methamphetamine abuse has destroyed numerous lives and families and ravaged communities. *See Rick's Picks, L.L.C.,* 72 FR 18275, 18276 (2007). Moreover, because of the nature of the chemicals used to make methamphetamine, its illicit manufacture poses a significant environmental hazard, as it generates toxic chemical by-products. Tr. 17–18. Not only do the by-products cause damage when discarded into waterways and public lands, the presence of chemical fumes during methamphetamine production creates a potential for fires and explosions. *Id.* at 18–19. Such illicit methamphetamine laboratories may be of the "mom and pop type," and be found in motels, homes, or trunks of automobiles; the toxic fumes they emit also create a health hazard for children who are exposed to them. *Id.*

As evidenced by the number of law enforcement seizures of illicit meth. labs, the State of Tennessee, which is where Respondent is located, has had a particularly high incidence of illicit methamphetamine manufacturing. More specifically, in 2003, Tennessee ranked seventh out of 47 reporting states, with 983 seizures. GX 3, at 4. In 2004, Tennessee ranked second of 48 reporting states, with 1,432 seizures. *Id.*

While following the passage of the Meth-Free Tennessee Act of 2005[5] (which became effective May 1, 2005), the number of illicit lab seizures declined, *Id.* at 4–5; between January 1 and July 31, 2006, Tennessee still had 249 illicit methamphetamine laboratory seizures according to the statistics maintained by DEA's El Paso Intelligence Center (EPIC).[6] Tr. 32–33; GX 23. Moreover, according to data compiled by the National Clandestine Laboratory Database of which I take official notice, during 2008, law enforcement authorities reported 553 clandestine meth. lab incidents in Tennessee. U.S. Drug Enforcement Administration, Maps of Methamphetamine Lab Incidents, available at *http://www.usdoj.gov/dea/concern/map_lab_seizures.html/*

[2] In July 2005, the FDA proposed to remove combination ephedrine-guaifenesin products from its over-the-counter (OTC) drug monograph and to declare them not safe and effective for OTC use. *See* 70 FR 40232 (2005). This rulemaking remains pending.

[3] In 1988, Congress amended the Controlled Substances Act (CSA) by enacting the Chemical Diversion and Trafficking Act (CDTA), which subjected bulk ephedrine to regulation. GX 5, at 7. Shortly thereafter, law enforcement authorities encountered ephedrine tablets instead of bulk ephedrine at illicit methamphetamine laboratories. *Id.* In 1993, the CSA was again amended by the Domestic Chemical Diversion Control Act of 1993 (DCDCA), which regulated single-entity ephedrine products and required distributors of these products to register. *Id.* Illicit methamphetamine manufacturers then switched from single-entity ephedrine products to OTC combination products containing ephedrine. *Id.* at 8. The DCDCA also led to the large-scale diversion of pseudoephedrine tablets to the illicit manufacture of methamphetamine. *Id.* In response, Congress enacted the Comprehensive Methamphetamine Control Act of 1996 (CMCA), which expanded regulatory control of lawfully marketed drug products containing ephedrine, pseudoephedrine and phenylpropanolamine. *Id.* at 8–9.

More recently, in 2006, Congress passed the Combat Methamphetamine Epidemic Act of 2005 (CMEA). GX 3, at 5. Under the CMEA, effective April 8, 2006, all tablet-form drug products containing pseudoephedrine, ephedrine, and/or phenylpropanolamine were required to be sold at retail in blister packs. *Id.* Also effective April 8, 2006, the law imposed a daily transaction limit of 3.6 grams of base product per person, per day, and a sales limit of 9 grams of base product in a 30-day period. *Id.* As of September 30, 2006, these products must be placed behind the counter, and purchasers must show identification and sign a logbook. *Id.*

[4] According to data compiled by the Drug Abuse Warning Network (DAWN), between 1993 and 1999, medical examiners throughout the country reported 4,593 methamphetamine related deaths. GX 4, at 9.

[5] The law limits the sale of tablet-form products containing pseudoephedrine or ephedrine to pharmacists and licensed pharmacy technicians. *Id.* at 5. In addition, all purchasers must be over 18 years of age, present photo identification, and sign a logbook. *Id.* While the law limits the sale of the tablet forms of list I chemicals, Tr. 90, it exempts gel capsules and liquid preparations. Tenn. Code Ann. § 39–17–431(b)(3).

[6] By contrast, a Government witness acknowledged that the number of seizures in Virginia is considerably lower than the number in Tennessee. Tr. 33.

(visited October 6, 2009).[7] The data also show that in 2008, Kentucky, another State where Respondent distributes List I chemicals, had 416 lab incidents, an increase from 294 the year before. *Id.* While the majority of seized methamphetamine laboratories utilized tablet-form pseudoephedrine and ephedrine products, DEA scientific studies indicate that liquid and gel-cap formulations of these precursors can easily produce methamphetamine when the appropriate reagents or solvents are used. GX 23, at 8.

Respondent's Business

Respondent is a wholesale distributor of various products including list I chemicals to convenience stores and gas stations located in rural Appalachia in the States of Tennessee, Kentucky, Virginia, North Carolina, and South Carolina. Tr. 353–54. Respondent was founded in 1972 by Mr. Joe Allen Mitchell, and was incorporated in 1990. Id. at 352–53. Mr. Mitchell is Respondent's President; the firm also employs two route salesmen and an office manager.[8] *Id.* at 306 & 358.

Respondent first obtained a DEA registration in July 1999, and currently holds Certificate of Registration, 004413RAY, which authorizes it to distribute list I chemicals. GX 1. While the certificate indicates that the registration expired on April 30, 2006, on March 16, 2006, Respondent submitted a renewal application. GX 2. Therefore, in accordance with the Administrative Procedure Act and DEA regulations, I find that Respondent's registration has remained in effect pending the issuance of this Final Order. *See* 5 U.S.C. 558(c); 21 CFR 1309.45.

The DEA Inspections

On June 29, 1999, a DEA Diversion Investigator (DI) visited Respondent to conduct a pre-registration investigation.[9] GX 25. During the inspection, the DI provided Respondent with several informational notices issued by DEA including a red notice; this notice explains, *inter alia,* that combination ephedrine and pseudoephedrine products are being used in the illicit manufacture of methamphetamine and directs registrants to report "suspicious orders" to their local DEA office.[10] GX 16, at 1; Tr. 78–81; GX 25, at 1–2.[11]

In an affidavit, the DI who conducted the 1999 inspection testified that he also provided Mr. Mitchell with "copies of the Code of Federal Regulation (CFR) cites relative to chemical distributors." GX 25, at 1. The DI further stated that he "informed Mr. Mitchell that any suspicious orders and thefts or losses must be reported to the DEA in accordance with 21 CFR 1310.05" and advised him as to "the threshold requirements and * * * the recordkeeping requirements pursuant to 21 CFR 1310.05 including reports of theft and loss, suspicious orders, and destruction of damaged or out of date merchandise." *Id.* at 2.

In his testimony, Mr. Mitchell stated that he could not recall ever having been "apprised or informed of [the] requirement to report suspicious orders" and that he had thought that any amount "over the threshold limit would be suspicious." Tr. 385–86. Mr. Mitchell also testified that he was "not really" aware that list I chemicals were used in the manufacture of methamphetamine or that cigarette lighter fluid was also used in the process. *Id.* at 376.[12] In any event, because the requirement to report suspicious orders is set forth in both Federal law and DEA regulations, *see* 21 U.S.C. 830(b)(1); 21 CFR 1310.05(a); whether Mr. Mitchell was specifically notified of the requirement (either in conversation with the DI or by being provided with the red notice) is immaterial.[13] *See Fed. Crop Ins. Corp.* v. *Merrill,* 332 U.S. 380, 385 (1947) ("Just as everyone is charged with knowledge of the United States Statutes at Large, Congress has provided that the appearance of rules and regulations in the **Federal Register** gives legal notice of their contents.") (citation omitted); *United States* v. *International Min. & Chem. Corp.,* 402 U.S. 558, 562 (1971) ("The principle that ignorance of the law is no defense applies whether the law be a statute or a duly promulgated and published regulation.").

Some time after the 1999 inspection, Respondent received a facsimile of a DEA memo, "Guidelines Regarding the Submission of Reports," which contained a table of "Threshold Quantities" for various formulations of ephedrine, pseudoephedrine, and phenylpropanolamine products. RX 30, at 1, 5; Tr. 369. Mr. Mitchell testified that "[t]o me it was the Bible. It showed what the threshold limits are. This is the information that I went by." Tr. 369. According to Mr. Mitchell, he "calculated the number of products that [he] could sell, and [he] instructed [his] salespeople these are [the] limits." *Id.*

DEA did not visit Respondent again until June 8–9, 2005, when two DIs went to Respondent, met Mr. Mitchell and presented him with a Notice of Inspection, which he signed indicating his consent to the inspection. Tr. 84; GX 6, at 2. The DIs inspected Respondent's security arrangements, reviewed its procedures for handling list I products, examined its recordkeeping, and audited two list I products it distributed.

According to one of the DIs, Respondent is located within a "good-sized building," which is surrounded by a chain-link fence with a gate. Tr. 178. The building includes an area in the front where novelty items are displayed, a warehouse in the rear, and offices. *Id.* at 86–87. The building is protected by an alarm system, which the DIs tested and found to be in working order. *Id.* at 123; GX 17. Moreover, Respondent's enclosed yard area is lit with spotlights at night. Tr. 360, 363; RX 29.

Inside the warehouse, the DIs found that Respondent stored list I chemical products in a caged area; the cage was, however, constructed of chicken wire and could be easily compromised. Tr. 176. The DIs also found that Respondent stored list I chemicals overnight in its delivery trucks, which are parked within the chain-link perimeter. *Id.* at

[7] Under the Administrative Procedure Act (APA), an agency "may take official notice of facts at any stage in a proceeding-even in the final decision." U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is "entitled on timely request, to an opportunity to show to the contrary." 5 U.S.C. 556(e); *see also* 21 CFR 1316.59(e). Respondent can dispute the facts of which I take official notice by filing a properly supported motion for reconsideration within twenty days of service of this Order, which shall begin on the date it is mailed.

[8] Neither Mr. Mitchell, nor any of Respondent's employees, has been convicted of a criminal offense. Tr. 357–59. Mr. Mitchell further testified that he has never had reason to believe that any current or former employees have diverted list I chemical products. *Id.*

[9] Respondent did not undergo another inspection until June 2005. Tr. 82–84.

[10] The other notices included a green notice which informed Mr. Mitchell that chemicals such as red and white phosphorus are being used in the illicit manufacture of methamphetamine, and a yellow notice, which informed him about the increasing theft of pseudoephedrine and ephedrine products. *See* GX 16, at 2–3.

[11] According to the DI who testified at the hearing, when he conducted his close-out interview for the June 2005 inspection, Mr. Mitchell indicated that he had never received the colored notices. Tr. 130.

[12] Mr. Mitchell further testified that he took "the attitude that I have no control on what the retail public does with the product." Tr. 404. This testimony suggests that he was aware of the illicit uses of ephedrine products. Moreover, short of burying one's head in the sand, it is hard to imagine how anyone engaged in the distribution of these products (especially in Tennessee, given the scope of the State's meth. problem) could be unaware that they are subject to diversion into the illicit manufacture of methamphetamine.

[13] There is no dispute that DEA inspected Respondent on June 29, 1999. *See* GX 25; RX 33.

124. The DI testified that he cited Respondent for a violation of DEA regulations, because the trailer and delivery vehicles are "mobile, and they could easily be broken into." *Id.* Mr. Mitchell testified, however, that he was willing to change Respondent's practice and have the trucks parked inside the warehouse at night upon their return. *Id.* at 364.

At the hearing, Mr. Mitchell acknowledged that it is Respondent's practice to store list I chemical products overnight on the delivery trucks on nights when the driver-salesmen are staying in hotels along their routes. *Id.* at 397. In Respondent's twenty-day business cycle, one driver-salesman stays overnight on his route approximately two nights; the other driver-salesman stays overnight on his route approximately three nights. *Id.* Mr. Mitchell did not express any willingness to change this practice.

As noted above, during the inspection, the DIs reviewed Respondent's recordkeeping and conducted an audit of two products: Max Brand 25 mg. ephedrine 48-count bottles [14] and Ephedrine Multi-Action 25 mg. ephedrine 48-count bottles. Tr. 105; GX 9. The audit found shortages of 109 bottles of Max Brand and 275 bottles of Ephedrine Multi-Action; these figures amounted to 1.44% and 2.19% of the total quantity of each product handled during the audit period. GX 9; Tr. 108. According to one of the DIs, the shortage could have resulted from recordkeeping errors such as unrecorded sales, from diversion, or from loss. *Id.* at 108–09. The DI testified, however, that he did not consider the shortages significant in terms of Respondent's total sales. *Id.* at 201.

During an interview, Mr. Mitchell stated that his list I chemical products were "fast movers" and that Respondent's customer base for the products consisted primarily of convenience stores and gas stations located in eastern Tennessee, Virginia, Kentucky, West Virginia, and both North and South Carolina.[15] *Id.* at 90. Mr. Mitchell further stated that seventy-five percent (75%) of Respondent's customers sell list I products, and that thirty-five percent (35%) of Respondent's "overall business" is attributable to list I products. *Id.* at 89–90. Mr. Mitchell estimated that at the time of the hearing, Respondent had approximately 200 customers for all of its products and that its gross profit [16] from ephedrine sales was $200,000 annually.[17] *Id.* at 426, 428.

During the inspection, the DIs also found that Respondent used either the U.S. Postal Service or some other common carrier to make deliveries of list I products. *Id.* at 90–91. According to a spreadsheet which Mr. Mitchell gave the DIs, between July 20, 2004, and May 25, 2005, there were thirty-four instances in which Respondent shipped list I products containing pseudoephedrine in this manner; the shipments were sent to three stores and involved such products as Tylenol Sinus, Advil Cold and Sinus, NyQuil, Dayquil, and Benadryl. GX 22; 21 U.S.C. 802(34)(K).

According to the DI, under Federal law and DEA regulations, Respondent was required to file monthly reports with the Agency for each of these transactions. Tr. 194; *see* 21 U.S.C. 830(b)(3); 21 CFR 1310.03(c). However, DEA never received any such reports from Respondent. *Id.* at 194.

Also during the inspection, a DI received a handwritten document from Respondent's office manager detailing the destruction of list I chemical products by Respondent. Tr. 121; GX 14. According to this document, Respondent burned twelve bottles of Multi-Action (60-count) in March 2005 and 12 bottles of Mini-Thin (60-count) in January 2005. GX 14. The document, which was dated and signed by Respondent's Office Manager, states that while Respondent had "destroyed [out-of-date] merchandise in the past," "the count would not be any greater than what is listed above" for the March and January 2005 destructions of merchandise.[18] *Id.*

According to the DI, Respondent was required to give notification "prior to the destruction," but did not do so. Tr. 121. Mr. Mitchell testified that he had been unaware of the requirement that DEA be notified of the destruction of list I chemical products. *Id.* at 365. He also testified that he never contacted DEA with questions about the destruction of list I chemical products. *Id.* at 392.

The DI further testified that during the inspections, he found various instances of sales that he considered suspicious. Tr. 154. His office subsequently compiled a record of these suspicious sales, which was based on the quantity of product sold. *Id.* at 155; GX 24.

As found above, the DI who performed Respondent's pre-registration inspection had discussed the necessity of reporting suspicious transactions with Mr. Mitchell. Tr. 162. This DI did not, however, testify at the hearing, and the DI who performed the 2005 inspection did not know how, or if, that DI had defined "suspicious orders." *Id.*

On cross-examination, the DI further testified that, while "[t]here is no document" specifying the criteria for determining whether an order is suspicious,[19] during the pre-registration investigation, the DI "explain[ed] the criteria." *Id.* at 161; *see also id.* at 169. According to the DI, such criteria would include the location of a customer, a sudden increase in a store's purchasing patterns, and a store's sales in comparison to "other stores in the geographic area." [20] *Id.* at 157–58. The DI further explained that even if Respondent did not know the population in an area where one of its customers is located, "if you look at their sales in general" and "most of the sales are" for twelve bottles, "and then you got some that are 100, 300, 300, 900, that sticks out to me." *Id.* at 160–61; *see also* GX 21 (Respondent's DEA Log of distributions).

I agree with the DI that a store's location, its sales in comparison to other stores, and an increase in its purchasing patterns are relevant (but not the exclusive) criteria which a distributor

[14] Max Brand product has been found at seized methamphetamine laboratories. Tr. 105, 380.

[15] Approximately sixty-five percent (65%) of Respondent's list I chemical business is conducted in Virginia, and about thirty percent (30%) occurs in Tennessee, often along the border with Virginia. Tr. 350–51, 354.

[16] Gross profit is the mark-up minus distribution expenses such as commissions, warehouse electricity, and the water bill, etc. Tr. 429–30.

[17] At the time of the hearing, Respondent did not carry pseudoephedrine products. Tr. 428.

[18] The Office Manager testified that she had made the notation regarding the additional amounts that were destroyed apparently because there had been additional destructions but there were no records documenting them. Tr. 439–40; 446–48 The Office Manager further maintained that this statement was not accurate and that she made the statement because the DIs had told her that "they needed something." *Id.* at 445. In its brief, the Government does not cite to any provision of the CSA or DEA regulations which specifically require that the destruction of products be reported to the Agency.

[19] DEA has, however, published criteria in the *Chemical Handlers Manual,* as well as the Report of the Attorney General's Suspicious Order Task Force. Although the *Chemical Handlers Manual* was withdrawn because it is currently undergoing revisions to reflect changes in Federal law, the Manual was in effect at the time of the events at issue here. In addition, DEA has published its "'Know Your Customer' Policy," and the identification criteria developed by the Suspicious Orders Task Force on its website. *See http://www.deadiversion.usdoj.gov/chem_prog/susp.htm.*

[20] The DI testified that "any businessman is going to know their competition and who they're selling to. They're going to know what people want. For instance, Mr. Mitchell even told me himself that these were fast movers and that he needed to carry these products because if he didn't carry these products that other people would sell those products for him if he didn't sell them." Tr. 158. The DI also testified that "the firm if they're selling in that area, they're going to be there every few weeks. They're going to know the area a lot more than I would as an investigator." *Id.* at 160. The Government did not, however, introduce any evidence about comparable sales by Respondent's competitors.

must consider in evaluating whether an order is suspicious. However, I reject the DI's testimony that a distributor can be charged with knowledge of the sales levels of list I products at those stores which are not its customers. Moreover, I reject the DIs testimony that most of Respondent's sales were for twelve bottles, noting that the exhibit which he referred to in giving this testimony is obviously incomplete.[21]

The ALJ further noted that "Respondent did not controvert [the DI's] testimony that most if its customers purchased twelve or twenty-four bottles per month." ALJ at 35. The ALJ ignored, however, that Respondent introduce several exhibits showing its sales of various products to its customers. Moreover, my review of this data suggests that Respondent's sales were considerably greater than twelve to twenty- four bottles per month.

At the hearing, Mr. Mitchell also claimed that he was unaware of these criteria and that no one had told him that he required to monitor his sales and report suspicious orders. *Id.* at 372. While Mr. Mitchell testified that he was obliged to know how to identify a suspicious order, he nonetheless insisted that DEA was responsible for giving him information on suspicious orders. *Id.* at 394. Mr. Mitchell admitted, however, that he had never requested this information from DEA.[22] *Id.* at 392, 394.

Mr. Mitchell testified that he thought that only those transactions which exceeded the threshold amounts as indicated on the fax he received (RX 30, at 3) were suspicious orders. Tr. 386. The DI testified, however, that while the threshold amounts for sales to retail establishments trigger reporting requirements, they are not related to the determination of whether a given sale should be considered suspicious. *Id.* at 168. In answer to the question, "[i]s there a relationship between these threshold amounts and what you term suspicious sales?," the DI testified:

> No, because of the extreme number of variables. You couldn't put a number on suspicious sales in black and white because each geographical area would be different. If DEA said if you sell over 1,000 that's suspicious, well, 1,000 in northern Virginia is quite different from 1,000 being sold in Eastern Tennessee because there's a larger customer base.

Id. at 168–69.

The DI concluded that in thirty-five instances, Respondent's monthly sales constituted suspicious orders based solely on the quantities; he also testified that these sales should have been reported to DEA but were not. *Id.* at 154–55. The Government submitted into evidence its compilation of the sales (GX 24), which shows the following sales by store and number of bottles:

	Number of bottles
Chevron Food Mart, Hazard, Kentucky	
January 2004	324
February 2004	144
March 2004	252
April 2004	432
May 2004	288
June 2004	156
August 2004	228
September 2004	216
October 2004	288
November 2004	240
December 2004	240
January 2005	216
February 2005	216
March 2005	396
April 2005	216
May 2005	180
Fast Stop, Covington, Virginia	
September 2004	168
October 2004	60
February 2005	156
March 2005	144
April 2005	156
May 2005	144
Fast Mart Appomattox, Appomattox, Virginia	
September 2004	84
October 2004	144
December 2004	144
Holiday Chevron, Marion, Virginia	
January 2005	468
February 2005	708
March 2005	948
April 2005	900
May 2005	984
Garner Mountain Food Market, Isom, Kentucky	
May 2005	108
Glade Spring Chevron, Glade Spring, Virginia	
April 2005	168
May 2005	60
Hillbilly Market, Bristol, Virginia	
April 2005	324
May 2005	144

GX 24.

Notably, this compilation provides no information as to the number of tablets in each bottle, the strength of the ephedrine in each tablet, and the chemical composition of the ephedrine (hcl or sulfate). Mr. Mitchell admitted, however, that Respondent's sales in March, April and May of 2005 to the Holiday Chevron in Marion, Virginia, exceeded the threshold amount of 1000 grams, which was then in effect, and which made the distributions a regulated transaction under Federal law.[23] Tr. 372–73; *see* 21 CFR 1310.04(f) (2004 & 2005). Mr. Mitchell further testified that the salesman who handled the Holiday Chevron's account had told him that the store's owner "had two locations, and he sometimes moved product from one place to the other." Tr. 380–81.

In addition, according to Respondent's compilation of its sales to the Holiday Chevron, it sold even greater quantities of ephedrine products to the store in the months of August (1272 bottles totaling 54,864 tablets), October (1284 totaling 55,440 tablets), and November 2005 (1248 totaling 55,872 tablets). *See* RX 39, at 4–6. Each of these transactions exceeded the 1,000 gram threshold and yet none of them were reported to the Agency.

The Government also relied on Respondent's DEA Log (GX 21), as support for its contention that it had engaged in excessive sales. *See* Tr. 143. Beyond the fact that the log is incomplete, the Government did not use this data to calculate an average monthly sale of ephedrine products per store or the statistical probability that any sale was excessive.[24]

[21] To further explain, both Mr. Mitchell's testimony and Respondent's records establish that the company had far more list 1 customers than GX 21 indicates. Moreover, at the bottom of each page of the exhibit, there is a notation indicating the page number. *See* GX 21. For example, the first page of the exhibit indicates that it covers January 2004, and the bottom of the page includes the notation: "Page 4 of 5." *Id.* at 1. Yet the next page of the exhibit indicates that it covers February 2004, and includes the notation: "Page 1 of 5." *Id.* at 2. The next two pages are for March 2004; the pages include the notations: "Page 1 of 5" and "Page 2 of 5," respectively. *Id.* at 3–4. This pattern is repeated throughout the exhibit, which includes no more than two pages for any one month. *See generally* GX 21.

[22] Mr. Mitchell maintained that he had on several occasions refused to sell to people who had come to his warehouse seeking to "buy ephedrine and ephedrine only." Tr. 433.

[23] Following the enactment of the Combat Methamphetamine Epidemic Act of 2005, the thresholds for combination ephedrine products were eliminated. Accordingly, all transactions involving ephedrine, "regardless of size, are subject to recordkeeping and reporting requirement as set forth in 21 CFR part 1310." 21 CFR 1310.04(g).

[24] Apparently based on these transactions, the Government also alleged that Respondent's "sales were vastly in excess of the amounts of this * * * product needed to meet" legitimate medical needs. Show Cause Order at 4. The Government did not, however, introduce any studies to support this contention. Instead, the Government apparently

As to the Holiday Chevron in Marion, Virginia, Mr. Mitchell testified that he still sold listed chemical product to it and that the store was visited twice a month. Tr. 413. He also testified that he knew the store had purchased listed chemicals from another distributor in the past, but maintained that he did not know if the store was still doing so. *Id.*

Mr. Mitchell also admitted that he had not inquired as to whether several of the stores identified in GX 24 were obtaining listed chemicals from other distributors. Tr. 422 (Hillbilly Market); *id.* at 424 (Holiday Chevron). He then admitted that he knew that the Hillbilly Market, the Fast Mart, and again the Holiday Chevron, had had accounts with other distributors, and yet Respondent had continued to sell to them. *Id.* at 422–25. He also admitted that his route salesmen had "been told of other stores that receive this product by mail in large quantities." *Id.* at 409.

More generally, Mr. Mitchell stated that he did not think that his salesmen would, in soliciting a new customer, ask the customer whether they were purchasing listed chemical products from another distributor. *Id.* at 430–31. He also acknowledged that a customer's purchasing of list I chemicals from another distributor had never affected Respondent's decision to sell to that customer and that Respondent would continue to sell to it. *Id.* at 408. According to the DI, a retailer's having multiple distributors for list I chemical products was typical for sales in the illicit market. *Id.* at 139.

After the on-site inspection, the DIs visited two of the stores to which Respondent distributed list I products (David's Market in Bristol, Tennessee, and the Fast Stop in Covington, Virginia) to verify that they were customers. Tr. 134. The manager at David's Market, Ms. A.O., provided copies of receipts which matched Respondent's sales records. *Id.* at 135. According to the DI, Ms. A.O. indicated that the list I chemical products sold quickly and, because she saw bad things happening in the market's parking lot, she believed people were buying the products for the "wrong reason." *Id.* at 135–36. As to the parking lot, Ms. A.O. stated that she had found what looked like a syringe and that she witnessed what she believed to be drug dealing taking place there. *Id.* at 136. According to Ms. A.O., David's Market also received list I chemical products from another distributor. *Id.* at 138–39.

At the Fast Stop, the owner indicated initially that he received list I chemical products every two to four weeks. Tr. 141. Subsequently, however, the owner told another DI that he only ordered such products every six to nine weeks. *Id.*

During the June 2005 investigation, the testifying DI asked Mr. Mitchell whether he had ever considered giving up the list I chemical products business, given its relationship to the illicit manufacture of methamphetamine. *Id.* at 131. Mr. Mitchell responded that "he was doing a pretty good business selling these products and was not interested in giving up the DEA registration at that time." [25] *Id.*

Moreover, during the June 2005 inspection, the DI observed that Respondent was selling "Love Roses," a product which is "a small glass cylinder that contains a plastic rose inside it," which is three to four inches in length and which has a removable cork at the ends. Tr. 118. The DI testified that this product is "commonly used" as a crack pipe, that it does not have a legitimate purpose, and that it is drug paraphernalia.[26] *Id.* at 191.

The DI further testified that he told Mr. Mitchell what the product was used for and that Mr. Mitchell found this information surprising. *Id.* at 192. While Mr. Mitchell testified that he was unaware that Love Roses were used as drug paraphernalia until the 2005 inspection, *id.* at 375; he admitted that Respondent was still selling the product as of the date of the hearing. *Id.* at 390.

On cross-examination, Mr. Mitchell testified that he did not know why the pill forms of ephedrine were "moving as fast as they were." *Id.* at 403. When asked whether he had "ever pause[d] to think that these products could be" resold "to the illicit market?"; Mr. Mitchell answered: "You know I guess I've taken the attitude that I have no control on what the retail public does with the [list I chemical] product." *Id.* at 404.

Discussion

Section 304(a) of the Controlled Substances Act provides that a registration to distribute a list I chemical "may be suspended or revoked * * * upon a finding that the registrant * * * has committed such acts as would render [its] registration under section 823 of this title inconsistent with the public interest as determined under such section." 21 U.S.C. 824(a)(4). Moreover, under section 303(h), "[t]he Attorney General shall register any applicant to distribute a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest." 21 U.S.C. 823(h). In making the public interest determination, Congress directed that the following factors be considered:

> (1) Maintenance by the [registrant] of effective controls against diversion of the listed chemicals into other than legitimate channels;
> (2) Compliance by the [registrant] with applicable Federal, State, or local law;
> (3) Any prior conviction record of the [registrant] under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;
> (4) Any past experience of the [registrant] in the manufacture and distribution of chemicals; and
> (5) Such other factors as are relevant to and consistent with the public health and safety.

Id. § 823(h).

"These factors may be considered in the disjunctive." *Joy's Ideas,* 70 FR 33195, 33197 (2005). 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 to renew a registration. *Robert A. Leslie,* 68 FR 15227, 15230 (2003). 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).

In this matter I have considered all of the statutory factors. While I find that several of the allegations are not proved, I conclude that the record as a whole establishes that Respondent does not maintain effective controls against diversion (factor one) and that Respondent violated both the CSA's requirement to report suspicious orders and its prohibitions against the knowing sale of drug paraphernalia (factor two). While I have also considered Respondent's (and its employees') lack of criminal convictions, and its experience in distributing chemicals,[27] I

relies on findings made in other cases which were based on expert testimony. *See* Gov. Br. at 22–23. However, in *Novelty Distributors, Inc.,* 73 FR 52689, 52693–94 (2008), I noted that there were serious flaws in the methodology used by the Government's expert in determining the level of sales which is consistent with legitimate demand. I thus make no findings on the issue.

[25] Mr. Mitchell testified that, although the Meth-Free Tennessee Act reduced his sales of ephedrine, even soft-gel formulations of List I chemical products were "fast movers." Tr. 388–89, 418.

[26] The DI maintained that the product does not have a legitimate purpose. Tr. 191. When asked by Respondent's counsel if he had "ever give[n] a loved one a rose?," the DI answered: "Not a plastic rose that's three inches tall in a plastic vial for $ 1 from the convenience store." *Id.*

[27] I acknowledge that Respondent has been registered since 1999. However, as explained below, because the record establishes that Respondent has violated several provisions of Federal law and does

Continued

nonetheless conclude that factors one and two make out a *prima facie* case that Respondent's continued registration "is inconsistent with the public interest." 21 U.S.C. 823(h). I further conclude that Respondent has not adequately addressed the violations of law and the deficiencies identified in its diversion controls, and that therefore, it has not rebutted the Government's *prima facie* case. Accordingly, Respondent's registration will be revoked and its pending application to renew its registration will be denied.

Factor One—Maintenance of Effective Controls Against Diversion

Under DEA precedent and regulations, this factor encompasses a variety of considerations. *See Novelty Distributors, Inc.,* 73 FR 52689, 52698 (2008). These include, *inter alia,* the adequacy of the registrant's/applicant's security arrangements, the adequacy of its recordkeeping and reporting, and its distribution practices. *Id.* Moreover, a distributor must exercise a high degree of care in monitoring its customer's purchases. *See Sunny Wholesale, Inc.,* 73 FR 57655, 57663 (2008). In evaluating a registrant's security controls and procedures, DEA regulations direct that the Agency consider numerous factors including "[t]he adequacy of the registrant's or applicant's systems for monitoring the receipt, distribution, and disposition of List I chemicals in its operations." 21 CFR 1309.71(b)(8).

In its brief, the Government does not contend that Respondent's physical security arrangements at its registered location are inadequate. *See* Gov. Br. at 22–24. While I note the DI's testimony that the cage in which the products are stored in its warehouse could be easily breached, I further note that Respondent's facility is protected by an alarm system and its perimeter is surrounded by a chain link fence. I thus agree with the ALJ that Respondent provides adequate physical security for those products which are kept inside the warehouse.

The record, however, also establishes that Respondent has a practice of storing list I products on its delivery trucks overnight (which do not appear to have alarms), both on the night before a salesman leaves on his route, as well as on those nights when a salesman stays in a hotel. DEA has previously held that this practice does not provide adequate security for list I products. As I have previously explained, when products are left overnight on trucks, a thief does not have to spend time offloading the products, but can steal the entire vehicle with its cargo, and do so in a manner of seconds. *See Novelty Distributors, Inc.,* 73 FR 52689, 52698 (2008), *pet. for review denied,* 571 F.3d 1176 (D.C. Cir. 2009); *McBride Marketing,* 71 FR 35710, 35711 (2006).

During the inspection, the DIs further found that Respondent had shortages of 109 bottles of Max Brand and 275 bottles of Ephedrine Multi-Action. While the DI testified that he did not consider the shortages to be significant in terms of Respondent's total sales of the products,[28] it is still a factor to be considered in assessing the adequacy of its controls against diversion.

Relatedly, the record establishes that Respondent destroyed products on at least two occasions. GX 14. While Respondent was not required to report the destructions to DEA under Federal law or Agency regulations, it did not make a contemporaneous record of either destruction. *Id.* Given the frailties of human memory, the creation of a contemporaneous record is essential to maintaining an accurate accounting of the products that were destroyed.

The ALJ further found that Respondent does not maintain effective controls against diversion because some of its customers purchase list I products from other distributors and Respondent's personnel do not ask its customers whether they are purchasing from other distributors. ALJ at 36. While a customer can seek out another supplier for a legitimate business reason (*i.e.,* because it offers a lower price), when the store is actively buying from multiple distributors, the distributor has an obligation to determine whether the quantities it is obtaining are excessive in relation to what the distributor knows about typical purchasing patterns of stores serving similar markets, and if so, not sell to the store. Mr. Mitchell's failure to instruct his salesmen to make these inquiries of his customers, as well as his admission that he continued to sell to several stores even though he knew that they were purchasing listed chemical products "by mail in large quantities" from other distributors, Tr. 409, provides further support for a finding that Respondent does not maintain effective controls against diversion. *See Holloway Distributing,* 72 FR 42118, 42124 (2007) ("[A] registrant has an affirmative duty to protect against diversion by knowing its customers and the nature of their list I chemical sales * * *. A registrant cannot avoid the requirements of Federal law by instructing its sales force to ask no questions of its customers and thereby be deliberately ignorant of diversion.").

I thus conclude that Respondent does not maintain effective controls against diversion. This finding provides reason alone to conclude that Respondent's continued registration is inconsistent with the public interest.[29]

Factor Two—Respondent's Compliance With Applicable Laws

At the hearing, the Government put on evidence suggesting four different ways in which Respondent violated Federal law.[30] More specifically, the Government alleged that: (1) It was required to report the transactions which it shipped by mail, (2) it failed to report suspicious transactions, (3) it sold drug paraphernalia, and (4) it knowingly or intentionally distributed ephedrine having reasonable cause to believe the product would be used in the illicit manufacture of methamphetamine.

In her decision, the ALJ concluded that Respondent violated Federal law by failing to report suspicious transactions,[31] by failing to file monthly

not maintain effective controls against diversion, I conclude that it is not necessary to make findings under this factor.

[28] It is also noted that the audit involved only two products and covered only a five-month period. *See* GX 9.

[29] In its post-hearing brief, the Government argued that I should apply the "market analysis performed by a DEA expert in the field regarding the 'normal expected sales range' of listed chemical products by 'non-traditional retailers.'" Gov't Br. at 22 (citing *Holloway Distributing,* 72 FR at 42123). Conceding that "the Government did not present a market study in these proceedings," the Government nonetheless argued that I apply the "findings of marketing expert Jonathan Robbin who found that '* * * the expected sales range for combination ephedrine products at a convenience store is 'between $0 and $25, with an average of $12.58 per month.'" *Id.* at 23 (citing *Planet Trading, Inc. d/b/a United Wholesale Distributors, Inc.,* 72 FR 11055, 11056 (2007)). However, in *Novelty Distributors,* I found that the methodology for determining the normal expected sales range for convenience stores' marketing of ephedrine products was unreliable. 73 FR at 52693–94. Accordingly, I reject the Government's argument.

[30] As discussed under factor one, the Government also elicited testimony from an Investigator to the effect that Respondent was required to report the destruction of List I products. In its brief, the Government does not cite this testimony as evidence relevant to any of the public interest factors. *See* Gov. Br. 22–29. More importantly, a destruction of a listed chemical does not fall within any of the circumstances which trigger the obligation to report to the Agency under Federal law or DEA regulations. *See* 21 U.S.C. 830(b); 21 CFR 1310.05(a). As explained above, a destruction should, however, be documented in the registrant's records.

[31] While the ALJ cited Respondent's failure to report suspicious transactions under both factors one and two, her reasoning was provided under factor one. *See* ALJ at 35–37. Because this requirement is directly imposed by statute, I discuss it under factor two. However, whether the requirement is discussed under factor one or two is not significant as what matters is the extent of the violations, if any.

reports of transactions which were shipped by mail, and by knowingly distributing listed chemicals when it had reasonable cause to believe the products would be diverted. ALJ at 36–37. The ALJ did not, however, address whether Respondent violated Federal law by selling drug paraphernalia.

Respondent's Failure To Report Mail-Order Transactions

As found above, on thirty-four occasions between July 20, 2004, and May 25, 2005, Respondent shipped list I products containing pseudoephedrine to three stores using either the mail or some other common carrier. GX 22. Moreover, it is undisputed that Respondent did not file reports for any of the shipments. Based on these findings, the ALJ concluded that Respondent violated DEA regulations, reasoning that "21 CFR 1310.03(c) at relevant times required handlers of listed chemicals to file monthly reports of transactions by mail." ALJ at 36–37.

The CSA specifically requires that:

> [e]ach regulated person who engages in a transaction with a nonregulated person * * * which—
>
> (i) involves ephedrine, pseudoephedrine, or phenylpropanolamine (including drug products containing these chemicals); and
>
> (ii) uses or attempts to use the Postal Service or any private or commercial carrier;
>
> shall, on a monthly basis, submit a report of each such transaction conducted during the previous month to the Attorney General in such form, containing such data, and at such times as the Attorney General shall establish by regulation.

21 U.S.C. 830(b)(3)(B); *see also* 21 CFR 1310.03(c) ("Each regulated person who engages in a transaction with a nonregulated person * * * that involves ephedrine [or] pseudoephedrine * * * including drug products containing these chemicals, and uses or attempts to use the Postal Service or any private or commercial carrier must file monthly reports of each such transaction * * * .").[32]

The CSA further defines "[t]he term 'regulated person'" to mean in relevant part, "a person who manufactures, distributes, imports, or exports a listed chemical." 21 U.S.C. 802(38). Moreover, the Act defines "[t]he term 'distribute'" to mean "to deliver (other than by administering or dispensing) * * * a listed chemical." 21 U.S.C. 802(11).

Respondent is thus clearly a "regulated person" under the Act and subject to the mail order reporting provision. However, as the text of the mail order reporting provision makes clear, the reporting requirement does not apply to all mail order transactions which a regulated person engages in, but rather, only those it engages in "with a nonregulated person," 21 U.S.C. 830(b)(3)(B), a term which neither Congress nor the Agency have defined. *See generally* 21 U.S.C. 802; 21 CFR 1300.02. The critical question therefore is whether a retail store is a "nonregulated person" under this provision.

Neither the Government in its brief, nor the ALJ in her decision, even acknowledge the statutory text, let alone address this issue. *See generally* Gov. Br. at 22–29; ALJ at 36–37. Moreover, there are numerous reasons that support the conclusion that retail stores were—even prior to the enactment of the CMEA—regulated persons under the Act.

The first reason is that a retail store which sells listed chemicals engages in distribution as that term is defined by the Act—it delivers (other than by administering or dispensing) a chemical to a customer. *See* 21 U.S.C. 802(11). Relatedly, Congress defined the term "retail distributor" to "mean a grocery store, general merchandise store, drug store, or other entity or person whose activities as a distributor relating to pseudoephedrine or phenylpropanolamine products are limited almost exclusively to sales for personal use * * * either directly to walk-in customers or in face-to-face transactions by direct sales."[33] *Id.* section 802(46)(A); *see also* 21 CFR 1300.02(b)(29). It is thus clear that under the Act, retail sales constitute distribution.

Second, while DEA has exempted from registration list I retail distributors "whose activities * * * are limited to the distribution of below-threshold quantities of a pseudoephedrine * * * or combination ephedrine product * * * in a single transaction to an individual for legitimate medical use," 21 CFR 1309.24(e), DEA regulations further provided that "[a]ny person exempted from the registration requirement under this section shall comply with the security requirements set forth in § 1309.71–1309.73 of this part and the record-keeping and reporting requirement set forth under parts 1310 and 1313 of this chapter." *Id.* § 1309.24(k). A retail distributor was thus (and remains) subject to Agency regulations and cannot be deemed to be a "nonregulated person" under 21 U.S.C. 830(b)(3)(B).

This conclusion finds further support in the exceptions which Congress created to the reporting requirement. *See id.* section 830(b)(3)(D). Among these is the exception for "[d]istributions of drug products by retail distributors that may not include face-to-face transactions to the extent that such distributions are consistent with the activities authorized for a retail distributor as specified in section 802(46)." *Id.* section 830(b)(3)(D)(ii). Because the reporting requirement only applies to regulated persons, there would be no need to exempt retail distributors if they were nonregulated persons. Accordingly, I am compelled to reject the ALJ's conclusion that Respondent violated Federal law when it failed to report the mail order transactions.

Respondent's Failure To Report Suspicious Transactions

The Government argued, and the ALJ concluded, that Respondent violated Federal law and DEA regulations by failing to report suspicious transactions. More specifically, the ALJ apparently found that Respondent violated Federal law by failing to report each of the thirty-five transactions identified in Government Exhibit 24. *See* ALJ at 35–36. She further rejected Respondent's contention that this requirement only applies to sales which exceed the threshold amount. *Id.* at 36; *see also* Gov. Br. at 23 (asserting that DEA has rejected the defense that a registrant is not required to report suspicious transactions which are below the threshold).

Adopting the Government's reasoning, the ALJ explained that:

> First, * * * a sale of an over-the-threshold amount of listed chemical is subject to recordkeeping and reporting requirements, and may or may not be a suspicious transaction. Likewise, a sale of a quantity less than the threshold amount may nonetheless be suspicious. Second, and more importantly, an order from a small retailer for hundreds of bottles of a product that is regulated precisely because it can be used for illicit purposes should immediately cause the distributor of that product concern as to why his customer is ordering such quantities.

ALJ at 35–36.

Here again, neither the ALJ in her decision, nor the Government in its brief, even acknowledge the text of the relevant statute, 21 U.S.C. 830(b)(1). *See id.* at 35–37. The statute provides in pertinent part:

> (1) Each regulated person shall report to the Attorney General, in such form and manner as the Attorney General shall prescribe by regulation—

[32] Unless otherwise noted in this discussion, all citations and quotations to the U.S. Code and DEA regulations are to the statute and regulations that were in effect at the time of the conduct at issue and as they were then numbered.

[33] While this version does not list ephedrine, the statute was subsequently amended to include this chemical. *See* 21 U.S.C. 802(49)(A).

(A) *any regulated transaction* involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance that the regulated person believes may indicate that the listed chemical will be used in violation of this subchapter.

21 U.S.C. 830(b)(1)(A) (emphasis added). *See also* 21 CFR 1310.05(a)(1) ("Each regulated person shall report to the Special Agent in Charge of the DEA Divisional Office for the area in which the regulated person making the report is located, as follows: * * * Any regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance that the regulated person believes may indicate that the listed chemical will be used in violation of this part.").

Notably, Congress did not require that *any* transaction "involving an extraordinary quantity of a listed chemical" (or involving the other two circumstances set forth in this paragraph) be reported by a regulated person. 21 U.S.C. 830(b)(1)(A). Rather, it required the reporting only of a "*regulated* transaction involving an extraordinary quantity of a listed chemical," or a regulated transaction involving the other two circumstances. *Id.* (emphasis added)

Moreover, Congress defined "[t]he term 'regulated transaction' " to mean "a distribution, receipt, [or] sale * * * of, a listed chemical, or if the Attorney General establishes a threshold amount for a specific listed chemical, a threshold amount, including a cumulative threshold amount for multiple transactions * * * of a listed chemical[.]" *Id.* § 802(39)(A). With respect to the combination ephedrine products at issue here, DEA regulations in effect at the time of the transactions set a threshold of 1000 grams "within a calendar month" for distributions between Respondent and a retail store customer.[34] 21 CFR 1310.04(f) & (f)(ii) (2004) & (2005). Accordingly, only those cumulative transactions which met the 1000 gram threshold within a given calendar month constituted regulated transactions for the purpose of the requirement to report a suspicious order under 21 U.S.C. 830(b)(1).

As noted above, the ALJ held that all of the transactions identified by the Government in its exhibit 24 were suspicious orders which Respondent was required to report. The ALJ's holding was based entirely on policy considerations and was not grounded in the relevant statutory texts. While these policy considerations are undoubtedly valid, they cannot trump the clear and unambiguous text of the statute. As the Supreme Court has explained: "When a court reviews an agency's construction of the statute it administers * * * [i]f the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Chevron, U.S.A., Inc.,* v. *NRDC, Inc.,* 467 U.S. 837, 842–43 (1984). In short, on this issue, Congress made the policy determination when it limited the reporting requirement to those transactions which met the definition of a "regulated transaction."

Mr. Mitchell admitted, however, that the sales his firm made in March, April and May 2005 to the Holiday Chevron in Marion, Virginia exceeded the threshold.[35] The record establishes that these sales were for 948, 900, and 984 bottles in the respective months. In addition, Respondent's evidence further showed that it sold even greater quantities, and which exceeded the threshold, in August (1272 bottles), October (1284 bottles), and November (1248 bottles) of 2005.

According to Respondent's brief, "[a]ny sales above the[] 'threshold' quantities * * * [Mr.] Mitchell considered 'suspicious' and any quantity less than the computed 'threshold' [Mr.] Mitchell did not consider suspicious." Resp. Br. at 4 (proposed findings of fact at ¶8). Notwithstanding Mr. Mitchell's acknowledgement that sales above threshold were suspicious, he did not report any of the six sales to DEA.

Moreover, while I reject the ALJ's finding that most of Respondent's customers were purchasing only twelve to twenty-four bottles, I conclude that these six sales "involved [an] extraordinary quantity" based on both the absolute amount of each sale and that the sales were approximately double to nearly triple what Respondent had sold to this store in a previous month (468 bottles). Any responsible person would have recognized that these sales were suspicious and Mr. Mitchell admitted that they were.[36] Accordingly, these sales involved an "extraordinary quantity" and were subject to reporting under section 830(b)(1)(A).[37] I therefore hold that Respondent violated Federal law and DEA regulations by failing to report these sales.

Alleged Violations of 21 U.S.C. 841(c)(2)

The Government also alleged that Respondent violated 21 U.S.C. 841(c)(2),[38] because "Respondent had 'reasonable cause to believe' that the large quantities of ephedrine products it sold to Fast Stop Covington, Chevron Food Mart[,] * * * [and] Holiday Chevron * * * would be used to manufacture methamphetamine." Gov. Br. at 26. The Government further argues that it "is not required to prove that the products were actually used to manufacture methamphetamine," and that there is no quantity threshold which exempts a merchant from criminal liability under the statute. *Id.* (citing cases). The ALJ agreed with the Government and found that Respondent violated 21 U.S.C. 841(c)(2) because it sold "excessive quantities of listed chemicals" and "it should have known that some of those chemicals were likely to be diverted to the illicit manufacture of * * * methamphetamine." ALJ at 37.

The Government is correct that it need not show that the ephedrine Respondent distributed was actually used to manufacture methamphetamine and that the then-existing threshold that triggered reporting requirements did not

[34] Under the regulation, whether the threshold had been reached (and a regulated transaction had occurred) was based on "the cumulative amount for multiple transactions within a calendar month." 21 CFR 1310.04(f). The thresholds were eliminated by the Combat Methamphetamine Epidemic Act of 2005. *See* USA Patriot Improvement and Reauthorization Act of 2005, Pub. L. 109–177, section 712(b), 120 Stat. 192, 264 (2006). For all transactions occurring after the effective date of the legislation, "the size of the transaction is not a factor in determining whether the transaction meets the definition of a regulated transaction * * *. All such transactions, regardless of size, are subject to recordkeeping and reporting requirements as set forth in * * * part [1310] and notification provisions as set forth in part 1313 * * *." 21 CFR 1310.04(g).

[35] In light of Mr. Mitchell's admission, I deem waived any argument that the sales did not exceed the 1000 gram threshold.

[36] In her discussion of Respondent's obligation to report suspicious orders, the ALJ explained that "Respondent did not controvert [the DI's] testimony that most of its customers purchased twelve or twenty-four bottles per month." ALJ at 35. A review of Respondent's evidence suggests that its average monthly sale was considerably more. Respondent did not, however, provide any statistical analysis to show what its average sale was.

[37] I note Respondent's evidence that the owner of the Holiday Chevron was purportedly buying for two stores. *See* RX 53. This contention is legally irrelevant as the transactions occurred with a single person. Significantly, while Congress exempted "a domestic lawful distribution in the usual course of business between agents or employees of a single regulated person" from the definition of a regulation transaction, it did not exempt the distribution to that regulated person. 21 U.S.C. 802(39)(A) & (A)(i). Indeed, were such transactions exempt from reporting, the purpose of the statute would be seriously undermined.

[38] This provision makes it a felony for "[a]ny person who knowingly or intentionally * * * possesses or distributes a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a control substance except as authorized by" the CSA. 21 U.S.C. 841(c)(2).

create a safe harbor which allowed a registrant to distribute a listed chemical product in disregard for the ultimate disposition of those products. *Holloway Distributing,* 72 FR 42118, 42124 (2007) (collecting cases); *see also United States* v. *Kim,* 449 F.3d 933, 941 (9th Cir. 2006) ("'[t]here is no quantity threshold exempting a merchant from criminal liability under section 841(c)(2).'").

The Government ignores, however, that to establish a violation of this provision it must show that Respondent (or its principal) knew facts that provided "reasonable cause to believe" that the ephedrine it distributed would be used to illicitly manufacture methamphetamine. *Holloway,* 72 FR at 42124. As one court of appeals has explained, the Government must show that Respondent "knew, or knew facts that would have made a reasonable person aware, that the [ephedrine] would be used to make methamphetamine." *United States* v. *Kaur,* 362 F.3d 1155, 1158 (9th Cir. 2004).

In support of her conclusion that Respondent was selling excessive quantities, the ALJ cited the DI's testimony that Respondent was selling only twelve to twenty-four bottles a month to most of its customers (Tr. 143). The DI's testimony was based on his review of an exhibit (GX 21), which purports to be a record of Respondent's monthly sales to each customer. The record is, however, clearly incomplete and was missing data (for every month no less) for most of Respondent's customers. While it is unclear why this record is incomplete, what is clear is that this evidence is not reliable and does not satisfy the substantial evidence test. *See* 5 U.S.C. 556(d) ("A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence.").[39] I therefore conclude that the Government has not met its burden and that this allegation is not proved.

Alleged Sales of Drug Paraphernalia

The Government further alleged that Respondent sold Love Roses, a product consisting of a small glass tube which contains a plastic flower and has removable ends. It is undisputed that this item is "commonly used" to smoke crack cocaine, and that it has no legitimate purpose. Tr. 191. It is also undisputed that during the June 2005 inspection, the DI told Respondent that this item was used to smoke crack and yet Respondent continued to sell the product and was still doing so at the time of the hearing. The ALJ did not, however, address the allegation in her decision. *See* ALJ at 36–38.

Under Federal law, "[i]t is unlawful for any person * * * to sell or offer for sale drug paraphernalia." 21 U.S.C. 863(a). As relevant here, this statute defines "[t]he term 'drug paraphernalia' [to] mean[] any equipment, product, or material of any kind which is primarily intended or designed for use in * * * ingesting, inhaling, or other introducing into the human body a controlled substance, possession of which is unlawful under the" CSA. *Id.* section 863(d). Section 863(d) further provides that drug paraphernalia "includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, methamphetamine, or amphetamines into the human body, such as * * * metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls." *Id.* section (d) & (1).

The Supreme Court has explained that Section 863(d) "identifies two categories of drug paraphernalia: those items 'primarily intended * * * for use' with controlled substances and those items 'designed for use' with such substances." *Posters 'N' Things, Ltd.* v. *United States,* 511 U.S. 513, 518 (1994).[40] With respect to the latter category, the Court explained that "[a]n item is 'designed for use' * * * if it 'is principally used with illegal drugs by virtue of its objective features, *i.e.,* features designed by the manufacturer.'" *Id.* (quoting *Hoffman Estates* v. *Flipside, Hoffman Estates, Inc.,* 455 U.S. 489, 501 (1982)).

In construing the "primarily intended * * * for use" language, the Court acknowledged that the phrase "could refer to the intent of nondefendants, including manufacturers, distributors, retailers, buyers or users." *Id.* at 519. Based on its analysis of the statute's text and structure, the Court concluded that the term "is to be understood objectively and refers generally to an item's likely use." *Id* at 521. The Court further explained that where an item has multiple uses, "it is the likely use of customers generally, [and] not [of] any particular customer, that can render a multiple-use item drug paraphernalia." *Id.* at 522 n.11.

While the Court construed section 863 as imposing a scienter requirement of knowledge, the Court held that "the knowledge standard in this context [does not] require knowledge on the defendant's part that a particular customer actually will use an item of drug paraphernalia with illegal drugs." *Id.* at 524. The Court further explained that "[i]t is sufficient that the defendant be aware that *customers in general are likely to use the merchandise with drugs.* Therefore, the Government must establish that the defendant knew that the items at issue are likely to be used with illegal drugs." *Id.* (emphasis added) (citing *United States* v. *United States Gypsum Co.,* 438 U.S. 422, 444 (1978) ("knowledge of 'probable consequences' sufficient for conviction")).[41]

The evidence establishes that a Love Rose's likely use is to smoke illicit drugs, and that Respondent sold this item knowing that they were "likely to be used with illegal drugs." *Id.* As explained above, Congress expressly included in the definition of "drug paraphernalia," a list of items which "constitute[e] *per se* drug paraphernalia." *Id.* at 519. Of relevance here, Congress included in this list "metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens." 21 U.S.C. 863(d). As the record shows, a Love Rose is nothing more than a small and fake flower inserted in a glass pipe; that the pipe contains a flower does not make it any less a pipe. Tr. 118; *See also Posters 'N' Things,* 511 U.S. at 518 (observing that certain items "including bongs, cocaine freebase kits, and certain kinds of pipes, have no other use besides contrived ones (such as use of a bong as a flower vase)"). The item thus falls within the statutory definition of "drug paraphernalia." *See* 21 U.S.C. 863(d).

Furthermore, even if the Love Rose does not fall strictly within the "list of * * * items constituting *per se* drug

[39] Moreover, while months before the hearing, Respondent provided the Government with additional sales records, the Government offered no statistical analysis of the data to show why, based on its sales level alone, Respondent had "reasonable cause to believe" that the products it distributed would be used to manufacture methamphetamine. 21 U.S.C. 841(c)(2).

[40] While *Posters 'N' Things* addressed the prior version of the Federal drug paraphernalia statute, the Court explained that "[t]he language of § 863 is identical to that of former § 857 except in the general description of the offense." 511 U.S. at 516 n.5. Of note, section 863 expanded the scope of prohibited acts with respect to drug paraphernalia and did not alter the definition of the term "drug paraphernalia." See id. Accordingly, the Court's interpretation of the term remains lawful authority.

[41] *See also* 511 U.S. at 524 n.13 (quoting *United States* v. *Mishra,* 979 F.2d 301, 307 (3d Cir. 1992) ("Government must prove that defendant 'contemplated, or reasonably expected under the circumstances, that the item sold or offered for sale would be used with illegal drugs'") and *United States* v. *Schneiderman,* 968 F.2d 1564, 1567 (2d Cir. 1992) ("Government must prove that defendant 'knew there was a strong probability the items would be so used.'")).

paraphernalia," 511 U.S. at 519, there was ample evidence establishing that the item's "likely use" is to ingest illicit drugs. *Id.* at 521. The DI testified that Love Roses are "commonly used" to smoke crack and that the product has no legitimate purpose.[42] Tr. 191; *see also Gregg & Son Distributors,* 74 FR 17517, 17522 (2009) (quoting Sharon Tubbs, "A Crack Pipe by Any Other Name," St. Petersburg Times (Aug. 10, 2001) (Floridian Section) ("The outsider assumes the rose tubes are meant to attract the impulse buyer who picks up a chintzy gift for his sweetie. But for addicts, the buy is anything but an impulse. Addicts go to stores looking for rose tubes, calling them 'stems'—street talk for [a] crack pipe.")). The DI further testified as to how the product is adapted for use to smoke crack by removing the cork. Tr. 118.

Moreover, it is undisputed that Mr. Mitchell was told by the DI during the June 2005 inspection that the product was used to smoke crack. Mr. Mitchell was thus "aware that customers in general [we]re likely to use the merchandise with drugs." *Posters N' Things,* 511 U.S. at 524. Yet Mr. Mitchell admitted that Respondent continued to sell the product and was still doing so at the time of the inspection. I thus conclude that Respondent violated Federal law by selling drug paraphernalia. 21 U.S.C. 863(a).

In conclusion, I find that Respondent violated Federal law and DEA regulations by failing to report six regulated transactions which were suspicious and by knowingly selling drug paraphernalia. These findings further support the conclusion that Respondent's continued registration is inconsistent with the public interest.

Factor Five—Other Factors Relevant to and Consistent With Public Health and Safety

The illicit manufacture and abuse of methamphetamine have had pernicious effects on families and communities throughout the nation. This is especially so in States such as Tennessee and Kentucky, which, notwithstanding the enactment of laws at both the state and Federal level which more closely regulate or restrict the sale of certain listed chemical products, still have an extraordinarily serious problem with illicit methamphetamine production and its abuse. As the record demonstrates, in 2008, law enforcement authorities in Tennessee and Kentucky still seized 553 and 416 illegal meth. lab sites respectively. The illicit production of methamphetamine thus remains a grave threat to public health and safety in both States. Cutting off the supply source of methamphetamine traffickers is of critical importance in protecting the citizens of Tennessee and Kentucky (as well as the citizens of adjoining States) from the devastation wreaked by this drug.

While listed chemical products containing ephedrine can still be lawfully marketed for over-the-counter use as a bronchodilator, numerous DEA orders have found (and the record here establishes) that convenience stores and gas stations constitute the non-traditional retail (or gray) market for legitimate consumers of products containing these chemicals. *See, e.g., Tri-County Bait Distributors,* 71 FR 52160, 52161–62 (2006); *D & S Sales,* 71 FR at 37609; *Branex, Inc.,* 69 FR 8682, 8690–92 (2004); Resp. Br. 13 ("Respondent's evidence demonstrates that it sold List I chemical product to non-traditional retailers."). DEA has further found that there is a substantial risk of diversion of list I chemicals into the illicit manufacture of methamphetamine when these products are sold by non-traditional retailers. *See Sunny Wholesale, Inc.,* 73 FR 57655, 57667 (2008) (noting testimony of special agent, who had debriefed more than 200 individuals involved in the illicit manufacture of methamphetamine, that gas stations, convenience stores, and other small retailers "were the primary and preferred source of" list I chemicals used by smaller meth. labs); *TNT Distributors, Inc.,* 70 FR 12729, 12730 (2005) (special agent testified that "80 to 90 percent of ephedrine and pseudoephedrine being used [in Tennessee] to manufacture methamphetamine was being obtained from convenience stores").[43] *See also Joy's Ideas,* 70 FR at 33199 (finding that the risk of diversion was "real" and "substantial"); *Jay Enterprises of Spartanburg, Inc.,* 70 FR 24620, 24621 (2005) (noting "heightened risk of diversion" if application to distribute to non-traditional retailers was granted).

For this reason, DEA has closely scrutinized the adequacy of the diversion controls and the compliance records of those entities which distribute listed chemicals into this market. Moreover, even where a distributor's violations are not extensive and/or identified inadequacies in its diversion controls might be redressed through compliance conditions, DEA may still conclude that revocation is necessary to protect the public interest based on evidence that a registrant and/or its principals do not take seriously their responsibility either to prevent diversion or to comply with the CSA. *See, e.g., Novelty Distributors, Inc.,* 73 FR 52689, 52703 (2008) (revoking registration and rejecting ALJ's recommendation to impose compliance conditions based, in part, on registrant's failure to enforce its own policies), *pet. for review denied,* 571 F.3d 1176 (D.C. Cir. 2009); *Holloway Distributing,* 72 FR at 42126 (revoking registration and noting that while registrant had "taken corrective actions, these measures [were] still not adequate to protect against the diversion of its products").[44]

As found above, Respondent's diversion controls are inadequate for four reasons: (1) Its practice of storing products on the trucks overnight, both at Respondent's facility and while the salesmen are servicing their routes; (2) it could not account for all of each product that was audited and did not have a contemporaneous record of products it destroyed; (3) its employees

[42] Indeed, even if one is cheap, if one is intent on expressing his/her affection for a loved one, there are plenty of other ways of doing so such as buying a real flower and not a fake one inside a small glass pipe. Mr. Mitchell's testimony proved this point. When asked on cross-examination what he understood the product was used for, Mr. Mitchell initially testified: "Well they take them home to their wives to keep from getting beat up." Tr. 390–91. Before the Government's counsel could even ask his next question, Mr. Mitchell added: "I don't know. I'd get beat up if I took one home." Tr. 391. Mr. Mitchell then acknowledged that he had been told that the product was used as drug paraphernalia. *Id.*

[43] *See OTC Distribution Co.,* 68 FR 70538, 70541 (2003) (noting "over 20 different seizures of [gray market distributor's] pseudoephedrine product at clandestine sites," and that in an eight-month period, distributor's product "was seized at clandestine laboratories in eight states, with over 2 million dosage units seized in Oklahoma alone."); *MDI Pharmaceuticals,* 68 FR 4233, 4236 (2003) (finding that "pseudoephedrine products distributed by [gray market distributor] have been uncovered at numerous clandestine methamphetamine settings throughout the United States and/or discovered in the possession of individuals apparently involved in the illicit manufacture of methamphetamine").

[44] Under the Administrative Procedure Act, an Agency is not required to give a licensee the "opportunity to demonstrate or achieve compliance with all lawful requirements" prior to revoking a license "in cases of willfulness or those in which public health, interest, or safety requires otherwise." 5 U.S.C. 558(c). While this exception likely applies here given the continued scope of the methamphetamine problem, especially in the States where Respondent distributes its products, I apply DEA's longstanding precedent that where "the Government has proved that a registrant has committed acts inconsistent with the public interest, a registrant must present sufficient mitigating evidence to assure the Administrator that [it] can be entrusted with the responsibility carried by such a registration." *Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008) (quoting cases). *See also id.* ("DEA has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for its actions and demonstrate that it will not engage in future misconduct.").

do not ask their customers whether they are purchasing from other distributors; and (4) Mr. Mitchell acknowledged that he continued to sell to stores even when he knew they were obtaining "large quantities" from other distributors. Regarding these four deficiencies, Mr. Mitchell addressed only one of them—the storage of products on its trucks—and did so only with respect to when the trucks were at his facility.[45]

The evidence also showed that Respondent failed on six occasions to report suspicious monthly sales to a store as required by Federal law even though Mr. Mitchell acknowledged that the transactions were suspicious. Here again, Respondent did not offer any evidence that it has instituted a program to identify and report suspicious orders.

Relatedly, when asked whether he had "ever pause[d] to think" that the ephedrine products his firm distributes could be resold to traffickers, Mr. Mitchell explained: "I've guess I've taken the attitude that I have no control on what the retail public does with the product." Tr. 404. As noted above, consistent with this attitude, Mr. Mitchell admitted that his firm had continued to sell to stores even when he knew the stores were buying large quantities from other distributors. And as if further evidence of Mr. Mitchell's and his firm's indifference to their obligations to comply with the law is needed, the record further showed that Respondent violated the CSA by selling a product whose likely use is as drug paraphernalia, and did so even after the DI told Mr. Mitchell that the product was used for this purpose.

Mr. Mitchell's and his firm's clear disregard of their responsibility to protect against diversion and comply with the law "is fundamentally inconsistent with the obligations of a DEA registrant." *Holloway,* 72 FR at 42124; *see also D & S Sales,* 71 FR 71 FR at 37610 (noting that a registrant is "required to exercise a high degree of care in monitoring its customers' purchases") (int. quotations and citations omitted). Because it is clear that Mr. Mitchell does not understand the nature of his firm's obligations, I conclude that Respondent's continued registration "would be inconsistent with the public interest." 21 U.S.C. 823(h). Accordingly, Respondent's registration will be revoked and any pending application will be denied.

[45] It is acknowledged that Respondent undertook to ensure that its customers obtained the necessary certifications required by the CMEA. Tr. 399. Yet this is only one of many factors that are properly considered in assessing whether Respondent's registration is consistent with the public interest.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(h) and 824(a), as well as by 28 CFR 0.100(b) and 0.104, I order that DEA Certificate of Registration, 004413RAY, issued to R & M Sales Company, Inc., be, and it hereby is, revoked. I further order that any pending application of R & M Sales Company, Inc., for renewal or modification of its registration, be, and it hereby is, denied. This order is effective January 18, 2011.

Dated: December 3, 2010.

Michele M. Leonhart,

Deputy Administrator.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 08–43]

Ronald Lynch, M.D.; Revocation of Registration

On April 4, 2008, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Ronald Lynch, M.D. (Respondent), of Sanford, Florida. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, BL6686541, 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 defined in 21 U.S.C. §§ 823(f), 824(a)(4)." ALJ Ex. 1, at 1.

The Show Cause Order alleged that Respondent "authorized controlled substance prescriptions for Internet customers throughout the United States from approximately June 2002, through September 2004, on the basis of online questionnaires and/or telephone consultations." *Id.* The Order alleged that Respondent "issued these prescriptions without a legitimate medical purpose and outside the usual course of professional practice, in violation of 21 CFR 1306.04(a) and 21 U.S.C. 841(a)(1)." *Id.* The Order further alleged that, while Respondent authorized controlled substance "drug orders" for "online customers throughout the United States," he is only licensed to practice medicine in the State of Florida and that he "violated state laws that prohibit the unauthorized practice of medicine, including unlicensed, out-of-state physicians issuing controlled substance prescriptions to state residents." *Id.* at 2 (citations omitted). Finally, the Order alleged that Respondent "violated Florida law and regulation prohibiting licensed physicians from issuing controlled substance prescriptions in excessive or inappropriate quantities, and from issuing prescriptions via the Internet without a documented patient evaluation and discussion between the physician and patient regarding treatment options." *Id.* (citing Fla. Stat. § 458.331(q) and Fla. Admin. Code Ann. r. 64B8–9.014).

On May 7, 2008, Respondent's counsel requested a hearing on allegations, ALJ Ex. 2, and the matter was placed on the docket of the Agency's Administrative Law Judges (ALJs). On March 24–25, 2009, a hearing was held in Arlington, Virginia.

At the hearing, the Government called several witnesses (including the Respondent) to testify and introduced documentary evidence. Respondent also testified on his own behalf. Following the hearing, both parties filed briefs containing their proposed findings of fact, conclusions of law, and argument.

On September 18, 2009, the ALJ issued her recommended decision (also ALJ). Therein, the ALJ, after considering the five public interest factors, *see* 21 U.S.C. 823(f), concluded that "Respondent has misused his DEA registration [in] the past and has not shown any indication that he will not do so in the future." ALJ at 46. The ALJ thus recommended that Respondent's "registration be revoked and that any pending applications be denied." *Id.*

As to the first factor—the recommendation of the appropriate state licensing board—the ALJ found that Respondent's continued licensure by the State of Florida "throughout the relevant time period" weighed "in favor of a finding that his continued registration would not be inconsistent with the public interest." *Id.* at 34. However, the ALJ also noted that "state licensure is a necessary but not sufficient condition for [holding a] DEA registration" so that "this factor is not dispositive." *Id.*

Examining factors two and four together—Respondent's experience in handling controlled substances and his compliance with applicable Federal, State or local laws—the ALJ determined that "both the Controlled Substances Act and the Florida telemedicine standards require that the prescribing physician or a provider under his supervision personally conduct a physical examination." *Id.* at 38–39. The ALJ found that because Respondent failed to perform such examinations, "he did not establish a proper doctor-patient

relationship" and, as a result, "was not a practitioner 'acting in the usual course of his professional practice' " and thus "violated 21 U.S.C. 841(a)(2)."[1] *Id.* at 39. The ALJ also concluded that Respondent's "failure to review medical records prior to prescribing controlled substances was a violation of Florida standards for telemedicine" and that he therefore "failed to satisfy the requirements for a doctor-patient relationship; did not act in the usual course of his professional practice; and thereby violated the Controlled Substances Act." *Id.* at 40.

The ALJ further found that Respondent had permitted "Ken Drugs to use a rubber stamp bearing his signature to issue prescriptions for controlled substances" and that this constituted a violation of 21 CFR 1306.05(a), which generally requires that prescriptions "be manually signed by the practitioner." *Id.* at 40–41; 21 CFR 1306.05(a). Next, the ALJ found that "Respondent authorized refills for controlled substance prescriptions without a legitimate purpose" such that "the decision whether or not to dispense these refills was made by Ken Drugs personnel, and not by Respondent," thereby violating Florida Administrative Code r. 64B8–9.014. ALJ at 41. The ALJ therefore concluded that "factors two and four weigh in favor of a finding that Respondent's continued registration would be inconsistent with the public interest." *Id.* at 43.

With respect to the third factor—Respondent's conviction record under Federal or state laws relating to controlled substances—the ALJ found that "Respondent has never been convicted" of an offense related to the manufacture, distribution or dispensing of controlled substances. *Id.* However, the ALJ also noted that this factor was not dispositive. *Id.*

As for factor five—other conduct which may threaten public health and safety—the ALJ found that "Respondent maintained throughout the hearing . . . that any shortcomings involving Ken Drugs' Internet patients were due largely to the system set up by the Kennedee Group, and not to any irresponsibility on his part." *Id.* Noting that "[a]s a DEA registrant, Respondent bears full responsibility for understanding his obligations under the Controlled Substances Act and related Federal regulations," the ALJ found that Respondent's "claims merely demonstrate [his] unwillingness to accept his responsibilities as a DEA registrant" and that his "refusal or inability to acknowledge outright that he acted improperly in basing prescriptions on these telephone conversations suggests an unwillingness to recognize that he abrogated his responsibilities as a DEA registrant." *Id.* at 43 & 44.

The ALJ thus found that Respondent had failed "to accept responsibility for his actions" and that his continued registration "poses a threat to the public health and safety." *Id.* at 45. She thus concluded that factor five also supported "a finding that Respondent's continued registration would be inconsistent with the public interest." *Id.*

Neither party filed exceptions to the ALJ's recommended decision. Thereafter, the ALJ forwarded the record to me for final agency action.

Having considered the entire record in this matter, I adopt the ALJ's findings of fact including those related to the credibility of the witnesses. I also adopt her conclusions of law except for her conclusion that under the Florida telemedicine rule, Respondent, as the prescribing physician, was required to conduct the physical examination or to direct another health care provider in the performance of the examination. *See* ALJ at 38. However, I agree with the ALJ's conclusion that Respondent violated the Florida telemedicine rule in those instances when he prescribed without having obtained a documented patient evaluation, *id.,* and that Respondent has failed to accept responsibility for his misconduct. I further conclude that Respondent violated various state laws and the Controlled Substances Act by prescribing controlled substances to residents of States where he was not authorized to practice medicine, as well as by prescribing controlled substances without having performed a physical exam on the residents of various States, whose laws require a prescribing physician to have personally performed a physical exam of his patient. I therefore adopt the ALJ's recommendation to revoke Respondent's registration and to deny any pending applications. I make the following factual findings.

Findings

Respondent is a physician who is board-certified in family practice and holds a medical license issued by the State of Florida.[2] Tr. 191 & 279. In 1999, Respondent also obtained a license to practice medicine in the State of New York; however, he believes that this authority has now expired. *Id.* at 191–92. He is not, and never has been, licensed in any other State. *Id.* at 193.

Respondent currently holds DEA Certificate of Registration BL6686541, which was last renewed on March 8, 2006 and was due to expire on March 31, 2009. GX 1. However, on February 9, 2009, Respondent submitted an application to renew his registration. Accordingly, because Respondent's application was timely submitted in accordance with the Agency's rule, his registration has remained in effect pending the issuance of this Decision and Final Order. *See* 5 U.S.C. 558(c); 21 CFR 1301.36(i).

In 2002, Respondent began working for the Kennedy Medical Clinic, Inc.,[3] as a family physician.[4] *Id.* at 194. On April 8, 2002, Kenneth Shobola, a Florida-registered pharmacist, incorporated Kennedy Medical Clinic, Inc., under the laws of the State of Florida; Shobola is the president and registered agent of the corporation, which operated two medical clinics in Tampa, Florida. GX 2, at 8.

On the same date, Shobola also incorporated Ken Drugs, Inc. *Id.* at 7. Shobola also served as president of this entity and was its sole shareholder. *Id.* This entity owned four pharmacies, three of which were located in Tampa, the other in Kissimmee, Florida. *Id.* at 7–8.

Shobola also incorporated and was the president of the Kennedee Group, Inc.[5] *Id.* at 8. Two websites, medsviaweb.com and medsviaweb.net, were registered to the Kennedee Group at the address of 1612 W. Waters Ave., Tampa, Florida; this was also the address of one of the Ken Drugs pharmacies. *Id.* at 7.

In September 2002, the DEA Tampa Diversion Group received information that prescriptions for hydrocodone, a schedule III controlled substance, were being sent to another pharmacy through the medsviaweb.com website and that refills of these prescriptions were being filled by the Ken Drugs pharmacy

[1] This appears to be a typographical error given that there is no evidence that Respondent was unlawfully distributing or dispensing "a counterfeit substance." 21 U.S.C. 841(a)(2). The correct provision is section 841(a)(1).

[2] Respondent testified that he is a member of the American Academy of Environmental Physicians. Tr. 282.

[3] Throughout this proceeding, the clinic was referred to simply as the "Kennedy Clinic."

[4] At some point while he was working for the Kennedy Clinic, Respondent also started his own practice, Integrative Natural Solutions. *Id.* at 68, 73, 194. Integrative Natural Solutions occupied one floor of an office building at the same address as the Kennedy Clinic in Kissimmee, Florida when, on September 21, 2004, a search warrant was executed at both offices, as well as at other locations. *Id.* at 16, 68.

[5] This entity was previously named Kenadee Group, Inc., and was also known as the Kenaday Group. GX 2, at 8.

located on W. Waters Ave. in Tampa. *Id.* at 9–10. Moreover, "the vast majority of clients seeking hydrocodone were from states other than Florida." *Id.* at 10.

Based on this information, DEA opened an investigation. During the investigation, DEA, along with personnel from the Florida Department of Law Enforcement, the Florida Department of Health, the Kentucky State Police, and the Tampa Police Department made seventeen undercover purchases through either the medsviaweb.com website or through Ken Drugs of such drugs as hydrocodone and Xanax (a schedule IV controlled substance). *Id.* at 11.

The Investigators obtained the drugs by filling out an online questionnaire, giving names, addresses, credit card information, dates of birth and purported medical conditions. Tr. 15; GX 2, at 10; *see also* GXs 6 & 10. After providing this information, a clerk from Ken Drugs' Tampa, Florida headquarters would call the Investigator and shortly thereafter, connect him/her with one of five different physicians employed by the Kennedee Group. Tr. 15; GX 2, at 11. A brief telephone consultation would occur with a physician who then issued a prescription for a controlled substance. Tr. 15; *see also* GX 2, at 11 ("After the receipt of consultation payment * * *. the undercover purchaser would talk by telephone to an employee of Kennedee Group * * * who advised that the purchaser would have to telefax a medical record accompanied by a photocopy of his or her driver's license. Regardless of these requirements, the employee of Kennedee Group * * * customarily resumed telephonic contact with the aspirant purchaser immediately after payment of the $120 or $125 fee to advise that a doctor was available for an expeditious medical consultation soon after which, according to the employee, the controlled substances prescribed would be delivered to the purchaser by UPS or FedEx.").

According to a DEA Diversion Investigator (DI), 97 percent of the prescriptions were for hydrocodone, with the other 3 percent being for the schedule IV controlled substances alprazolam (generic for Xanax), and occasionally, diazepam (generic for Valium). *See* 21 CFR 1308.14(c); Tr. 15; *see also* GX 2, at 23 ("Between June 17 and September 9, 2004, a review of the Ken Drugs pharmacy records revealed that 4,842 prescriptions were written for Schedule[] II, III, and IV controlled substances.[6] The vast majority of the prescriptions were for hydrocodone and only a small number were for other controlled substances such as diazepam (Valium) and alprazolam (Xanax)"). The prescriptions were filled at one of Shobola's Ken Drug pharmacies in either Tampa or Kissimmee and then shipped to the customer. Tr. 16.

In February 2004, the DI, using the undercover name "Michael Patrick," made an undercover purchase from Ken Drugs. *Id.* at 39 & 44. Upon accessing *http://www.medsviaweb.com,* the DI registered as a patient and provided "biographical data, credit card data, address data, information about allergies, [and] medical conditions." *Id.* at 49–50; *see* GX 6 (screens printed out from medsviaweb.com). Next, because he lacked an undercover credit card, the DI called Ken Drugs in Tampa to ask whether he could purchase the controlled substance he was seeking with a postal money order; an employee of Ken Drugs approved this arrangement. Tr. 50.

On February 6, the DI purchased the money order for $125 and sent it to Ken Drugs; several days later, the DI received a telephone call from Ken Drugs during which he was told that a medical consultation would follow if he would send a copy of his driver's license and medical records. *Id.; see* GX 8, at 1. While the DI could not remember whether he sent in a copy of his undercover driver's license, he did not send in any medical records. Tr. 50.

The Government then played into the record Government Exhibit 7, an audio recording of the DI's telephone consultation with a Kennedee Group physician. A speaker, who identified herself as Jennifer, arranged for the consultation once she had confirmed that the DI's money order had been received. Tr. 31–32. Jennifer then asked the DI whether he had faxed his driver's license and medical records; the DI answered, "Yes." *Id.* at 34. Jennifer then put the DI through to an individual who identified himself as Respondent. *Id.*

The DI stated that he suffered "back pain from an automobile crash" and requested "Vicodin extra strength." *Id.* He further explained that several years earlier another physician had "recommended" Vicodin and that it had "helped." *Id.* at 35. He also stated that he had not used Vicodin in several months. *Id.*

Respondent recommended Lortab because it was something with less "Tylenol."[7] *Id.* He then inquired as to the extent of the DI's back pain. *Id.* at 35–36. The DI stated that the back pain "interfere[d] with [his] sleeping, can last for hours some days and for minutes in [sic] other days," and amounted to "a little bit of interference." *Id.* at 36. The DI further offered that prior x-rays indicated that there was no structural damage. *Id.* Respondent then asked the DI how many pills he thought he would need per day; the DI responded two to three per day. *Id.* at 37. Respondent then stated: "Let's say two, two would be fine," and indicated that the DI would be sent "something that's actually a little safer for you and better than what you were asking for." *Id.* at 37–38.

On February 12, 2004, the DI picked up the Lortab in person at Ken Drugs #3, which was located at 4730 North Havana Avenue in Tampa. *Id.* at 44. He received sixty tablets of hydrocodone/apap (10/500), a drug which combines 10 mgs. of hydrocodone with 500 mgs. of acetaminophen in each tablet. *Id.* at 46; GX 8, at 2, 4. Laboratory testing confirmed that the tablets contained hydrocodone. Tr. 47. The label identified the prescribing physician as Respondent. GX 8 at 2, 4.

The DI further testified that no physical examination was performed, that he did not know whether Respondent had a copy of the online questionnaire in front of him when he prescribed the Lortab, and that Respondent did not take a medical "history" or give him a "treatment plan." Tr. 41, 77–78.

At DEA's request, on July 20, 2004, a Medical Quality Assurance Investigator with the Florida Department of Health (DOH) made an undercover purchase of hydrocodone through the website modernlifestylemeds.com; this prescription was also authorized by Respondent. Tr. 148; GX 9. According to the DOH Investigator, he registered as a customer, giving his undercover name of "Donald Huntley," date of birth, home address, telephone number, and a medical complaint; he then requested Percodan. Tr. 149, 152–53; GX 9, at 1. On July 29, the DOH Investigator filled out a medical history form and received an e-mail confirming his name, date of birth, phone number, and his medical complaint. Tr. 150–152; GX 9, at 1. The

[6] According to an affidavit prepared by an IRS Special Agent who participated in the investigation, "[a] review of the prescriptions filled by the KEN DRUGS pharmacy on Waters Avenue in Tampa, Florida, from June of 2002 through of 2003, reveals that 50,237 Schedule II, III, and IV prescriptions were filled. Further, that 48,793 prescriptions were written by Hameed, Lynch, Oluwole, Osuji, and Shyngle, and the vast majority were for hydrocodone." GX 2, at 23.

[7] Respondent testified that the voice on this recording sounded like his own. Tr. 223. As indicated *infra,* the prescription label on the vial identified the prescribing physician as Dr. Ronald Lynch. I therefore find that the individual identifying himself as Dr. Lynch in the telephone conversation recorded in Government Exhibit 7 is Respondent.

following day he received a telephone call from "Jasmine at Modern Lifestyles," who asked "what type of medication [he] was trying to obtain." Tr. 152; GX 9, at 1. After the DOH Investigator told her that he wanted Percodan, Jasmine replied that he could not get this drug (which is a schedule II controlled substance), but that he would be able to get Lortab at a cost of $177 for a thirty-day supply; she also instructed him to send in a copy of his driver's license and his medical records. Tr. 152; GX 9, at 1.

On August 1, the DOH Investigator faxed a copy of his undercover driver's license but not his medical records, and on August 2, Jasmine called again to confirm that he wanted Lortab. Tr. 153; GX 9, at 1. Jasmine told the Investigator that he could not personally pick up the medication and that he would need to pay by credit card; he then gave her his undercover credit card information. GX 9, at 1. Jasmine did not ask about the medical records which the Investigator had failed to provide; she then put the Investigator through to an individual who identified himself as Respondent. GX 9, at 1; Tr. 154, 157.

Respondent [8] asked the Investigator his age and the cause of his pain. Tr. 154; GX 9, at 1. The Investigator responded that he was sixty years old and that he had injured his back some four to five years earlier while helping his son move furniture. Tr. 155; GX 9, at 1. Respondent further asked about other medications that the Investigator was taking and about whether he had any liver damage; the latter responded that he was taking Vicodin and Lortab and did not have liver damage. Tr. 155; GX 9, at 1. Respondent then asked the Investigator to provide the name of the physician he was currently seeing; the Investigator named a Dr. Cichon. Tr. 155; GX 9, at 1. After some three to five minutes, the conversation ended with Respondent stating that he would prescribe Lortab with three refills. Tr. 156; GX 9, at 1.

In his testimony, the Investigator stressed that he never sent the required medical records, never met Respondent in person, and never underwent a physical examination by Respondent or anyone associated with the website he had accessed to obtain the medication. Tr. 157–158; *see also* GX 9, at 1–2.

On August 4, the Investigator received a vial which contained hydrocodone/apap 10/500. Tr. 156; GX 9, at 2. The prescription was dispensed by Ken Drugs, Inc.'s pharmacy #3, which was located at 4730 North Habana Avenue in Tampa, Florida. Tr. 158; GX 9, at 2. The label on the vial indicated that it contained ninety pills and that Respondent was the prescribing physician. Tr. 159–60; GX 9, at 2; GX 10, at 2, 3.

On September 21, 2004, DEA executed a search warrant at seven locations associated with Ken Shobola and his Ken Drugs enterprise, two in Kissimmee and five in Tampa, including Respondent's Integrative Natural Solutions business, which was located at the same address as one of the Kennedy Clinic's offices. Tr. 16, 68, 73. As part of the search, the Investigators "imaged [and] downloaded" the files on thirty-three computers; they also seized another computer and sent it to the DEA forensics laboratory for analysis. *Id.* at 17.

Among the items seized were records of ten controlled substance prescriptions which Respondent issued to residents of California, Ohio and Tennessee. *Id.* at 67; GX 18. Only one prescription bore Respondent's actual signature; this prescription was clearly faxed to the Kennedee Group. Tr. 226, GX 18, at 6. The other prescriptions bore a stamped signature and were electronically transmitted by Respondent. Tr. 226; GX 18, at 5–6.

Three of the prescriptions were dispensed to residents of California; all of these prescriptions were for 90 tablets of hydrocodone/apap, containing either 7.5 or 10 mgs. of hydrocodone per tablet. GX 18, at 1–6. Six prescriptions were dispensed to residents of Tennessee; four of these were for 90 tablets of hydrocodone/apap containing 10 mgs. of hydrocodone, one was for 90 tablets of alprazolam, and one was for 60 tablets of diazepam. *Id.* at 7–10, 13–18. The remaining prescription, which was dispensed to a customer in Ohio, was for 90 hydrocodone/apap (10/500). *Id.* at 11–12.

At least three physicians who worked for Shobola's scheme were interviewed by DEA Investigators. The lead DI testified that on October 20, 2004, he interviewed a Dr. Ladapo Shyngle at his Tampa residence. Tr. 23; GX 2, at 9. During the interview, Dr. Shyngle stated that he did not have face-to-face meetings with the Ken Drugs customers he prescribed hydrocodone to; he also admitted that he did not review the customers' medical records in every case before prescribing controlled substances to them. Tr. 24; GX 5, at 15–16, 20; GX 17, at 2.

Dr. Shyngle further admitted that as the number of Ken Drugs' customers increased, he saw their medical records before prescribing only approximately thirty percent of the time. GX 5, at 20–21; GX 17, at 1–2. According to Shyngle, Ken Drugs "hired an institution" that performed physical examinations for them. GX 5, at 25. Shyngle admitted, however, that the physicians were "not always" "actually able to look at the information" documenting those physical exams before they prescribed. *Id.*

The DI also testified that on November 17, 2004, he interviewed a Dr. Chuma Osuji, Director of Medicine for Ken Drugs.[9] Tr. 19–20, 82; GX 2, at 8; GX 4, at 5. The Government entered into evidence a transcript of the taped 2-hour interview of Dr. Osuji; the DI also testified as to the substance of the interview. Tr. 20–22; GX 4.

In the interview, Dr. Osuji admitted that he did not see the patients to whom he prescribed controlled substances; [10] that most of the prescriptions he wrote were for hydrocodone; that, while he sometimes saw the medical records prior to, or at the time of prescribing, he "frequently" did not; and that all of the prescriptions authorized by the physicians retained by the Kennedee Group were filled at pharmacies owned by Ken Shobola. Tr. 20–21; GX 4, at 9–10, 30.

Dr. Osuji also stated that he issued prescriptions by completing a form authorizing the prescription and faxing it to one of the Ken Drugs pharmacies for filling; the authorization was not "manually" signed. Tr. 88–89; GX 4, at 29–30. Dr. Osuji stated that Ken Drugs contracted with another company which was supposed to provide physical examinations of patients so Dr. Osuji assumed that the customers had undergone physical examinations prior to his prescribing to them. GX 4, at 25, 38. Also according to Dr. Osuji, one or two months earlier, he had learned that patients were not getting physical examinations (apparently after someone complained that he had paid for a physical and not received one). Tr. 21; GX 4, at 38–40, 47.

[8] At this point in the hearing, counsel for Respondent objected to the witness referring to this individual as Dr. Lynch, the Respondent. Tr. 155. The ALJ overruled this objection. *Id.* In his testimony, Respondent did not dispute that he had prescribed to either the DEA or DOH Investigators. Moreover, the prescription label for the medication that was dispensed to the Investigator indicated that the prescribing physician was Dr. Ronald Lynch. GX 10, at 2–3. I therefore find that Respondent was the individual who identified himself as Dr. Lynch.

[9] According to Dr. Osuji, although he was to be the medical director from the initial plans with Ken Shobola, there turned out to be "many medical directors" so that Dr. Osuji ultimately was not in charge of "oversee[ing]" the operation. GX 4, at 7. Apparently, there were a total of six medical directors. *Id.* at 42.

[10] According to Dr. Osuji, the customers were supposedly seen by "doctors, nurses, and [physicians assistants]" before he spoke with them. GX 4, at 8.

Another DI testified that she participated in an interview of Respondent on the day the search warrant was executed. Tr. 168–69. She testified that Respondent conducted two different kinds of medical practice, the first an "individual practice, which involved holistic medicine" and was named Integrative Natural Solutions; the other was an "internet pharmacy business, which was connected to the Ken Drugs business." *Id.* at 169.

Respondent was hired by Shobola to write prescriptions for the Kennedee Group and was paid $30 per telephone consultation. *Id.* at 173. However, Respondent admitted that he was not paid if he did not authorize a prescription. *Id.* at 198. Respondent stated that he conducted approximately fifty consultations per week, "usually no more than about 10 a [sic] day." *Id.* Respondent primarily prescribed hydrocodone. *Id.* at 171. The prescriptions were always filled by Ken Drugs. *Id.*

Respondent contacted the customers by accessing the website "through the Kenned[ee] Group Corporation" and then did telephone consultations with them. *Id.* at 170, 172–73. Respondent stated that he "talk[ed] with the patient [sic] regarding their medical concern, their medical need, if they had any problems, liver damage, if they had been taking medication, [and] what drugs or medication in particular they were seeking." *Id.*

Respondent maintained that the customers' medical records were filed at the corporate offices of the Kennedee Group and that he would "periodically" look at the records to determine patients' medical needs. *Id.* Respondent admitted, however, that his examination of the records did not "necessarily" occur "before he dispensed the medication." *Id.* Respondent allowed the corporate office to "use a rubber stamp with his signature, a custom stamp," to complete prescription authorizations. *Id.* at 172. He also told the Investigators that he was electronically transmitting the prescriptions to the pharmacy. *Id.* at 181.

During the interview, Respondent stated that he "believed that what he was doing was in line, because he thought that the Kenned[ee] Group were [sic] known. They [sic] had a big business and he felt he was doing what he thought was appropriate." *Id.* at 177. Respondent also stated that he believed that Shobola "had looked into the legalities of the business[;] and he felt that with the size of the business, surely, what they were doing could not be wrong. He trusted the insight of Ken Shobola." *Id.* at 185.

The Government also called Respondent to testify. The ALJ found, however, that Respondent's "testimony was frequently at odds with that of the [other] Government witnesses" and that he "displayed a lack of candor and appeared to shade his testimony to support his position on the issues." ALJ at 32. She accordingly found "the [other] Government witnesses more credible." Id.

According to Respondent, the Ken Drugs corporate center was designed for telemedicine and not for the physical receiving and treating of patients. Id. at 202. He described the business as "a nation-wide endeavor" in which patients were serviced by regional staff which conducted home visits to ascertain such matters as whether the customers were minors. Id. at 203–04.

In his testimony, Respondent admitted that the Ken Drugs scheme "[o]bviously[] did not lend itself to do[ing] any physical examination." *Id.* at 212–13. He further maintained that "[v]ery often, the majority of the time * * * [a]t least 75 to 85 percent of the time" he conducted his telephone consultations with the customers' medical records in front of him. *Id.* at 206. The ALJ did not find this testimony credible in light of his admission during the September 21, 2004 interview that he did not necessarily review the records before he prescribed. ALJ at 39. Moreover, both the DEA and DOH Investigators testified that they did not send in their medical records prior to Respondent's prescribing hydrocodone to them. For the same reason, the ALJ did not credit Respondent's testimony that he would have to turn away Internet patients who did not provide medical records.[11]

As to the potential for fraud in prescribing to persons he never met, Respondent admitted that "the real doctor/patient relationship is based upon honesty," and that if the patients "were liars" "they could break through." *Id.* at 206–07. Respondent then testified that the Shobola scheme used "the team approach" and that other employees were responsible for confirming the customers' identities and screening the required medical records and physical examination before he did his telephone consultations with them. *Id.* at 206–07, 220. According to Respondent, prior to his contacting the customers, the other employees obtained the required medical records, imaging studies, and sometimes, documentation of an actual in-person consultation with what he called a "mid-level provider." *Id.* at 199–200. This was so Respondent would not have "to waste [his] time with being a police agent or * * * a lawyer." *Id.* at 208.

He also maintained that customers "wouldn't get me on the phone until they had gone through some of these hurdles." *Id.* at 208. Here again, Respondent's testimony is contradicted by the purchases made by the DEA and DOH Investigators, both of whom obtained hydrocodone without sending in their medical records.

Later in his testimony, Respondent claimed that he could make a "judgment" that persons were either drug abusers or drug seekers based on their "voice," "diction," and "answers to some of the questions that I might have posed to them." *Id.* at 230. However, he then admitted that this "is, by no means, any criteria to determine who is being evasive and who is being under-handed or who is legitimately seeking a substance. It is very, very less than perfect." *Id.* at 231.

Respondent further maintained that "[t]here was not one letter, not one comment from any medical quality boards or anyone, regarding safety, regarding guidance in any way" as to "the practice of telemedicine." *Id.* at 209. However, as explained below, at the time Respondent issued the prescriptions, substantial guidance was available as to the legality of this practice. Respondent further claimed that he was "very glad that since that faithful [sic] day in September 2004" (apparently the date on which the search warrant was executed) he had "not returned to internet medicine because [he] do[es] think it does have some holes in it." *Id.*

Respondent also asserted that he visited the Ken Drugs corporate headquarters to meet the clerks and the personnel handling the telephone consultation transfers because he "need[ed] to talk to them and find out that everything [was] happening legitimately and appropriately." *Id.* at 202. The record, however, contains no evidence that Respondent sought to independently determine whether the practices he was engaging in were legal. Moreover, the ALJ found Respondent's "asserted reliance on Ken Drugs' administrative personnel disingenuous at best." ALJ at 44.

Respondent further maintained that he kept medical records "of every conversation or most of the conversations" in one of his notebooks. Tr. 210. However, when asked whether he wrote the prescriptions contained in Government Exhibit 18, Respondent stated that he did not bring his records with him to the hearing. *Id.* at 225–26.

Respondent further asserted that he discussed the patients' diagnoses with the patients and that he "absolutely" discussed alternative treatments such as physical therapy, magnetic therapy, acupuncture and eating "certain anti-inflammatory foods." *Id.* at 210, 214–15. He also maintained that he discussed the risks and benefits of treatment with controlled substances, *i.e.,* the risk of "habituation and the risk of acetaminophen damage," the latter concern compelling him to inquire always about blood tests, liver damage and kidney function. *Id.* at 216–17.

While the evidence pertaining to the undercover purchases indicates that Respondent did discuss the risks to liver function caused by taking too much acetaminophen, there is no evidence that he discussed the risk of addiction caused by taking narcotics with either Investigator. Nor did Respondent even discuss, let alone recommend, to the DEA and DOH Investigators that they try alternative treatments.

For Florida residents, Respondent claimed that he provided outside referrals and that it was "fairly infrequent" that customers did not have "background" MRIs, blood work, or x-rays. *Id.* at 213–14. However, he claimed that he could not do this for his out-of-state patients. *Id.* at 213.

According to Respondent, the audio recording of his telephone consultation with the DEA DI was "[n]ot necessarily" representative of his typical consultation, as it was the "minority of the time" that he participated in a consultation without the medical records in front of him; he also claimed that he would later review the medical record if it was not available at the time of the consultation. *Id.* at 224–25. He also maintained that he was "[s]ometimes" available to customers to review the "course and efficacy of the treatment." *Id.* at 218.

As for the prescriptions identified in Government Exhibit 18, Respondent maintained that he had actually signed only one of them. Tr. 226 (discussing GX 18, at 6). As for the others, Respondent stated that they looked like they had been stamped. *Id.* at 228. However, he admitted that the stamp was a facsimile of his signature and that he "may have" provided the Kennedy clinic with a stamp containing his signature. *Id.* He then stated that while "it was [his] practice to sign" the prescriptions "when he could," he had granted "the pharmacist" at Ken Drugs "some permission to use the stamp, if [he] was not able to do that" himself. *Id.* at 229. With respect to those prescriptions which were stamped, Respondent could not even address whether he did "indeed, * * * have a consultation with these * * * individuals." *Id.* at 228.

Respondent also testified on his own behalf. Respondent primarily testified about his professional background and that in 2006, he had attended a course offered by the American Academy of Pain Management which included classes about DEA, controlled substances, and the use or misuse of opioids.[12] *Id.* at 281–84. Respondent also further asserted that he has identified drug seeking patients in his "current practice" and that he handles them by discharging them. *Id.* He further testified that from 2005 on, he sees 100 percent of his patients in "a face to face setting," and that he will diagnose a person he does not know over the telephone only in an emergency. *Id.* at 290.

Discussion

Section 304(a) of the Controlled Substances Act (CSA) 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 the case of a practitioner, Congress directed 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 or renew an existing 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).

In this matter, I acknowledge that the State of Florida has taken no action against Respondent's medical license (factor one) and that Respondent has not been convicted of an offense related to controlled substances (factor three). However, under settled Agency precedent, "neither of these factors is dispositive." *Joseph Gaudio,* 74 FR 10083, 10090 n.25 (2009) (citing *Edmund Chein,* 72 FR 6580, 6590 n.22 (2007) and *Mortimer B. Levin,* 55 FR 8209, 8210 (1990)).

Rather, the gravamen of the Government's case is that Respondent violated the CSA and numerous state laws by: (1) Prescribing controlled substances to persons whom he never met and physically examined, and (2) by engaging in the unauthorized practice of medicine because he lacked the state licenses required to prescribe to the residents of various States. Gov. Br. at 5–9 (discussing factors two and four). The Government further argues that Respondent's conduct in prescribing over the Internet creates an extraordinary threat to public health and safety. *Id.* at 9–10. While Respondent offered some testimony as to changes he has made in his medical practice, as explained below, I agree with the ALJ's finding that his testimony was evasive and that he repeatedly failed to accept responsibility for his misconduct.

Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and His Record of Compliance With Applicable Controlled Substance Laws

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.*

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." *Gonzalez* v. *Oregon,* 546 U.S. 243, 274

[12] His testimony as to what subjects were covered was vague.

(2006) (citing *United States* v. *Moore,* 423 U.S. 122, 135 (1975)).

Under the CSA, it is "fundamental" that a practitioner must establish a bonafide doctor-patient relationship to act "in the usual course of * * * professional practice" and to issue a prescription for a "legitimate medical purpose." *Gaudio,* 74 FR at 10090 (citing *Moore,* 423 U.S. at 141–43). Moreover, at the time of the events at issue here, whether a doctor and patient have established a bona fide doctor-patient relationship under the CSA was generally a question of state law. *Id.; see also Kamir Garces-Mejias,* 72 FR 54931, 54935 (2007); *United Prescription Services, Inc.,* 72 FR 50397, 50407 (2007); Dispensing and Purchasing Controlled Substances Over the Internet (DEA Guidance Document), 66 FR 21181, 21182–83 (2001).

Moreover, "[a] physician who engages in the unauthorized practice of medicine" under state law "is not 'a practitioner acting in the usual course of * * * professional practice' " under the CSA. *Gaudio,* 74 FR at 10090 (quoting *United Prescription Services,* 72 FR at 50407). As the Supreme Court explained shortly after the CSA's enactment, "in the case of a physician," the CSA "contemplates that he is authorized by the State to practice medicine and to dispense drugs in connection with his professional practice." *Moore,* 423 U.S. at 140–41. This rule derives from the plain text of the statute which defines the term "practitioner" to mean "a physician * * * licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices * * * to * * * dispense a controlled substance," 21 U.S.C. 802(21), and the term "dispense" to mean "to deliver a controlled substance to an ultimate user * * * by, or pursuant to the lawful order of a practitioner." 21 U.S.C. 802(10). Thus, a controlled-substance prescription issued by a physician who lacks the license or other authority necessary to practice medicine within a State is unlawful under the CSA. *See* 21 CFR 1306.04(a); *Cf.* 21 CFR 1306.03(a)(1) ("A prescription for a controlled substance may be issued only by an individual practitioner who is * * * [a]uthorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession.").

The record establishes that Respondent repeatedly violated the CSA when he prescribed controlled substances for the customers of the Kennedee Group. He did so for two reasons: (1) He failed to establish a bona fide doctor-patient relationship as required by the laws of the States where the patients resided, and (2) because he was licensed only in Florida (and possibly New York at the time), he engaged in the unauthorized practice of medicine in those States (other than Florida and possibly New York) where the customers lived. Nor can Respondent credibly claim that "[t]here was not one letter, not one comment from any medical quality boards or anyone, regarding safety, regarding guidance in any way" as to the practice of telemedicine." *Id.* at 209.

As found above, Respondent issued three prescriptions for schedule III controlled substances containing hydrocodone to residents of California. However, in 2000, California enacted a provision which prohibits the prescribing or dispensing of a dangerous drug "on the Internet for delivery to any person in this state, without an appropriate prior examination and medical indication therefore." Cal. Bus. & Prof. Code § 2242.1. Moreover, in 2003 (and prior to the three prescriptions identified in GX 18), the Medical Board of California (MBC) revoked a physician's medical license when he engaged in practices similar to those of Respondent. *See In re Steven Opsahl, M.D.,* Decision and Order, at 3 (Med. Bd. Cal. 2003) (available by query at *http://publicdocs.medbd.ca.gov/pdl/mbc.aspx).*

In *Opsahl,* the MBC explained that "[b]efore prescribing a dangerous drug, a physical examination must be performed." *Id.* The MBC held that a physician "cannot do a good faith prior examination based on a history, a review of medical records, responses to a questionnaire, and a telephone consultation with the patient, without a physical examination of the patient." *Id.* The MBC also held that a "medical indication" is determined only after the taking of a history, the conducting of a physical examination, and an assessment of "the patient's condition." *Id.* The MBC further explained that "[a] physician cannot determine whether there is a medical indication for prescription of a dangerous drug without performing a physical examination." *Id.*

In approximately the same time-frame, MBC also issued numerous Citation Orders to out-of-state physicians for prescribing over the Internet to California residents. These Orders cited both the physicians' failure to conduct "a good faith prior examination" and their lack of "a valid California Physician and Surgeon's License to practice medicine in California." Citation Order, Martin P. Feldman (Aug. 15, 2003); *see also* Citation Order, Harry Hoff (June 17, 2003); Citation Order, Carlos Gustav Levy (Jan. 28, 2003); Citation Order, Carlos Gustav Levy (Nov. 30, 2001).

As the evidence shows, Respondent has never held a California Physician and Surgeon's license. Moreover, given Respondent's admission that the scheme "[o]bviously, did not lend itself to do any physical examinations," Tr. 212–13, I conclude that Respondent did not conduct a physical examination of any of the three California residents he prescribed to (and who were identified in GX 18). Accordingly, I conclude that in prescribing to these three persons, Respondent violated California law by engaging in the unauthorized practice of medicine and by prescribing "without an appropriate prior examination and medical indication therefore." Cal. Bus. & Prof. Code § 2242.1. I further hold that these prescriptions lacked a "legitimate medical purpose" and were issued "outside of the usual course of [his] professional practice" and therefore violated the CSA as well. 21 CFR 1306.04(a); 21 U.S.C. 841(a)(1).

Respondent issued a prescription for hydrocodone to an Ohio resident. As does every State, Ohio prohibits the practice of medicine without a state license. Ohio Rev. Code Ann. § 4731.41 (1998). Moreover, Ohio has enacted a statute which defines "telemedicine" as "the practice of medicine in this state through the use of any communication, including oral, written, or electronic communication, by a physician outside th[e] state" and requires that a physician obtain a "telemedicine certificate" to lawfully prescribe within the State, *id.* § 4731.296 (effective 4–10–01), and a "special activity certificate." *Id.* § 4731.294 (effective 4–10–01). Moreover, in 2002, Ohio adopted a regulation which, except for in circumstances not at issue here, prohibits the dispensing of controlled substances "to a person who the physician has never personally examined and diagnosed." Ohio Admin. Code § 4731–11–09(A).

Respondent did not possess either an Ohio medical license or Ohio "telemedicine certificate" and thus, he was not authorized to prescribe to an Ohio resident. Moreover, because Respondent did not perform a physical examination of the Ohio resident as required by the State's rule, he did not establish a legitimate doctor-patient relationship with this person. In prescribing hydrocodone to this person, not only did Respondent violate Ohio law and regulation, he also acted outside of the usual course of professional practice and lacked a legitimate medical purpose and

therefore violated the CSA as well. 21 CFR 1306.04(a); 21 U.S.C. 841(a)(1).

Respondent issued six prescriptions for controlled substances (which included hydrocodone, as well as alprazolam and diazepam), to residents of Tennessee. Tennessee law prohibits the practice of medicine within the State without a license issued by the State. Tenn. Code Ann. § 63–6–201(a) (2002); *see also id.* § 63–6–204 (2002) (defining "a person [who is] regarded as practicing medicine" as one "who treats, or professes to diagnose, treat, operate[] on or prescribes for any physical ailment or any physical injury to or deformity of another"). Like Ohio, Tennessee also provides for "restricted licenses and special licenses based upon licensure to another state for the limited purpose of authorizing the practice of telemedicine." *Id.* § 63–6–209(b) (1996).

Prior to the prescribings at issue here, Tennessee had also promulgated a regulation which provided clear notice that, prior to issuing a prescription for a controlled substance "by electronic means or over the Internet or over telephone lines," a physician must "[p]erform[] an appropriate history and medical examination," "[m]a[k]e a diagnosis based upon the examinations and all diagnostic and laboratory tests consistent with good medical care," "[f]ormulate[] a therapeutic plan," and "[i]nsure[] availability of the physician or coverage for the patient for appropriate follow-up care." Tenn. Comp. R. & Regs. 0880–2–14.(7)(a) (2002). Here again, Respondent did not possess a Tennessee license and violated state law when he issued the six prescriptions to Tennessee residents. He also violated Tennessee's regulation because he did not perform a medical examination of the persons he prescribed to. Because Respondent did not establish a legitimate doctor-patient relationship and lacked the necessary State license, in issuing these prescriptions, he acted outside of the usual course of professional practice and lacked a legitimate medical purpose and therefore violated the CSA as well.[13]

Respondent also violated both Florida's telemedicine regulation (which was promulgated in September 2003) and the CSA when he prescribed hydrocodone to the DEA and DOH Investigators. The Florida rule defines "the term 'telemedicine' " to include the "prescribing [of] legend drugs" made to patients via the internet, telephone, or facsimile. Fla. Admin. Code Ann. r. 64B8–9.014(5). The rule provides that prescribing medications solely on the basis of an electronic questionnaire "constitutes the failure to practice medicine with that level of care, skill, and treatment which is recognized by reasonably prudent physicians as being acceptable under similar conditions and circumstances, *as well as prescribing legend drugs other than in the course of a physician's professional practice.*" Fla. Admin. Code Ann. r. 64B8–9.014 (emphasis added). The rule further provides that physician shall not issue a prescription, through electronic or other means, unless following are done:

> (a) A documented patient evaluation, including history and physical examination to establish the diagnosis for which any legend drug is prescribed.
>
> (b) Discussion between the physician * * * and the patient regarding treatment options and the risks and benefits of treatment.
>
> (c) Maintenance of contemporaneous medical records meeting the requirements of [Fla. Admin. Code] Rule 64B8–9.003.

Id. r. 64B8–9.014(2).

In her recommended decision, the ALJ noted that "the Florida regulation governing telemedicine standards does not specify who must conduct the physical examination." ALJ at 38. Rather than research whether the Florida Medical Board had resolved this apparent ambiguity, the ALJ found "it reasonable to infer that the examination must be conducted by the prescribing physician or a health care provider under his direction (such as a nurse or physician assistant)." *Id.*

The ALJ did not, however, cite any authority such as an administrative or judicial opinion of the Florida Board of Medicine, the Florida Attorney General, or the Florida courts definitively construing the regulation as imposing this requirement. Moreover, as the Supreme Court has made clear, while DEA has authority under the public interest standard to determine whether a physician has complied with state law, it does not have the power to "authoritatively interpret" ambiguous provisions of State law. *Gonzales* v. *Oregon,* 546 U.S. 243, 264 (2006) (noting "the obvious constitutional problems" were the Attorney General to "do[] so"). Thus, while it may be reasonable to construe the regulation as the ALJ did, absent either an administrative or judicial decision interpreting the regulation in this manner, I am compelled to reject the ALJ's conclusion that Florida's telemedicine rule "require[s] that the prescribing physician or a provider under his supervision personally conduct a physical examination." ALJ at 38–39.

In any event, whatever the rule requires as far as who can perform the physical exam, it does not matter because the rule clearly requires that a physician cannot prescribe a drug unless there is "[a] documented patient evaluation" and neither the DEA nor DOH investigator provided any medical records to Ken Drugs.[14] Thus, it is clear that Respondent violated the Florida rule when he prescribed hydrocodone to the DEA and DOH investigators. Moreover, it is clear that Respondent acted outside of the usual course of professional practice and lacked a legitimate medical purpose and thus violated the CSA.[15] 21 CFR 1306.04(a); 21 U.S.C. 841(a)(1).

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[13] In addition to these statute and rules, which had been promulgated prior to his conduct, in April 2001, DEA published a guidance document entitled *Dispensing and Purchasing Controlled Substances over the Internet,* 66 FR 21181. The Agency's 2001 Guidance expressly stated that "[u]nder Federal and state law, for a doctor to be acting in the usual course of professional practice, there must be a bona fide doctor/patient relationship." 66 FR at 21182. Continuing, the Guidance observed that "[f]or purposes of state law, many state authorities, with the endorsement of medical societies, consider the existence of the following four elements as an indication that a legitimate doctor/patient relationship has been established:

A patient has a medical complaint;

A medical history has been taken;

A physical examination has been performed; and

Some logical connection exists between the medical complaint; the medical history, the physical examination, and the drug prescribed.

Id. at 21182–83. The Guidance further stated that "[c]ompleting a questionnaire that is then reviewed by a doctor hired by the internet pharmacy could not be considered the basis for a doctor/patient relationship." *Id.* at 21183.

Of further relevance, the Guidance explained that "[o]nly practitioners acting in the usual course of their professional practice may prescribe controlled substances. These practitioners *must be registered with DEA and licensed to prescribe controlled substances by the State(s) in which they operate.*" *Id.* at 21181 (emphasis added).

[14] The ALJ also found that "the record establishes that Respondent failed to review medical records for most, if not all, of his patients." ALJ at 38. While there is evidence that Respondent failed to review the medical records of the DEA and DOH Investigators, and there is evidence that other doctors admitted that in many instances they did not review medical records before prescribing, it is not necessary to decide whether the ALJ's finding is supported by substantial evidence. Given that: (1) the Investigators obtained prescriptions without providing medical records, and (2) even putting aside the ALJ's finding that Respondent's testimony that he had the medical records in front him "[a]t least 75 to 85 percent of the time," Tr. 206, was not credible, ALJ at 39; it is still clear that Respondent frequently prescribed without reviewing a person's medical record. Beyond this, given the clear requirements of California, Ohio, and Tennessee that the prescribing physician must perform the physical examination, whether he reviewed medical records of these persons is immaterial.

[15] In his brief, Respondent argues that "there is no requirement that the prescribing physician personally conduct a physical examination of a patient for a valid doctor-patient relationship to exist." Resp. Br. at 10 (citing *Forlaw, M.D.* v. *Fitzer,* 246 So.2d 432, 435 (Fla. 1984)). However, as explained above, in California, Ohio and Tennessee there is such a requirement. Moreover, with respect

In his testimony, Respondent appeared to deny having personally issued all but one of the prescriptions contained in Government Exhibit 18. Tr. 228–29. However, as found above, in an interview, Respondent admitted that he was electronically transmitting prescriptions to Ken Drugs, and in his testimony, Respondent admitted that he had provided a stamp with his signature to at least one of the Ken Drugs pharmacies. Thus, it is clear from his testimony that Respondent's intent in doing so was to authorize Ken Drugs to dispense prescriptions under his registration number. *Id.* at 229 ("It was my practice to sign them when I could and when everything was variable and proper and there would be some permission to use the stamp, if I was not able to do that myself."). I thus reject Respondent's contention that he did not authorize the nine stamped prescriptions.[16]

Moreover, Respondent did not claim that these were oral prescriptions. Thus, Respondent also violated DEA regulations because he did not manually sign the prescriptions. *See* 21 CFR 1306.05(a) ("Where an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or typewriter and shall be manually signed by the practitioner.")[17]

As the foregoing demonstrates, Respondent's experience in dispensing controlled substances and his record of compliance with laws related to controlled substances is characterized by his repeated prescribing in violation of state laws prohibiting the unauthorized practice of medicine as well as those requiring that a physician personally perform a physical examination of a patient he prescribes to. These prescriptions also violated Federal law because in issuing them, Respondent lacked "a legitimate medical purpose" and acted outside of "the usual course of [his] professional practice." 21 CFR 1306.04(a). I thus hold that the Government has satisfied its *prima facie* burden of showing that Respondent has committed acts which "render his registration * * * inconsistent with the public interest." 21 U.S.C. 824(a)(4).

Sanction

Under Agency precedent, where, as here, "the Government has proved that a registrant has committed acts inconsistent with the public interest, a registrant must 'present sufficient mitigating evidence to assure the Administrator that [he] can be entrusted with the responsibility carried by such a registration.' " *Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008) (quoting *Samuel S. Jackson,* 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller,* 53 FR 21931, 21932 (1988))). "Moreover, because 'past performance is the best predictor of future performance,' *ALRA Labs, Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir.1995), [DEA] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, [he] must accept responsibility for [his] actions and demonstrate that [he] will not engage in future misconduct." *Medicine Shoppe,* 73 FR at 387; *see also Jackson,* 72 FR at 23853; *John H. Kennedy,* 71 FR 35705, 35709 (2006); *Prince George Daniels,* 60 FR 62884, 62887 (1995). *See also Hoxie* v. *DEA,* 419 F.3d at 483 ("admitting fault" is "properly consider[ed]" by DEA to be an "important factor[ ]" in the public interest determination).

It is acknowledged that Respondent ceased his internet prescribing activities shortly after the execution of the search warrant. It is also acknowledged that Respondent took a course of the American Academy of Pain Management, which included subjects pertaining to the prescribing of controlled substances.

The ALJ found, however, that Respondent has not accepted responsibility for his misconduct. ALJ at 43–45. As support for this finding, the ALJ cited: (1) Respondent's statement to the investigators that he believed the Ken Drugs' scheme was lawful because the Kennedee Group was well known, had a large business, and that Shobola had researched its legality, (2) his testimony that he relied on Ken Drugs' employees to screen for drug abusers, which she characterized as "disingenuous at best," and (3) his "evasive and unresponsive" testimony in "describing his interactions with Ken Drugs patients." ALJ at 43–44.

The ALJ's finding is well supported by the record. With respect to Respondent's contention that he believed that what he was doing was lawful, I have previously held that "a licensed physician * * * is * * * properly charged with the obligation to determine what the law require[s] with respect to his prescribing activities." *Patrick W. Stodola, M.D.,* 74 FR 20727, 20735 (2009). In short, Respondent's various contentions as to why he believed Shobola's internet prescribing scheme was lawful are absurd on their faces.

Indeed, further evidence of Respondent's failure to accept responsibility is his testimony that "[t]here was not one letter, not one comment from any medical quality boards or anyone, regarding safety, regarding guidance in any way" as to "the practice of telemedicine." Tr. 209.[18] As noted above, this is utter nonsense, as prior to his prescribing, each of the three States whose residents he prescribed to (California, Ohio, and Tennessee) had enacted statutes and/or promulgated regulations which clearly prohibited his prescribing without obtaining a state license and without physically examining his patients.

As the California Court of Appeal has noted, "the proscription of the unlicensed practice of medicine is neither an obscure nor an unusual state prohibition of which ignorance can reasonably be claimed, and certainly not by persons * * * who are licensed health care providers. Nor can such persons reasonably claim ignorance of the fact that authorization of a prescription pharmaceutical constitutes the practice of medicine." *Hageseth* v. *Superior Court,* 59 Cal. Rptr. 3d 385, 403 (Ct. App. 2007). The same is true of the state law standards for establishing a valid doctor-patient relationship.

Respondent's testimony regarding how Ken Drugs screened for drug abusers likewise manifests a degree of irresponsibility that is incompatible

to the undercover purchases, the argument provides no comfort to Respondent because he prescribed without obtaining a "documented patient evaluation, including [a] physical examination" and the Florida rule expressly provides that such prescribing is not "in the course of a physician's professional practice." Fla. Admin. Code Ann. R. 64B8–9.014.(1) & (2).

Respondent also testified that Ken Drugs had "other locations that were designed for seeing patients" and that the patients "would be directed to an office where they could get a physical examination, where they could go through getting their vital signs and so forth." Tr. 203. Respondent did not, however, produce any evidence showing that any of the patients identified in Government Exhibit 18 were physically examined at these "other locations." Nor did he offer any evidence showing that the so-called regional staffers were qualified to perform physical exams and diagnose patients. Finally, Respondent does not cite to any law or regulation of the States of California, Ohio or Tennessee authorizing this practice.

[16] Even if he did not authorize the prescriptions, the evidence supports a finding that Respondent authorized the pharmacist to issue prescriptions under the authority of his registration. Under DEA case law, a registrant who authorizes others to use his registration is responsible for any misuse of his registration by these individuals. *See Paul H. Volkman,* 73 FR 30630, 30644 n.42 (2008); *Rose Mary Jacinta Lewis,* 72 FR 4035, 4040 (2007); *Robert G. Hallermeier,* 62 FR 26818, 26820 (1997); *Summer Grove Pharmacy,* 54 FR 28522, 28523 (1989).

[17] An oral prescription must be "reduced to writing by the pharmacist" and "contain[ ] all information required by 21 CFR 1306.05, except for the signature of the practitioner." 21 CFR 1306.21(a).

[18] Notably, at an earlier point in his testimony, Respondent stated: "We were all constantly reviewing legalities and making certain that we were responding to the best practice possible." Tr. 202. *See also* Tr. 222 ("there were very, very few guidelines").

with what DEA expects of a registrant. While Respondent testified that other employees were responsible for screening the patients, he acknowledged that if the patients "were liars * * * they could break through" and that "a lot of fraud can happen." He then justified his prescribing notwithstanding the obvious diversion risk, claiming that he is not a lawyer or police agent and that as "a physician * * * I take people at their word" and "as a family physician, I have patients that come to me face-to-face and can be dishonest with me." *Id.* at 206–09.

Later, Respondent claimed that he could identify drug abusers and drug seekers by their voice or diction, but then acknowledged that this was "by no means, any criteria to determine who is being evasive" and that it was "very, very less than perfect." *Id.* at 230–31. Putting aside the obvious risk of diversion by prescribing to people one never meets, if Respondent, as a trained physician, could not identify drug abusers and drug seeking patients, it should have been apparent that Ken Drugs' employees could not either. Yet he proceeded to prescribe controlled substances to numerous persons even though he had no idea as to whether they were legitimate patients or drug seekers and abusers.[19]

The ALJ was also unimpressed by Respondent's testimony regarding his interactions with Ken Drugs' patients. For example, Respondent testified that Ken Drugs' customers would not be able to get him "on the phone until they had gone through some of these hurdles" such as sending in their medical records. *Id.* at 206. He also claimed that there were times when the customers got through to him without having provided their medical records, and that he "would have to say, 'No, we can't help you.' " *Id.* at 214. Yet he prescribed to both the DEA and DOH Investigators who had not sent in any records. He also testified that he discussed "the risk of habituation" with the persons he prescribed to. *Id.* at 217. Once again, he did not do so when he prescribed to either the DEA or DOH Investigators.

As the ALJ found, much of Respondent's testimony was self-serving and disingenuous. Moreover, Respondent repeatedly attempted to minimize his misconduct, which is egregious. In short, Respondent has failed to acknowledge any wrongdoing on his part. Accordingly, I agree with the ALJ's finding that Respondent has failed to accept responsibility for his misconduct and that this "warrants the finding * * * that his continued registration poses a threat to the public health and safety." ALJ at 46.[20] Having concluded that Respondent has failed to rebut the Government's *prima facie* case, his registration 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) & 824(a)(4), as well as by 28 CFR 0.100(b) & 0.104, I order that DEA Certificate of Registration, BL6686541, issued to Ronald Lynch, M.D., be, and it hereby is, revoked. I further order that any application for renewal or modification of such registration be, and it hereby is, denied. This Order is effective January 18, 2011.

Dated: December 3, 2010.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 2010–31650 Filed 12–15–10; 8:45 am]

BILLING CODE 4410–09–P

[19] The National Center on Addiction and Substance Abuse (CASA) has reported that "[t]he number of people who admit abusing controlled prescription drugs increased from 7.8 million in 1992 to 15.1 million in 2003." National Center on Addiction and Substance Abuse, *Under the Counter: The Diversion and Abuse of Controlled Prescription Drugs in the U.S.* 3 (2005) (cited in *Stodola,* 74 FR at 10089 n.24). Moreover, "[a]pproximately six percent of the U.S. population (15.1 million people) admitted abusing controlled prescription drugs in 2003, 23 percent more than the combined number abusing cocaine (5.9 million), hallucinogens (4.0 million), inhalants (2.1 million) and heroin (328,000)." *Id.* Relatedly, "[b]etween 1992 and 2003, there has been a * * * 140.5 percent increase in the self-reported abuse of prescription opioids"; in the same period, the "abuse of controlled prescription drugs has been growing at a rate twice that of marijuana abuse, five times greater than cocaine abuse and 60 times greater than heroin abuse." *Id.*

CASA has further reported that teenagers "represent an especially vulnerable group," because "[t]eens may view prescription drugs as relatively safe either when abused alone or in combination with alcohol or other drugs." *Id.* According to CASA, "[i]n 2003, 2.3 million teens ages 12 to 17 (9.3 percent) reported abusing a controlled prescription drug in the past year; 83 percent of them reported abusing opioids." *Id.* Moreover, "[b]etween 1992 and 2002, the number of [first time] teenage prescription opioid abusers increased by 542 percent." *Id.*

Finally, CASA noted that "[i]nternet sites not adhering to state licensing requirements, medical board standards or Federal law have enabled consumers to obtain controlled prescription drugs without a valid prescription or physician supervision and without regard to age." *Id.* at 63. CASA also noted that "illegal [i]nternet pharmacies have introduced a new avenue through which unscrupulous buyers and users can purchase controlled substances for unlawful purposes." *Id.* Moreover, "[t]he age of the customers appears not to be an issue for Internet pharmacies," and that there are "no mechanisms in place to block children from purchasing controlled drugs over the Internet." *Id.* at 66.

[20] *See also Stodola,* 74 FR at 20730–31 (practitioner's continued registration deemed inconsistent with the public interest where, *inter alia,* "he has not accepted responsibility for his misconduct but blames others"); *Leslie,* 68 FR at 15231 (revoking registration where, *inter alia,* "Respondent refuse[d] to take responsibility for his past misconduct" and "remain[ed] steadfast in his insistence upon denying any previous wrongdoing"); *Prince George Daniels,* 60 FR 62881, 62887 (1995) (registrant's "lack of candor * * * as to the full extent of his involvement in the cocaine incident creates concern about his future conduct"); *John Stanford Noell,* 59 FR 47359, 47361 (1994) (denying Respondent's application for registration where, as to factor five, "Respondent has exhibited no remorse for his illegal activities").

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Notice of Publication of 2010 Update to the Department of Labor's List of Goods From Countries Produced by Child Labor or Forced Labor

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Announcement of Public Availability of updated list of goods.

SUMMARY: This notice announces the publication of an updated list of goods—along with countries of origin—that the Bureau of International Labor Affairs ("ILAB") has reason to believe are produced by child labor or forced labor in violation of international standards ("List"). ILAB is required to develop and make available to the public the List pursuant to the Trafficking Victims Protection Reauthorization Act of 2005 ("TVPRA").

FOR FURTHER INFORMATION CONTACT: Director, Office of Child Labor, Forced Labor, and Human Trafficking, Bureau of International Labor Affairs, U.S. Department of Labor at (202) 693–4843 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: ILAB's Office of Child Labor, Forced Labor, and Human Trafficking (OCFT) carries out the mandates of section 105(b)(1) of the TVPRA, Public Law 109–164. For complete information on OCFT's TVPRA activities, please visit the Web site listed below. Previous **Federal Register** notices issued on this subject include: *Notice of Proposed Procedural Guidelines for the Development and Maintenance of the List of Goods From Countries Pursuant to the Trafficking Victims Protection Reauthorization Act of 2005* (72 FR 55808, Oct. 1, 2007); *Notice of Procedural Guidelines for the Development and Maintenance of the List of Goods from Countries Produced by Child Labor or Forced Labor; Request for Information* (72 FR 73374, Dec. 27, 2007); *Notice of Public Hearing to Collect Information to Assist in the Development of the List of Goods From Countries Produced by Child Labor or*

Forced Labor (73 FR 21985, Apr. 23, 2008); and *Notice of Publication of The Department of Labor's List of Goods from Countries Produced by Child Labor or Forced Labor* (74 FR 46620, Sept. 10, 2009).

ILAB published the first *List of Goods Produced by Child Labor or Forced Labor* on Sept. 10, 2009. That List included 122 goods from 58 countries, based on research on 77 countries. ILAB now announces the publication of an updated List, reflecting research on 39 additional countries as well as review of information submitted to ILAB pursuant to its TVPRA procedural guidelines. This update adds 6 new goods and 12 new countries to the List. A full report, including the updated List and a discussion of the List's context, scope, methodology, and limitations, as well as Frequently Asked Questions and a bibliography of sources, are available on the DOL Web site at: *http://www.dol.gov/ilab/programs/ocft/tvpra.htm.*

Signed at Washington, DC, this 6th day of December, 2010.

Sandra Polaski,

Deputy Undersecretary for International Affairs.

[FR Doc. 2010–31150 Filed 12–15–10; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Standard on Mechanical Power Presses

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) hereby announces the submission of the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, "Standard on Mechanical Power Presses," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before January 18, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site, *http://www.reginfo.gov/public/do/PRAMain* or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The inspection and certification records required by the Standard on Mechanical Power Presses are intended to ensure that mechanical power presses are in safe operating condition, and that all safety devices are working properly. Failure of these safety devices could cause serious injury or death to a worker.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is currently approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1218–0229. The current OMB approval is scheduled to expire on December 31, 2010; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on August 11, 2010 (75 FR 48726).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference OMB Control Number 1218–0229. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Title of Collection: Standard on Mechanical Power Presses.

OMB Control Number: 1218–0229.

Affected Public: Private sector, businesses or other for-profits.

Total Estimated Number of Respondents: 295,000.

Total Estimated Number of Responses: 9,975,130.

Total Estimated Annual Burden Hours: 1,373,054.

Total Estimated Annual Costs Burden: $0.

Dated: December 13, 2010.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2010–31581 Filed 12–15–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Notice of Initial Determination Revising the List of Products Requiring Federal Contractor Certification as to Forced/Indentured Child Labor Pursuant to Executive Order 13126

AGENCY: Bureau of International Labor Affairs (ILAB), Labor.

ACTION: Request for comments.

SUMMARY: This initial determination proposes to revise the list required by Executive Order No. 13126 ("Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor"), in accordance with the Department of Labor's "Procedural Guidelines for the Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured

Child Labor." This notice proposes to add a product, (along with its country of origin) to the list that the Department of Labor preliminarily believes might have been mined, produced, or manufactured by forced or indentured child labor. This notice also proposes to remove a product (along with its country of origin) from the list where, preliminarily, the Department of Labor has reason to believe that the use of forced or indentured child labor has been significantly reduced if not eliminated. The Department of Labor invites public comment on this initial determination. The Department will consider all public comments prior to publishing a final determination updating the list of products, made in consultation and cooperation with the Department of State, and the Department of Homeland Security.

DATES: Information should be submitted to the Office of Child Labor, Forced Labor and Human Trafficking (OCFT) via one of the methods described below by 5 p.m., February 15, 2011.

To Submit Information, or for Further Information, Contact: Information submitted to the Department should be submitted directly to OCFT, Bureau of International Labor Affairs, U.S. Department of Labor at (202) 693–4843 (this is not a toll free number). Comments, identified as "Docket No. DOL–2010–0005," may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* The portal includes instructions for submitting comments. Parties submitting responses electronically are encouraged not to submit paper copies.
- *Facsimile (fax):* OCFT at 202–693–4830.
- *Mail, Express Delivery, Hand Delivery, and Messenger Service (2 copies):* Brandie Sasser at U.S. Department of Labor, OCFT, Bureau of International Labor Affairs, 200 Constitution Avenue, NW., Room S–5317, Washington, DC 20210.
- *E-mail: EO13126@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 12, 1999, President Clinton signed Executive Order No. 13126 (EO 13126), which was published in the **Federal Register** on June 16, 1999 (64 FR 32383). EO 13126 declared that it was "the policy of the United States Government * * * that the executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of good, wares, articles, and merchandise mined, produced or manufactured wholly or in part by forced or indentured child labor." Pursuant to EO 13126, and following public notice and comment, the Department of Labor published in the January 18, 2001, **Federal Register**, a list of products (the "List") (along with their respective countries of origin) that the Department, in consultation and cooperation with the Departments of State and Treasury (relevant responsibilities now within the Department of Homeland Security), had a reasonable basis to believe might have been mined, produced or manufactured with forced or indentured child labor (66 FR 5353). The Department also published on January 18, 2001, "Procedural Guidelines for Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor" (Procedural Guidelines), which provide guidelines on the maintenance, review, and as appropriate, revision of the List (66 FR 5351).

The Procedural Guidelines provide that the List may be updated through considerations of submissions by individuals and on the Department's own initiative. In either event, when proposing to update the List, the Department of Labor must publish in the **Federal Register** a notice of initial determination, which includes any proposed alteration to the List. The Department will consider all public comments prior to the publication of a final determination of an updated list, which is made in consultation and cooperation with the Departments of State and Homeland Security.

On January 18, 2001, pursuant to Section 3 of the EO 13126, the Federal Acquisition Regulatory Councils published a final rule to implement specific provisions of EO 13126 that requires, among other things, that federal contractors who supply products that appear on the List issued by the Department certify to the contracting officer that the contractor, or, in the case of an incorporated contractor, a responsible official of the contractor, has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce or manufacture any product furnished under the contract and that, on the basis of those efforts, the contractor is unaware of any such use of child labor. *See* 48 CFR Subpart 22.15.

On September 11, 2009, the Department of Labor published an initial determination in the **Federal Register** proposing to update the List to include 29 products from 21 countries. The Notice requested public comments for a period of 90 days. Public comments were received and reviewed by all relevant agencies, and a final determination was issued on July 20, 2010 that included all products proposed in the initial determination except for carpets from India. (75 FR 42164).

The current List and the Procedural Guidelines can be accessed on the Internet at *http://www.dol.gov/ILAB/regs/eo13126/main.htm* or can be obtained from: OCFT, Bureau of International Labor Affairs, Room S–5317, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–4843; fax (202) 693–4830.

II. Definition of Forced/Indentured Child Labor

Under Section 6(c) of EO 13126:

"Forced or indentured child labor" means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

Information Sought

The Department is requesting public comment on the revisions to the List proposed below, as well as any other issue related to the fair and effective implementation of EO 13126. This notice is a general solicitation of comments from the public. All submitted comments will be made a part of the public record and will be available for inspection and on *www.regulations.gov.*

In conducting research for this initial determination, the Department considered a wide variety of materials originating from its own research, other U.S. Government agencies, foreign governments, international organizations, non-governmental organizations (NGOs), U.S. Government-funded technical assistance and field research projects, academic research, independent research, media, and other sources. The Department of State and U.S. embassies and consulates abroad also provide important information by gathering data from contacts, conducting site visits, and reviewing local media sources. Further, for this initial determination, the Department sought additional information from the public through a call for information published in the **Federal Register** on February 24, 2010.

In developing the revised List, the Department's review focused on available information concerning the

use of forced or indentured child labor. The lack of available information does not, by itself, establish that, in any particular country, or for any particular product, forced or indentured child labor is not being used. Government resources for acquiring information are limited. In addition, information about actual working conditions in some countries is difficult or impossible to obtain, for a variety of reasons. For example, governments are unable or unwilling to cooperate with international efforts, or with the efforts of NGOs, to uncover and address abuses. Institutions or organizations that might uncover such information, such as free and independent news media, trade unions, and NGOs also may not exist.

As outlined in the Procedural Guidelines, several factors were weighed in determining whether or not a product should be placed on the revised List: The nature of the information describing the use of forced or indentured child labor; the source of the information; the date of the information; the extent of corroboration of the information by appropriate sources; whether the information involved more than an isolated incident; and whether recent and credible efforts are being made to address forced or indentured child labor in a particular country and industry.

This notice constitutes the initial determination updating the EO 13126 list issued July 20, 2010. Based on recent, credible, and appropriately corroborated information from various sources, the Departments of Labor, State, and Homeland Security have preliminarily concluded that there is a reasonable basis to believe that the following product, identified by its country of origin, might have been mined, produced, or manufactured by forced or indentured child labor:

Product: Hand-Woven Textiles
Country: Ethiopia

In addition, the Departments of Labor, State, and Homeland Security have preliminarily concluded that there is no longer a reasonable basis to believe that the use of forced or indentured child labor in the production of the following product, identified by its country of origin:

Product: Charcoal
Country: Brazil

After the July 2010 update to the List, the Department of Labor received recent, credible, and appropriately corroborated information from various sources on the use of forced or indentured child labor in charcoal production in Brazil. This information indicates that while children previously worked under forced labor conditions in charcoal production, there is no longer a reasonable basis the problem has been significantly reduced if not eliminated. Therefore, the Departments of Labor, State, and Homeland Security have preliminarily concluded that there is no longer a reasonable basis to believe that charcoal from Brazil is produced by forced or indentured child labor and therefore it should not continue to be on the List.

The Government of Brazil has developed a comprehensive approach to combat forced labor, including forced child labor, that includes robust policies and legislation, strong enforcement efforts, allocation of financial resources, and programs to assist victims of forced labor. For example, legislation requires fines and imprisonment of four to twelve years for the use of forced child labor, and the Government provides financial and employment assistance to victims of forced labor. The Government is currently implementing its Second National Plan to Combat Forced Labor and also has established a National Agreement to Eradicate Forced Labor, which involves more than 130 parties whose efforts are monitored and tracked online. Brazil also publishes a "Dirty List" (Lista Suja) of forced labor cases, including the names of companies and property owners who employ workers under forced labor conditions. The Government has created a Special Mobile Inspection Unit (GEFM) at the Ministry of Labor and Employment (MTE), which performs on-site investigations of forced labor cases. GEFM is composed of teams of labor inspectors, Labor Public Ministry attorneys, and members of the National Police. Currently, more than 100 labor inspectors are part of this inspection unit. To resolve such cases, GEFM has the right to initiate formal charges, to settle the complaint at the scene of the crime, and to levy fines. Such fines are used to enhance enforcement efforts, undertake preventative efforts, and to provide services to forced labor victims, including children.

In response to being placed on the List, the Government of Brazil provided additional information to the Department of Labor on the status of forced or indentured child labor in charcoal production. The information included disaggregated data that indicates that, from January 2007 to September 2010, the MTE conducted 1,924 labor inspections in 23 states and found no child under 18 working under forced labor conditions in charcoal production. The MTE's public Web site shows that from January 2007 to August 2010, the GEFM conducted 499 investigations of forced labor cases, inspected 1,025 businesses, and rescued more than 16,000 workers from forced labor conditions. While the Government collects data in a disaggregated manner, information made publicly available on the Web site is not disaggregated by age or sector.

To corroborate the Brazilian Government's data that indicated no evidence of forced child labor in charcoal production, the Department accessed information publicly available since the end of the previous research period (2008–2010) and spoke with a number of stakeholders actively engaged in forced labor issues in the charcoal sector. These sources, which included the International Labor OrganizaILO, Reporter Brasil, the Citizens' Charcoal Institute (ICC), and the Pastoral Land Commission (CPT), indicate that forced child labor in the production of charcoal has been significantly reduced if not eliminated. Both the CPT and ICC provided monitoring data to support these claims, although the CPT data differs slightly from the Government's data. The CPT, which receives complaints of forced labor cases, carries out independent forced labor monitoring and also refers cases to the GEFM, reported that from June 2008 to August 2010, it submitted five complaints of forced labor in charcoal to MTE that involved 76 victims, including 10 children. Thus, while it appears that there continue to be isolated cases of forced child labor, the Government has established mechanisms to address and respond to such cases. The ICC, which independently monitors labor conditions in charcoal enterprises in the states of Pará, Maranhão, Tocantins, and Piauí, has carried out 2,793 inspections in 158 municipalities, registered 145,917 charcoal kilns, and reached out to more than 52,000 charcoal workers. It found no evidence of forced child labor in these businesses.

According to information obtained, factors driving the reduction in forced child labor in the charcoal industry have included increased government enforcement, government collaboration with civil society, awareness-raising among workers, and monitoring systems put in place by companies in the pig iron/charcoal supply chain.

It is important to note that information obtained by the Department indicates that adult forced labor and child labor that is not forced is still occurring in the production of charcoal. Therefore, while the Department is proposing to remove charcoal from Brazil from the EO 13126 List, it will continue to be included on *The*

Department of Labor's List of Goods Produced by Child Labor or Forced Labor.

The Department invites public comment on whether these products (and/or other products, regardless of whether they are mentioned in this Notice) should be included on or removed from the revised List of products requiring federal contractor certification as to the use of forced or indentured child labor. To the extent possible, comments provided should address the criteria for inclusion of a product on the List contained in the Procedural Guidelines discussed above. The Department is also interested in public comments relating to whether products initially determined to be on the List are designated with appropriate specificity and whether alternative designations would better serve the purposes of EO 13126.

The bibliography providing the preliminary basis for adding hand-woven textiles from Ethiopia on the List and additional documentation on the removal of charcoal from Brazil are available on the Internet at *http://www.dol.gov/ILAB/regs/eo13126/main.htm.*

As explained, following receipt and consideration of comments on the revised List set out above, the Department of Labor, in consultation and cooperation with the Departments of State Homeland Security, will issue a final determination in the **Federal Register.** The Department of Labor intends to continue to revise the List periodically, to add and/or delete products, as justified by new information.

Signed at Washington, DC, this 8th day of December, 2010.

Sandra Polaski,

Deputy Undersecretary, Bureau of International Labor Affairs.

[FR Doc. 2010–31213 Filed 12–15–10; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Labor Advisory Committee for Trade Negotiations and Trade Policy

ACTION: Meeting notice.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiation and Trade Policy.

Date, Time, Place: January 12, 2011; 10 a.m.–11:30 a.m.; U.S. Department of Labor, Secretary's Conference Room, 200 Constitution Ave., NW., Washington, DC.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to 19 U.S.C. 2155(f) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

FOR FURTHER INFORMATION, CONTACT: Gregory Schoepfle, Director, Office of Trade and Labor Affairs; *Phone:* (202) 693–4887.

Signed at Washington, DC, the 10th day of December, 2010.

Sandra Polaski,

Deputy Undersecretary International Affairs.

[FR Doc. 2010–31582 Filed 12–15–10; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

This notice includes the following: 2010–31, Deutsche Asset Management (UK) Limited, D–11495; 2010–32, Sherburne Tele Systems, Inc. Amended and Restored Stock Ownership Plan and Trust (the "ESOP"), D–11569; 2010–33, Citigroup Global Markets, Inc. and Its Affiliates (together, CGMI or the Applicant), D–11573; and 2010–34, Retirement Plan for Employees of the Rehabilitation Institute of Chicago (the Plan), D–11585.

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Deutsche Asset Management (UK) Limited (the Applicant), Located in London, England, a Wholly-Owned Subsidiary of Deutsche Bank AG, Located in Frankfurt, Germany, and Throughout the World

[Prohibited Transaction Exemption 2010–31; Exemption Application Number D–11495]

Exemption

Section I—Covered Transactions

The restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A), (B), (D), and (E) of the Code, shall not apply to certain foreign exchange Hedging and

Administrative Conversion transactions that occurred between November 30, 2007 and May 30, 2008, inclusive, between the DB Torus Japan Master Portfolio (the Master Fund), in which the assets of a client employee benefit plan (the Client Plan) were invested, and Deutsche Bank AG, a party in interest with respect to the Client Plan, provided that the conditions contained herein are satisfied.

Section II—General Conditions

(a) The Foreign Exchange Transactions were executed solely in connection with the Master Fund's Hedging of the Japanese yen currency risk for its share classes denominated in U.S. dollars (USD), and for Administrative Conversions;

(b) At the time that the Foreign Exchange Transactions were entered into, the terms of such transactions were not less favorable to the Master Fund than the terms generally available in comparable arm's length Foreign Exchange Transactions between unrelated parties;

(c) Any Foreign Exchange Transactions authorized by Deutsche Asset Management (UK) Ltd. and executed by Deutsche Bank AG were not part of any agreement, arrangement, or understanding, written or otherwise, designed to benefit the foregoing entities or their Affiliates (collectively, Deutsche Bank), or any other party in interest;

(d) Prior to investing in DB Torus Japan Fund Ltd. (hereinafter the Feeder Fund, the vehicle through which investments in the Master Fund are effected), the fiduciary of the Client Plan received the offering memorandum for the Feeder Fund;

(e) The exchange rate used for a particular Foreign Exchange Transaction did not deviate by more than three percent (above or below) the interbank bid and asked rate for such currency at the time of such transaction, as displayed on an independent, nationally-recognized service that reports rates of exchange in the foreign currency market for such currency;

(f) Prior to the granting of this exemption concerning the subject Foreign Exchange Transactions, Deutsche Asset Management (UK) Ltd. reimbursed the Client Plan for its pro-rata share of: (1) The Spread on each Foreign Exchange Transaction subject to this exemption; and (2) Any fees charged by Deutsche Bank AG for executing the subject Foreign Exchange Transaction(s), plus interest at the applicable Internal Revenue Service (the Service) underpayment penalty rate up to the date of reimbursement;

(g) Within 30 days after taking the corrective action described in Section II(f) above, Deutsche Asset Management (UK) Ltd. provided the independent fiduciary of the Client Plan whose assets were involved in the Foreign Exchange Transactions with: (1) Written information, formulas, and/or other documentation sufficient to enable such fiduciaries to independently verify that the Plans have been reimbursed in accordance with the requirements of Section II(f) above; and (2) a copy of the Notice of Proposed Exemption (the Notice);

(h) Within 30 days after taking the corrective action described in Section II(f) above, Deutsche Asset Management (UK) Ltd. provided the Department with written documentation demonstrating that the foregoing reimbursements to the Client Plan were correctly computed and paid;

(i) Effective May 31, 2008, Deutsche Asset Management (UK) Ltd., in conjunction with the administrator of both the Master Fund and the Feeder Fund (together, the Funds), continuously monitors the percentage of total assets invested by benefit plan investors in the Funds so that, as of each acquisition or redemption of equity interests, Deutsche Asset Management (UK) Ltd. and the administrator of the Funds are able to verify whether equity participation in the Funds by benefit plan investors is not significant pursuant to section 3(42) of the Act and 29 CFR 2510.3–101;

(j) Deutsche Asset Management (UK) Ltd. maintains, or causes to be maintained, for a period of six years from the date of the transactions that are the subject of this exemption, the following records, as well as any other records necessary to enable the persons described in Section II(l) of this exemption, to determine whether the conditions of this exemption have been met:

(1) The account name;

(2) The trade and settlement dates of the subject foreign exchange Hedging and Administrative Conversion transactions;

(3) The USD/Japanese yen currency exchange rates for each covered transaction;

(4) The interbank bid and asked currency rates for USD/Japanese yen exchanges on Bloomberg or a similar independent service at the time of the transaction;

(5) The identification of the type of currency trade undertaken (whether spot or forward or other contractual trade);

(6) The amount of Japanese yen sold or purchased in the Hedging and Administrative Conversion transactions; and

(7) The amount of U.S. dollars exchanged for Japanese yen in the Hedging and Administrative Conversion transactions.

(k) The following are exceptions to the requirements of Section II(j):

(1) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of Deutsche Asset Management (UK) Ltd. or its Affiliates, the records necessary to enable the persons described in Section II(l) to determine whether the conditions of the exemption have been met are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest, other than Deutsche Asset Management (UK) Ltd. and its Affiliates, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the excise taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained for examination as required by Section II(l) below.

(l)(1) Except as provided in paragraph (2) of this Section II(l) and notwithstanding the provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in Section II(j) are unconditionally available for examination during normal business hours at their customary location to the following persons or an authorized representative thereof:

(i) Any duly authorized employee or representative of the Department or the Service;

(ii) The independent fiduciary of the Client Plan (or a duly authorized employee or representative of such fiduciary), or

(iii) Any participant or beneficiary of the Client Plan or any duly authorized employee of representative of a participant or beneficiary in such Client Plan.

(2) None of the persons described above in paragraphs (ii) and (iii) of Section II(l)(1) shall be authorized to examine trade secrets of Deutsche Bank or its Affiliates, or any commercial or financial information which is privileged or confidential.

(3) Should Deutsche Asset Management (UK) Ltd. refuse to disclose information to the persons described above in paragraphs (ii) and (iii) of Section II(l)(1) on the basis that such information is exempt from disclosure, Deutsche Asset Management (UK) shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the

Department may request such information.

Section III—Definitions

For purposes of this exemption:

(a) An "Affiliate" of Deutsche Asset Management (UK) Ltd. means:

(1) Any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person or entity; (2) Any officer, director, partner, employee, or relative (as defined in section 3(15) of the Act) of such other person or entity; and (3) Any corporation or partnership of which such other person or entity is an officer, director, partner, or employee.

(b) The term "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "Client Plan" means an employee benefit plan, other than a plan sponsored by Deutsche Bank and its affiliates, as described in section 3(3) of the Act or section 4975(e)(1) of the Code that invested directly or indirectly in the Master Fund, and for which Deutsche Asset Management (UK) Ltd. or its affiliate served as an investment advisor.

(d) The term "Foreign Exchange Transaction" means the exchange of the currency of one nation for the currency of another nation, or a contract for such an exchange. The term foreign exchange transaction includes options contracts on such transactions.

(e) The term "Hedging" means a strategy used to offset the investment risk of future gains or losses resulting from anticipated fluctuations in the value of currency, such as an investor's decision to exchange foreign currency in anticipation of upward or downward movement in the value of that currency.

(f) The term "Administrative Conversions" means, with respect to foreign exchange transactions, those transactions necessary to effect (1) subscriptions, (2) redemptions, or (3) the payment of fees and expenses identified below:

(i) December 27, 2007 spot conversions in the total amount of $552,650 for management fees, incentive fees, administration fees and expenses, legal fees, the Funds' Board of Directors fees, the Funds' Conflict Advisory Board fees, translation services, and bank charges; and

(ii) January 30, 2008 spot conversions in the total amount of $554,637 for management fees, incentive fees, administration fees and expenses, legal fees, the Funds' Board of Directors fees, the Funds' Conflicts Advisory Board fees, translation services, and bank charges.

(g) The term "Spread" means the difference between (i) the rate at which the transaction occurred and (ii) the reported market price (*i.e.,* the interbank bid or asked price depending on the direction of the trade) at the time of the transaction as reflected by a "screen shot" taken from an independent pricing service.

Written Comments

1. The Notice of Proposed Exemption (the Notice), published in the January 19, 2010 issue of the **Federal Register** beginning at page 3067, invited all interested persons to submit written comments and requests for a hearing to the Department within forty-five (45) days of the date of its publication. In response, the Department received an extensive written comment from the Applicant regarding the content of the Notice. This comment, which was the only one received by the Department in connection with the Notice, suggested a number of clarifications and editorial adjustments to the operative language of Section I ("Covered Transactions"), Section II ("General Conditions"), and Section III ("Definitions") of the Notice, which are detailed below; those modifications suggested by the Applicant which the Department has determined to adopt are reflected in the text of this final grant (the Grant) of exemption. The Applicant's comment also requested certain clarifications to the text of the "Summary of Facts and Representations" section of the Notice, which are also generally described below. The Department notes that it did not receive any requests for a hearing from the Applicant or from any other person during the aforementioned 45-day comment period.

2. In its written comment, the Applicant expressed its view that the scope of exemptive relief proposed in Section I of the Notice for "foreign exchange hedging transactions" could be construed as limiting such relief to those spot and forward transactions directly related to the purpose of hedging currencies, while potentially excluding certain "administrative conversion" activities. The Applicant's comment explained that the term "administrative conversions" is intended to encompass those transactions necessary to effect: (i) Subscriptions (through the conversion of U.S. dollars (USD) to the Japanese yen, the Funds' base currency, as required by the terms of Class A of the Feeder Fund); (ii) redemptions out of the Funds' base currency and back into the currency required to be paid to investors (through the conversion of yen to USD as required by the terms of Class A of the Feeder Fund); or (iii) the payment of assorted fees and expenses (through the spot conversion of such expenses from yen to USD). Accordingly, the Applicant's comment requested that the Department insert the words "and administrative conversion" after the words "foreign exchange hedging" and before the word "transactions" in Section I of the Grant in order to clarify that exemptive relief extends to the administrative conversion activities necessary for the completion of the foreign exchange transactions. After due consideration of the Applicant's request, the Department agrees to the insertion of this clarifying language in this Grant.

The Applicant's comment further requested that a definition for the term "administrative conversions" in Section III(f) be made consistent with the various activities described in the previous paragraph; this revised definition would also reference the specific categories of fees and expenses incurred by the Funds with respect to certain spot conversions that occurred during the period of exemptive relief. In addition, the Applicant has requested that conforming adjustments to the text be made to Sections II(j)(2), II(j)(6), and II(j)(7) of the Grant by adding the term "administrative conversions" to each of these general conditions for relief, and that a reference to the administrative conversion activities described in Section III(f) be added at the conclusion of Section II(a). The Department agrees that each of these suggested insertions and adjustments would provide additional clarity and consistency to the text, and has, therefore, decided to incorporate each of the foregoing modifications. In this connection, the Department notes that the adoption of these adjustments should not be construed to mean that the Department is expressing an opinion herein as to whether the assessment of the various fees and expenses charged to the Funds in connection with the administrative conversion transactions were consistent with, or in violation of, the fiduciary requirements of Part 4 of Title I of the Act.

3. In its comment, the Applicant also requested that a number of references made in the text of the Notice to Deutsche Bank AG and/or its affiliates be adjusted and clarified in the final Grant. In this connection, the Applicant requested that the initial reference to "Deutsche Bank Asset Management (UK) Ltd. or its affiliates (collectively, Deutsche Bank)" in Section I of the Notice be deleted, and that the words

"Deutsche Bank AG" be substituted in lieu thereof. Concomitantly, the Applicant requested that the language of the general condition at Section II(c) should be amended to read: "Any foreign exchange transactions authorized by Deutsche Asset Management (UK) Ltd. and executed by Deutsche Bank AG were not part of any agreement, arrangement, or understanding, written or otherwise, designed to benefit Deutsche Bank, its affiliates, or any other party in interest." The Applicant further requested that all references to "Deutsche Bank" made in the Notice at Sections II(f), II(g), II(h), II(i), II(j), and II(k) of the Notice be deleted, and that the term "Deutsche Asset Management (UK) Ltd." be substituted in lieu thereof in each instance. After reviewing these suggested clarifications concerning references to Deutsche Bank entities, the Department has agreed to adopt each of these modifications in the text of the final Grant.

4. In its comment, the Applicant stated that a definition for the term "spread" be added to the text of Section III of the final Grant. According to the Applicant, "spread" means the difference between (i) the rate at which the transaction occurred and (ii) the reported market price (*i.e.,* the bid or asked price depending on the direction of the trade) at the time of the transaction as reflected by a "screen shot" taken from an independent pricing service. The Applicant commented that the screen shot provides an accurate reflection of the market price since the prices quoted on the screen shot depict the prices at the time a trade occurred. The Department concurs that the inclusion of such a definition would improve the clarity of the exemption, and accordingly has modified the definition at Section III(g) of the Grant.

5. In addition, the Applicant requested in its comment that the definition of "foreign exchange transaction" appearing at Section III(d) of the Notice be modified by adding similar language found in the definition of the same term that appears in the text of an administrative class exemption, PTE 94–20 (59 FR 51216, February 10, 1994). Section IV(a) of PTE 94–20 states that "a 'foreign exchange transaction' means the exchange of the currency of one nation for the currency of another nation, or a contract for such an exchange. The term foreign exchange transaction includes options contracts on foreign exchange transactions." The Applicant's comment further requested that the clause "including a synthetic contract" be added to this definition after the word "contract". In its comment, the Applicant equated the term "synthetic contract" with a "swap," which, according to the Applicant, is the economic equivalent of continuous currency forwards selling the yen for the USD, settling differences in cash and then putting the same trade on immediately at the close of each forward trade."

After due consideration of this request, the Department has determined to substitute, in Section III(d) of the Grant, the exact language defining a "foreign exchange transaction" found in Section IV(a) of PTE 94–20 in lieu of the definitional language contained in Section III(d) of the Notice; however, the Department declines to insert an additional "synthetic contracts" clause to the foregoing definition. In this regard, the Department is of the view that the exemptive relief provided in this Grant encompasses the various foreign exchange transactions activities described by the Applicant in its application, and that there is insufficient information on the record for the Department to determine the scope of the term "synthetic contracts" as they relate to foreign exchange transactions.

6. The Applicant's comment also suggested several additional modifications to the text of Section II(j) of the Notice. At Section II(j)(3), the Applicant requested that the words "on the trade and settlement dates" be deleted, and that the words "for each covered transaction" be substituted in lieu thereof in the final Grant. After due consideration, the Department agrees to this change. At Section II(j)(4), the Applicant also requested the deletion of the words "The high and low currency prices on Bloomberg or similar independent service on the dates of the subject transactions" and the substitution of language in the text of the Grant that would require the utilization of the interbank bid and asked currency rates for Japanese yen/USD exchanges on Bloomberg or a similar independent service at the time of the transaction. As described above in Item 4, the Applicant explained that it desires this modification because it believes that the currency rates at the time of the transaction are "a better indicator of market prices than the high and low for the day." The Department concurs, and adopts this substitution in Section II(j)(4) of the Grant. At Section II(j)(5), the Applicant requested the insertion of the words "or other contractual trade" after the word "forward" in the text of the final Grant. The Applicant explains in its comment that these "other contractual trades" represent "continuous currency forwards" in which yen are sold in exchange for the USD. After due consideration, the Department agrees to the Applicant's suggested modification at Section II(j)(5).

7. In its comment, the Applicant requested that the language contained in Section II(l)(1)(iii) of the Notice, which permits "[A]ny participant of beneficiary of such Client Plans or any duly authorized employee or representative of a participant or beneficiary in such Client Plans" to inspect the records required to be maintained by Deutsche Asset Management (UK) Ltd. pursuant to Section II(j) of the Grant, be deleted in its entirety from the text of the final Grant. In requesting this change, the Applicant's comment stated that the class of individuals comprising these participants and beneficiaries "could exceed tens of thousands of individuals, which could cause an extraordinary burden to the Applicant." The Applicant further stated that "[b]ecause any plan invested in the [Feeder] Fund was a defined benefit plan, we request that only plan fiduciaries (and the Department and Service) have access to the Applicant's records." After due consideration of this comment, the Department has determined not to adopt the Applicant's suggested modification. The Department is of the view that providing participants and beneficiaries with a right of inspection of records that are otherwise required to be maintained promotes transparency and is not onerous or burdensome. In this connection, the Department, on its own motion, has also determined to add a new Section II(l)(3) to the text of the final Grant which would require Deutsche Asst Management (UK) Ltd., in instances where it refuses to disclose the foregoing information to an independent plan fiduciary, participant, and/or beneficiary on the basis that such information is exempt from disclosure, to provide to such persons with a written notice advising them of the reasons for the refusal.

8. The Applicant's comment included additional recommendations for technical and clarifying changes. In this regard, the Applicant requested that the first reference to "Master Fund" made in Section II(d) of the Notice be deleted, and the words "Feeder Fund (and indirectly in the Master Fund through the Feeder Fund)" be substituted in lieu thereof. In response to the Applicant's suggestion, the Department has determined to clarify and reformulate the text of Section II(d) in the Grant by stating that, "[p]rior to investing in DB Torus Japan Fund Ltd. (hereinafter the Feeder Fund, the vehicle through which investments in the Master Fund are

effected), the fiduciary of each Client Plan received the offering memorandum for the Feeder Fund."

The Applicant also requested that the reference to "Applicant", found in Section III(a) of the Notice (which defines "affiliate") be deleted, and that the word "Deutsche Asset Management (UK) Ltd." be substituted in lieu thereof in the final Grant. In addition, the Applicant requested that the first reference to the "Applicant" in Section III(c) of the Notice (which defines the term "Client Plan") be deleted and the words "Deutsche Bank" be substituted in lieu thereof in the text of the Grant; similarly, the Applicant requested that the second reference to the "Applicant" in Section III(c) of the Notice be deleted, and the words "Deutsche Asset Management (UK) Ltd." be substituted in lieu thereof in the final Grant. Also, the Applicant requests that the text of Section III(c) of the Notice be further amended in the Grant by inserting the words "directly or indirectly" after the word "invested," and by deleting the words "and the Feeder Fund" after the words "Master Fund." After consideration of these clarifying modifications suggested by the Applicant, the Department has determined to adopt each of them in the text of the final Grant.

9. In its comment, the Applicant also requested several technical clarifications to the text of the Summary of Facts and Representations section of the Notice. The majority of these adjustments involved the systematic substitution in the text of the names of various Deutsche Bank entities in the same manner as the substitutions described in Items 3 and 8 above; other systematic modifications suggested by the Applicant involved the multiple additions of the term "administrative conversion" after each use of the words "foreign exchange hedging transaction" when referencing the scope of relief covered by the exemption. Accordingly, the Department herewith adopts the foregoing systemic, clarifying modifications suggested by the Applicant to the text of the Facts and Representations section of the Notice.

In addition, the Applicant requests that the Department amend the language contained in the penultimate sentence of the second paragraph of Representation 7 of the Notice by inserting the words "may have" before the phrase "caused a breach of the 25% limitation until approximately April 15, 2008." The Department has determined to adopt this suggested modification in order to maintain the internal consistency of the text of the Facts and Representations contained in the Notice.

The Department has also determined to make the following additional technical clarifications to the text of the Facts and Representations section of the Notice that were requested by the Applicant in its comment: Deleting the word "is" in line 8 of the first paragraph of Representation 1 and inserting in lieu thereof the words "until June 19, 2009 was"; inserting the word "indirectly" before the words "wholly-owned" in line 11 of the second paragraph of Representation 1; inserting the words "and that its subscription will be converted to yen, its redemptions will be converted to USD, and fees and expenses will be converted to the appropriate currency for the recipient" at the conclusion of the third sentence of Representation 4; inserting the words "in advance" before the words "the execution of currency trades" in the final sentence of Representation 4; inserting the words "bid or asked" before the phrase "rate available on these trades based on the aforementioned Bloomberg screen prints" in the final sentence of the first paragraph of Representation 8; substituting the word "subscriptions" in lieu of the word "investments" at the beginning of item (ii) at line 17 of Representation 9; inserting the words "any class of shares in" before the word "either" in item (v) of Representation 9; inserting the words "any class of shares" at the end of the final sentence of Representation 9; and inserting the words "at the same time" after the words "unrelated third party" in the second sentence of Representation 10.

10. The Department notes that, subsequent to the submission of the exemption application, the Applicant determined that only a single Client Plan was affected by the foreign exchange and administrative conversions covered by this exemption.[1] The Applicant also made a subsequent representation to the Department that no fees were charged by the Applicant's affiliates or other financial institutions for executing the exemption transactions; accordingly, there were no fees to add to the principal amount (i.e., the Spread on each Foreign Exchange Transaction subject to the exemption) in determining the interest component of the reimbursement owed to the Client Plan pursuant to Section II(f) of the exemption. In computing this interest component, the Applicant confirms that it utilized the Department's online Voluntary Fiduciary Correction Program (VFCP) calculator to arrive at the applicable Internal Revenue Service underpayment rate described in Section 5(b)(5) of the VFCP at 71 FR 20271 (April 19, 2006). The Applicant represents that, pursuant to Section II(g) of the exemption, a copy of the Notice was furnished to the independent fiduciary for the affected Client Plan on February 3, 2010. The Applicant further represents that, on September 9, 2010, in accordance with Section II(f) of the exemption, Deutsche Asset Management (UK) Ltd. paid the affected Client Plan $6,396.16, which amount included $741.20 in interest.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the text of the Notice at 75 FR 3067 (January 19, 2010).

FOR FURTHER INFORMATION CONTACT: Mr. Mark Judge of the Department, telephone (202) 693–8550. (This is not a toll-free number.)

Sherburne Tele Systems, Inc. 2008 Amended and Restated Employee Stock Ownership Plan and Trust (the "ESOP") Located in Big Lake, Minnesota

[Prohibited Transaction Exemption 2010–32; Exemption Application No. D–11569]

Exemption

The restrictions of sections 406(a)(1)(A) and (D) and 406(b)(1) and 406(b)(2) of the Act and the sanctions imposed under section 4975 of the Code, by reason of sections 4975(c)(1)(A), (D), and (E) of the Code, shall not apply to the sale by the ESOP of all its shares of common stock (the "ESOP Shares") in Sherburne Tele Systems, Inc. (the "Company") to the Company, a party in interest with respect to the ESOP, provided that the following conditions are satisfied:[2]

(a) The sale is a one-time transaction for cash;

(b) The terms and conditions of the sale are at least as favorable to the ESOP as those that the ESOP could obtain in an arm's length transaction with an unrelated third party;

(c) The sales price is the greater of (i) $5.01 per share, or (ii) the fair market value of the ESOP Shares as of the date

[1] Section 404(a) of the Act requires, among other things, that the fiduciary of a plan act prudently, solely in the interests of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. In granting this exemption, the Department is expressing no opinion herein as to whether the fiduciary provisions of Part 4 of Title I of the Act have been satisfied.

[2] For purposes of this exemption, references to provisions of Title I in the Act, unless otherwise specified, should be read to refer also to the corresponding provisions of the Code.

of the sale, as determined by a qualified, independent appraiser (the appraiser);

(d) The sales proceeds received by the ESOP pursuant to the transaction are valued at a share price that is greater than the share price received by the non-ESOP shareholders;

(e) The benefits received by the members of the board of directors and officers of the Company pursuant to the board of directors awards program, the Company's phantom stock plan and retention plans, which were paid, coincident with the closing of the asset sale of the Company to Iowa Telecommunications Services, Inc. were reasonable;

(f) A qualified, independent fiduciary (the "Independent Fiduciary") for the ESOP was and is responsible for (i) reviewing the terms of the sale of the Company's assets; (ii) engaging the appraiser to value the ESOP Shares; (iii) reviewing and, if appropriate, approving the methodology used by the appraiser, to ensure that such methodology is properly applied in determining the fair market value of the ESOP Shares, to be updated as of the date of the sale; (iv) negotiating the terms of the sale of the ESOP Shares to the Company to ensure that the ESOP participants receive at least the fair market value of the ESOP Shares; (v) determining, and documenting in writing, whether the terms of the sale are fair and reasonable to the ESOP and whether it is prudent to proceed with the transaction; (vi) approving the transaction; and (vii) determining whether the transaction satisfies the criteria set forth in section 404 and section 408(a) of the Act;

(g) The ESOP pays no fees, commissions, or other expenses in connection with the sale (including the fees paid to the appraiser and the Independent Fiduciary), other than a one-time $500.00 escrow fee (as described in the notice of proposed exemption's Summary of Facts and Representations #10); and

(h) The proceeds from the sale are promptly forwarded to the ESOP's trust simultaneously with the transfer of the ESOP Shares to the Company.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 6, 2010 at 75 FR 47639.

Written Comments

No written comments were received by the Department with respect to the notice of proposed exemption.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 693–8557. (This is not a toll-free number.)

Citigroup Global Markets, Inc. and Its Affiliates (together, CGMI or the Applicant), Located in New York, New York

[Prohibited Transaction Exemption 2010–33; Exemption Application No. D–11573]

Exemption

Section I. Covered Transactions

A. The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective May 31, 2009, to the purchase or redemption of shares by an employee benefit plan, an individual retirement account (an IRA), a retirement plan for self-employed individuals (a Keogh Plan), or an individual account pension plan that is subject to the provisions of Title I of the Act and established under section 403(b) of the Code (the Section 403(b) Plan) (collectively, the Plans) in the Trust for Consulting Group Capital Markets Funds (the Trust), sponsored by MSSB in connection with such Plans' participation in the TRAK Personalized Investment Advisory Service (the TRAK Program).

B. The restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, shall not apply, effective May 31, 2009, with respect to the provision of (i) investment advisory services by the Adviser or (ii) an automatic reallocation option as described below (the Automatic Reallocation Option) to an independent fiduciary of a participating Plan (the Independent Plan Fiduciary), which may result in such fiduciary's selection of a portfolio (the Portfolio) [3] in the TRAK Program for the investment of Plan assets.

This exemption is subject to the following conditions set forth below in Section II.

Section II. General Conditions

(a) The participation of Plans in the TRAK Program is approved by an Independent Plan Fiduciary. For purposes of this requirement, an employee, officer or director of the Adviser and/or its affiliates covered by an IRA not subject to Title I of the Act will be considered an Independent Plan Fiduciary with respect to such IRA.

(b) The total fees paid to the Adviser and its affiliates will constitute no more than reasonable compensation.

(c) No Plan pays a fee or commission by reason of the acquisition or redemption of shares in the Trust.

(d) The terms of each purchase or redemption of Trust shares remain at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party.

(e) The Adviser provides written documentation to an Independent Plan Fiduciary of its recommendations or evaluations based upon objective criteria.

(f) Any recommendation or evaluation made by the Adviser to an Independent Plan Fiduciary is implemented only at the express direction of such Independent Plan Fiduciary, provided, however, that —

(1) If such Independent Plan Fiduciary elects in writing (the Election), on a form designated by the Adviser from time to time for such purpose, to participate in the Automatic Reallocation Option under the TRAK Program, the affected Plan or participant account is automatically reallocated whenever the Adviser modifies the particular asset allocation recommendation which the Independent Plan Fiduciary has chosen. Such Election continues in effect until revoked or terminated by the Independent Plan Fiduciary in writing.

(2) Except as set forth below in paragraph II(f)(3), at the time of a change in the Adviser's asset allocation recommendation, each account based upon the asset allocation model (the Allocation Model) affected by such change is adjusted on the business day of the release of the new Allocation Model by the Adviser, except to the extent that market conditions, and order purchase and redemption procedures, may delay such processing through a series of purchase and redemption transactions to shift assets among the affected Portfolios.

(3) If the change in the Adviser's asset allocation recommendation exceeds an increase or decrease of more than 10 percent in the absolute percentage allocated to any one investment medium (*e.g.,* a suggested increase in a 15 percent allocation to greater than 25 percent, or a decrease of such 15 percent allocation to less than 5 percent), the Adviser sends out a written notice (the Notice) to all Independent Plan Fiduciaries whose current investment allocation may be affected, describing the proposed reallocation and the date on which such allocation is to be

[3] For the avoidance of doubt, unless the context suggests otherwise, the term "Portfolio" includes the Stable Value Investments Fund, a collective trust fund established and maintained by First State Trust Company, formerly a wholly-owned subsidiary of Citigroup.

instituted (the Effective Date). If the Independent Plan Fiduciary notifies the Adviser, in writing, at any time within the period of 30 calendar days prior to the proposed Effective Date that such fiduciary does not wish to follow such revised asset allocation recommendation, the Allocation Model remains at the current level, or at such other level as the Independent Plan Fiduciary then expressly designated, in writing. If the Independent Plan Fiduciary does not affirmative 'opt out' of the new Adviser recommendation, in writing, prior to the proposed Effective Date, such new recommendation is automatically effected by a dollar-for-dollar liquidation and purchase of the required amounts in the respective account.

(4) An Independent Plan Fiduciary will receive a trade confirmation of each reallocation transaction. In this regard, for all Plan investors other than Section 404(c) Plan accounts (i.e., 401(k) Plan accounts), CGMI or MSSB, as applicable, mails trade confirmations on the next business day after the reallocation trades are executed. In the case of Section 404(c) Plan participants, notification depends upon the notification provisions agreed to by the Plan recordkeeper.

(g) The Adviser generally gives investment advice in writing to an Independent Plan Fiduciary with respect to all available Portfolios. However, in the case of a Plan providing for participant-directed investments (the Section 404(c) Plan), the Adviser provides investment advice that is limited to the Portfolios made available under the Plan.

(h) Any sub-adviser (the Sub-Adviser) that acts for the Trust to exercise investment discretion over a Portfolio is independent of Morgan Stanley, Inc. (Morgan Stanley), CGMI, MSSB and their respective affiliates (collectively, the Affiliated Entities).

(i) Immediately following the acquisition by a Portfolio of any securities that are issued by any Affiliated Entity, such as Citigroup or Morgan Stanley common stock (the Adviser Common Stock), the percentage of that Portfolio's net assets invested in such securities will not exceed one percent. However, this percentage limitation may be exceeded if—

(1) The amount held by a Sub-Adviser in managing a Portfolio is held in order to replicate an established third-party index (the Index).

(2) The Index represents the investment performance of a specific segment of the public market for equity securities in the United States and/or foreign countries. The organization creating the Index is:

(i) Engaged in the business of providing financial information;

(ii) A publisher of financial news information; or

(iii) A public stock exchange or association of securities dealers.

The Index is created and maintained by an organization independent of the Affiliated Entities and is a generally-accepted standardized Index of securities which is not specifically tailored for use by the Affiliated Entities.

(3) The acquisition or disposition of Adviser Common Stock does not include any agreement, arrangement or understanding regarding the design or operation of the Portfolio acquiring such Adviser Common Stock, which is intended to benefit the Affiliated Entities or any party in which any of the Affiliated Entities may have an interest.

(4) The Independent Plan Fiduciary authorizes the investment of a Plan's assets in an Index Fund which purchases and/or holds the Adviser Common Stock and the Sub-Adviser is responsible for voting any shares of Adviser Common Stock that are held by an Index Fund on any matter in which shareholders of Adviser Common Stock are required or permitted to vote.

(j) The quarterly investment advisory fee that is paid by a Plan to the Adviser for investment advisory services rendered to such Plan is offset by any amount in excess of 20 basis points that MSSB retains from any Portfolio (with the exception of the Money Market Investments Portfolio and the Stable Value Investments Portfolio for which neither MSSB nor the Trust will retain any investment management fee) which contains investments attributable to the Plan investor.

(k) With respect to its participation in the TRAK Program prior to purchasing Trust shares,

(1) Each Plan receives the following written or oral disclosures from the Adviser:

(A) A copy of the Prospectus for the Trust discussing the investment objectives of the Portfolios comprising the Trust, the policies employed to achieve these objectives, the corporate affiliation existing among the Adviser and its affiliates, and the compensation paid to such entities.[4]

(B) Upon written or oral request to the Adviser, a Statement of Additional Information supplementing the Prospectus which describes the types of securities and other instruments in which the Portfolios may invest, the investment policies and strategies that the Portfolios may utilize and certain risks attendant to those investments, policies and strategies.

(C) A copy of the investment advisory agreement between the Adviser and such Plan which relates to participation in the TRAK Program and describes the Automatic Reallocation Option.

(D) Upon written request of the Adviser, a copy of the respective investment advisory agreement between MSSB and

(E) the Sub-Advisers.

(F) In the case of a Section 404(c) Plan, if required by the arrangement negotiated between the Adviser and the Plan, an explanation by an Adviser representative (the Financial Advisor) to eligible participants in such Plan, of the services offered under the TRAK Program and the operation and objectives of the Portfolios.

(G) A copy of the proposed exemption and the final exemption pertaining to the exemptive relief described herein.

(2) If accepted as an investor in the TRAK Program, an Independent Plan Fiduciary of an IRA or Keogh Plan is required to acknowledge, in writing, prior to purchasing Trust shares that such fiduciary has received copies of the documents described above in subparagraph (k)(1) of this section.

(3) With respect to a Section 404(c) Plan, written acknowledgement of the receipt of such documents is provided by the Independent Plan Fiduciary (*i.e.,* the Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares). Such Independent Plan Fiduciary is required to represent in writing to the Adviser that such fiduciary is (a) independent of the Affiliated Entities and (b) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the TRAK Program.

(4) With respect to a Plan that is covered under Title I of the Act, where investment decisions are made by a trustee, investment manager or a named fiduciary, such Independent Plan Fiduciary is required to acknowledge, in writing, receipt of such documents and represent to the Adviser that such fiduciary is (a) independent of the Affiliated Entities, (b) capable of making

[4] The fact that certain transactions and fee arrangements are the subject of an administrative exemption does not relieve the Independent Plan Fiduciary from the general fiduciary responsibility provisions of section 404 of the Act. In this regard, the Department expects the Independent Plan Fiduciary to consider carefully the totality of the fees and expenses to be paid by the Plan, including any fees paid directly to MSSB, CGMI or to other third parties.

an independent decision regarding the investment of Plan assets and (c) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the TRAK Program.

(l) Subsequent to its participation in the TRAK Program, each Plan receives the following written or oral disclosures with respect to its ongoing participation in the TRAK Program:

(1) The Trust's semi-annual and annual report including a financial statement for the Trust and investment management fees paid by each Portfolio.

(2) A written quarterly monitoring statement containing an analysis and an evaluation of a Plan investor's account to ascertain whether the Plan's investment objectives have been met and recommending, if required, changes in Portfolio allocations.

(3) If required by the arrangement negotiated between the Adviser and a Section 404(c) Plan, a quarterly, detailed investment performance monitoring report, in writing, provided to an Independent Plan Fiduciary of such Plan showing Plan level asset allocations, Plan cash flow analysis and annualized risk adjusted rates of return for Plan investments. In addition, if required by such arrangement, Financial Advisors meet periodically with Independent Plan Fiduciaries of Section 404(c) Plans to discuss the report as well as with eligible participants to review their accounts' performance.

(4) If required by the arrangement negotiated between the Adviser and a Section 404(c) Plan, a quarterly participant performance monitoring report provided to a Plan participant which accompanies the participant's benefit statement and describes the investment performance of the Portfolios, the investment performance of the participant's individual investment in the TRAK Program, and gives market commentary and toll-free numbers that enable the participant to obtain more information about the TRAK Program or to amend his or her investment allocations.

(5) On a quarterly and annual basis, written disclosures to all Plans of (a) the percentage of each Portfolio's brokerage commissions that are paid to the Affiliated Entities and (b) the average brokerage commission per share paid by each Portfolio to the Affiliated Entities, as compared to the average brokerage commission per share paid by the Trust to brokers other than the Affiliated Entities, both expressed as cents per share.

(m) The Adviser maintains or causes to be maintained, for a period of (6) six years, the records necessary to enable the persons described in paragraph (m)(1) of this section to determine whether the applicable conditions of this exemption have been met. Such records are readily available to assure accessibility by the persons identified in paragraph (1) of this section.

(1) Notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in the first paragraph of this section are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(2) A prohibited transaction is not deemed to have occurred if, due to circumstances beyond the control of the Adviser, the records are lost or destroyed prior to the end of the six-year period, and no party in interest other than the Adviser is subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by sections 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (1) of this section.

(3) None of the persons described in subparagraphs (ii)–(iv) of section (m)(1) is authorized to examine the trade secrets of the Adviser or commercial or financial information which is privileged or confidential.

(4) Should the Adviser refuse to disclose information on the basis that such information is exempt from disclosure, the Adviser shall, by the close of the thirtieth (30th) day following the request, provide written notice advising that person of the reason for the refusal and that the Department may request such information.

Section III. Definitions

For purposes of this exemption:

(a) The term "*Adviser*" means CGMI or MSSB as investment adviser to Plans.

(b) The term "*Affiliated Entities*" means Morgan Stanley, CGMI, MSSB and their respective affiliates.

(c) The term "*CGMI*" means Citigroup Global Markets Inc. and any affiliate of Citigroup Global Markets Inc.

(d) An "*affiliate*" of any of the Affiliated Entities includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Affiliated Entity. (For purposes of this subparagraph, the term "*control*" means the power to exercise a controlling influence over the management or policies of a person other than an individual);

(2) Any individual who is an officer (as defined in Section III(g) hereof), director or partner in the Affiliated Entity or a person described in subparagraph (d)(1);

(3) Any corporation or partnership of which the Affiliated Entity, or an affiliate described in subparagraph (d)(1), is a 10 percent or more partner or owner; and

(4) Any corporation or partnership of which any individual which is an officer or director of the Affiliated Entity is a 10 percent or more partner or owner.

(e) An "*Independent Plan Fiduciary*" is a Plan fiduciary which is independent of the Affiliated Entities and is either:

(1) A Plan administrator, sponsor, trustee or named fiduciary, as the recordholder of Trust shares under a Section 404(c) Plan;

(2) A participant in a Keogh Plan;

(3) An individual covered under (i) a self-directed IRA or (ii) a Section 403(b) Plan, which invests in Trust shares;

(4) A trustee, investment manager or named fiduciary responsible for investment decisions in the case of a Title I Plan that does not permit individual direction as contemplated by Section 404(c) of the Act; or

(5) A participant in a Plan, such as a Section 404(c) Plan, who is permitted under the terms of such Plan to direct, and who elects to direct, the investment of assets of his or her account in such Plan.

(f) The term "*MSSB*" means Morgan Stanley Smith Barney Holdings LLC, together with its subsidiaries.

(g) The term "*officer*" means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policymaking function for the entity.

Section IV. Effective date

This exemption is effective as of May 31, 2009 with respect to the Covered Transactions, the General Conditions and the Definitions that are described in Sections I, II and III.

Written Comments

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption on or before August 25, 2010. During the comment period, the Department received 13 telephone calls and 2 comment letters from participants or beneficiaries in Plans with investments in the TRAK Program, which concerned the commenters' difficulty in understanding the notice of proposed exemption or the effect of the exemption on the commenters' benefits. The Department also received one written comment from the Applicant, which concerned the correction of a publication error appearing in the operative language of Section II of the proposed exemption and the correction of a typographical error appearing in Representation 15 of the Summary of Facts and Representations (the Summary). The Department received no hearing requests during the comment period.

With respect to the operative language, the Applicant notes that the first two paragraphs of Section II, General Conditions read:

(a) The participation of Plans in the TRAK Program is

(b) Approved by an Independent Plan Fiduciary. For purposes of this requirement, an employee, officer or director of the Adviser and/or its affiliates covered by an IRA not subject to Title I of the Act will be considered an Independent Plan Fiduciary with respect to such IRA.

Accordingly, the Applicant requests that parenthetical "(b)" be deleted and the sentence fragments reproduced above be combined into a single paragraph following the parenthetical "(a)", and that the ensuing paragraphs in Section II be re-lettered for consistency. The Department concurs with the Applicant's requested correction of this publication error and it has revised Section II of the final exemption.

With respect to the Summary, the Applicant notes that, at the end of Representation 15, which describes revisions to the operative language of PTE 2009–12, the proposed exemption states that "a new definition of MSSB is added in Section III(f) to mean Morgan Stanley Smith Barney Holdings LLC, together with its affiliates." However, the Applicant points out that the definition of MSSB in Section III(f) of the proposed exemption includes the term "subsidiaries," rather than "affiliates." Accordingly, the Applicant requests that, at the end of Representation 15, the word "affiliates" be replaced with the word "subsidiaries," in order to be consistent with Section III(f) of the Definitions. The Department concurs and takes note of the foregoing revision to Representation 15 of the Summary.

After giving full consideration to the entire record, including the written comments, the Department has decided to grant the exemption, as described above. The complete application file is made available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the proposed exemption published in the **Federal Register** on June 11, 2010 at 75 FR 33344.

FOR FURTHER INFORMATION CONTACT: Warren Blinder of the Department, telephone (202) 693–8553. (This is not a toll-free number.)

Retirement Plan for Employees of the Rehabilitation Institute of Chicago (the Plan), Located in Chicago, Illinois

[Prohibited Transaction Exemption 2010–34; Application No. D–11585]

Exemption

Section I: Transactions

The restrictions of sections 406(a)(1)(B), 406(a)(1)(D), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(B) and 4975(c)(1)(D) of the Code,[5] shall not apply:

(1) To a series of interest-free Advances in the aggregate amount of $701,117 (the Advances or individually, an Advance), made to Hewitt Associates, LLC (Hewitt), the Pension Benefit Guaranty Corporation (PBGC), the Internal Revenue Service (the IRS), and Deloitte and Touche, LLP (Deloitte),[6] during the period from September 28, 2006, through June 2, 2009, by the Rehabilitation Institute of Chicago (RIC), for the purpose of paying ordinary operating expenses incurred on behalf of the Plan; and

(2) To the reimbursement to RIC by the Plan of such Advances made during the period from September 28, 2006, through June 2, 2009, in an aggregate amount not to exceed $701,117, where each such reimbursement occurred at least sixty (60) days but no more than 365 days after the date of each such Advance; provided that the conditions as set forth in section II of this exemption were satisfied.

Section II: Conditions

(1) During the period from September 28, 2006, through June 2, 2009, when RIC made each of the Advances and during the period at least sixty (60) days but no more than 365 days after the date of each such Advance, when the Plan reimbursed each such Advance, all of the requirements of Prohibited Transaction Exemption 80–26 (PTE 80–26), as amended, effective December 15, 2004,[7] were satisfied, except for the requirement in Section IV(f)(1) of PTE 80–26 that loans made on or after April 7, 2006, with a term of sixty (60) days or longer be made pursuant to a written loan agreement that contains all of the material terms of such loan;

(2) With regard to any reimbursement covered by this exemption, an independent, qualified auditor certifies that such reimbursement matches each of the Advances, during the period from September 28, 2006, through June 2, 2009, made by RIC to the Service Providers on behalf of the Plan; and such reimbursements were made by the Plan to RIC during the period at least sixty (60) days but no more than 365 days after the date of each such Advance;

(3) The Advances made by RIC to the Service Providers, during the period from September 28, 2006, through June 2, 2009, were for the payment of ordinary operating expenses of the Plan which were properly incurred on behalf of the Plan;

(4) Within ninety (90) days of the publication in the **Federal Register** of the final exemption for the transactions which are the subject of this exemption, RIC must refund to the Plan an amount equal to $74,555 (the Refund Amount), plus earning and interest. Such Refund Amount represents the total for certain reimbursements to RIC by the Plan in connection with payments by RIC to Monticello Associates Inc. (Monticello), Deloitte, the IRS, and the Department in the amounts, respectively of $55,500, $18,530, $375, and $150. Furthermore, RIC must refund to the Plan an additional amount attributable to lost earnings experienced by the Plan on the Refund Amount, and interest on such lost earnings, for the period from April 7, 2006, to the date upon which RIC has returned to the Plan the entire Refund Amount, the lost earnings on such Refund Amount, plus interest on such

[5] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[6] Hewitt, PBGC, IRS, and Deloitte are collectively referred to, herein, as the Service Providers.

[7] 71 FR 17917, April 7, 2006.

lost earnings. For the purpose of calculating the lost earnings on the Refund Amount due to the Plan, plus interest, on such lost earnings, RIC must use the Online Calculator for the Voluntary Fiduciary Correction Program [8] that appears on the Web site of the Employee Benefits Security Administration; and

(5) Within ninety (90) days of the publication in the **Federal Register** of the final exemption for the transactions which are the subject of this exemption, RIC must file a Form 5330 with the IRS and pay to the IRS all applicable excise taxes, and any interest on such excise taxes deemed to be due and owing with respect to the Refund Amount.

Effective Date: This exemption is effective, for each Advance to the Service Providers made by RIC from September 28, 2006, through June 2, 2009, and for reimbursements to RIC by the Plan of such Advances covered by this exemption.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty-four (44) days of the date of the publication of the Notice in the **Federal Register** on September 16, 2010. All comments and requests for a hearing were due by October 30, 2010.

During the comment period, the Department received three letters from the same commentator requesting a hearing. In addition, the Department received comment letters, and e-mails from seven (7) commentators. The concerns expressed by the commentators are summarized in the paragraph below.

Generally, the comments from commentators have been classified into the following categories: (1) Comments from individuals who misunderstood the subject transactions or requested an explanation of the subject transactions or requested confirmation that the subject transactions do not affect benefits under the Plan; and (2) a request for clarification from a commentator; and (3) a request for hearing from a commentator.

Comments Requesting Explanation

With respect to the first category of comments, it is represented that the applicant mailed to all interested persons copies of (1) the Notice, and (2) the supplemental statement required pursuant to the Department's Regulation section 29 CFR § 2570.43 which explained the facts and circumstances surrounding the subject transactions in a summary form. Based on the foregoing, the Department maintains that the applicant has provided a clear explanation and adequate notice regarding the subject transactions and should not be required to respond further to comment letters, and e-mails from commentators requesting further explanation.

Clarification From an Individual

With respect to the second category of comments, during the comment period, the Department did receive an e-mail dated October 6, 2010, from Wayne M. Lerner, DPH, FACHE, the President and CEO of Holy Cross Hospital in Chicago, Illinois. Mr. Lerner requests a clarification of the language, as set forth in the Summary of Facts and Representations on page 56572, column 2, lines 47–49 in the Notice. In this regard, the second and third sentences of representation no. 2 in the Notice read, as follows:

As of March 13, 2006, and at the start of the relevant period for which relief is requested in this proposed exemption, the members of the Committee, were: (a) Wayne M. Lerner, President and Chief Executive Officer of RIC; (b) Edward B. Case (Mr. Case), Executive Vice President and Chief Financial Officer of RIC; (c) Susan H. Cerletty, Executive Vice President, Clinical, of RIC and (d) Nancy Paridy, Esq. (Ms. Paridy), Senior Vice President of RIC and General Counsel to RIC. The following individuals have been members of the Committee, since December 1, 2007: (a) Joanne C. Smith, M.D., President and Chief Executive Officer of RIC, (b) Mr. Case, and (c) Ms. Paridy.

In Mr. Lerner's view it can be inferred from these two sentences that appeared in the Notice that the committee membership, as of March 13, 2006, was in place until a new committee was formed on December 1, 2007. Mr. Lerner points out that in fact, he resigned as President and CEO of the RIC on June 7, 2006, and that Ms. Cerletty left RIC in August of that same year. The Department concurs with Mr. Lerner's requested clarification.

Requests for Hearing

With regard to the third category of comments, the Department received three (3) letters from the same commentator requesting a hearing. In none of the comment letters did the commentator give a reason why a hearing should be held. As no material issues relating to the subject transaction were raised by the commentator during the comment period which would require the convening of a hearing, the Department has determined not to delay consideration of the final exemption by holding a hearing on application D–11585.

After giving full consideration to the entire record, including the written comments from the commentators, the Department has decided to grant the exemption, as described above. The complete application file, including the written comments from the commentators, is made available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on September 16, 2010, at 75 FR 56568.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the

[8] 70 FR 17516, April 6, 2005.

transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of December 2010.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2010–31571 Filed 12–15–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following proposed exemptions: D–11592, TD Ameritrade, Inc. (TD Ameritrade or the Applicant); and D–11638, Owens & Minor, Inc.; *et al.*

DATES: All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice.

ADDRESSES: Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. *Attention:* Application No. __, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffitt.betty@dol.gov,* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Warning: If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to the comments or hearing requests received, as they are public records.

SUPPLEMENTARY INFORMATION:

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate). The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

TD Ameritrade, Inc. (TD Ameritrade or the Applicant) Located in Omaha, NE.

[Application No. D–11592]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[1]

SECTION I. SALES OF AUCTION RATE SECURITIES FROM PLANS TO TD AMERITRADE: UNRELATED TO A SETTLEMENT AGREEMENT

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective July 20, 2009, to the sale by a Plan (as defined in Section V(e)) of an Auction Rate Security (as defined in Section V(c)) to TD Ameritrade, where such sale (an Unrelated Sale) is unrelated to, is not made in connection with, and is entered into after the finalization of, a Settlement Agreement (as defined in Section V(f)), provided that the conditions set forth in Section II have been met.

SECTION II. CONDITIONS APPLICABLE TO TRANSACTIONS DESCRIBED IN SECTION I

(a) The Plan acquired the Auction Rate Security in connection with brokerage services provided by TD Ameritrade to the Plan;

(b) The last auction for the Auction Rate Security was unsuccessful;

(c) The Unrelated Sale is made pursuant to a written offer by TD Ameritrade (the Unrelated Offer) containing all of the material terms of the Unrelated Sale, including, but not limited to: (1) The identity and par value of the Auction Rate Security; (2) the interest or dividend amounts that are due with respect to the Auction Rate Security; and (3) the most recent information for the Auction Rate Security (if reliable information is available).

(d) The Unrelated Sale is for no consideration other than cash payment against prompt delivery of the Auction Rate Security;

(e) The sales price for the Auction Rate Security is equal to the par value of the Auction Rate Security, plus any

[1] For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

accrued but unpaid interest or dividends;

(f) The Plan does not waive any rights or claims in connection with the Unrelated Sale;

(g) The decision to accept the Unrelated Offer or retain the Auction Rate Security is made by a Plan fiduciary or Plan participant or IRA owner who is independent (as defined in Section V(d)) of TD Ameritrade.[2]

(h) Neither TD Ameritrade nor any affiliate exercises investment discretion or renders investment advice within the meaning of 29 CFR 2510.3–21(c) with respect to the decision to accept the Unrelated Offer or retain the Auction Rate Security;

(i) The Plan does not pay any commissions or transaction costs with respect to the Unrelated Sale;

(j) The Unrelated Sale is not part of an arrangement, agreement or understanding designed to benefit a party in interest to the Plan;

(k) TD Ameritrade and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of the Unrelated Sale, such records as are necessary to enable the persons described below in paragraph (l)(1), to determine whether the conditions of this exemption, if granted, have been met, except that:

(1) No party in interest with respect to a Plan which engages in an Unrelated Sale, other than TD Ameritrade and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (l)(1); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of TD Ameritrade or its affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period;

(l)(1) Except as provided below in paragraph (l)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (k) are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the U.S. Securities and Exchange Commission (the Commission);

(B) Any fiduciary of any Plan, including any IRA owner, that engages in an Unrelated Sale, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the Unrelated Sale, or any authorized employee or representative of these entities;

(2) None of the persons described above in paragraphs (l)(1)(B)–(C) shall be authorized to examine trade secrets of TD Ameritrade, or commercial or financial information which is privileged or confidential; and

(3) Should TD Ameritrade refuse to disclose information on the basis that such information is exempt from disclosure, TD Ameritrade shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

SECTION III. SALES OF AUCTION RATE SECURITIES FROM PLANS TO TD AMERITRADE: RELATED TO A SETTLEMENT AGREEMENT

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code shall not apply, effective July 20, 2009, to the sale by a Plan of an Auction Rate Security to TD Ameritrade, where such sale (a Settlement Sale) is related to, and made in connection with, a Settlement Agreement, provided that the conditions set forth in Section IV have been met.

SECTION IV. CONDITIONS APPLICABLE TO TRANSACTIONS DESCRIBED IN SECTION III

(a) The terms and delivery of the offer (the Purchase Offer) are consistent with the requirements set forth in the Settlement Agreement;

(b) The Purchase Offer or other documents available to the Plan specifically describe, among other things:

(1) How a Plan may determine: the Auction Rate Securities held by the Plan with TD Ameritrade; the number of shares and par value of the Auction Rate Securities; the interest or dividend amounts that are due with respect to the Auction Rate Securities; purchase dates for the Auction Rate Securities; and (if reliable information is available) the most recent rate information for the Auction Rate Securities;

(2) The background of the Purchase Offer;

(3) That neither the tender of Auction Rate Securities nor the purchase of any Auction Rate Securities pursuant to the Purchase Offer will constitute a waiver of any claim of the tendering Plan;

(4) The methods and timing by which Plans may accept the Purchase Offer;

(5) The purchase dates, or the manner of determining the purchase dates, for Auction Rate Securities tendered pursuant to the Purchase Offer;

(6) The timing for acceptance by TD Ameritrade of tendered Auction Rate Securities;

(7) The timing of payment for Auction Rate Securities accepted by TD Ameritrade for payment;

(8) The methods and timing by which a Plan may elect to withdraw tendered Auction Rate Securities from the Purchase Offer;

(9) The expiration date of the Purchase Offer;

(10) The fact that TD Ameritrade may make purchases of Auction Rate Securities outside of the Purchase Offer following the termination or expiration of the Purchase Offer and may otherwise buy, sell, hold or seek to restructure, redeem or otherwise dispose of the Auction Rate Securities;

(11) A description of the risk factors relating to the Purchase Offer as TD Ameritrade deems appropriate;

(12) How to obtain additional information concerning the Purchase Offer; and

(13) The manner in which information concerning material amendments or changes to the Purchase Offer will be communicated to the Plan.

(c) The terms of the Settlement Sale are consistent with the requirements set forth in the Settlement Agreement; and

(d) All the conditions of Section II have been met.

SECTION V. DEFINITIONS

For purposes of this proposed exemption:

(a) The term "*affiliate*" means any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

[2] The Department notes that the Act's general standards of fiduciary conduct also would apply to the transactions described herein. In this regard, section 404 of the Act requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a plan fiduciary must act prudently with respect to, among other things, the decision to sell the Auction Rate Security to TD Ameritrade for the par value of the Auction Rate Security, plus unpaid interest and dividends. The Department further emphasizes that it expects Plan fiduciaries, prior to entering into any of the proposed transactions, to fully understand the risks associated with this type of transaction following disclosure by TD Ameritrade of all relevant information.

(b) The term "*control*" means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term "*Auction Rate Security*" means a security: (1) That is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and (2) with an interest rate or dividend that is reset at specific intervals through a Dutch Auction process;

(d) A person is "*independent*" of TD Ameritrade if the person is (1) not TD Ameritrade or an affiliate; and (2) not a relative (as defined in section 3(15) of the Act) of the party engaging in the transaction;

(e) The term "*Plan*" means an individual retirement account or similar account described in section 4975(e)(1)(B) through (F) of the Code (an IRA); an employee benefit plan as defined in section 3(3) of the Act; or an entity holding plan assets within the meaning of 29 CFR 2510.3–101, as modified by section 3(42) of the Act; and

(f) The term "*Settlement Agreement*" means a legal settlement involving TD Ameritrade and a U.S. state or federal authority that provides for the purchase of an Auction Rate Security by TD Ameritrade from a Plan.

Effective Date: If granted, this proposed exemption will be effective as of July 20, 2009.

Summary Of Facts And Representations

1. The Applicant, TD Ameritrade, is a New York corporation headquartered in Omaha, Nebraska. The Applicant is an online broker-dealer that provides market access and electronic tools to self-directed investors. The Applicant is registered as a broker-dealer with the Commission pursuant to section 15(c) of the Securities Exchange Act of 1934 and is a member of the Financial Industry Regulatory Authority. The Applicant is also a wholly-owned subsidiary of TD Ameritrade Holding Corporation (TD Ameritrade Holding). As of September 30, 2009, TD Ameritrade Holding had total assets of $18,371,810,000. As of the same date, TD Ameritrade had total assets of $3,240,360,000.

The Applicant was formed as a result of the consolidation of retail brokerage operations of Ameritrade, Inc. and TD Waterhouse Investors Services, Inc. following TD Ameritrade Holding's acquisition of TD Waterhouse Group, Inc. on January 24, 2006. The Applicant and its affiliates and subsidiaries provide a wide range of investment-related services, including discount brokerage and investment advisory services. In this regard, the Applicant acts as a broker and dealer with respect to the purchase and sale of securities, including Auction Rate Securities, as discussed herein.

2. The Applicant describes Auction Rate Securities (or ARS) and the arrangement by which ARS are bought and sold as follows. Auction Rate Securities are preferred stock or bonds that are generally issued with maturities of thirty years, but the maturities can range from five years to perpetuity. ARS interest rates or dividend yields are determined and periodically reset at auctions commonly referred to as "Dutch Auctions," during which ARS are auctioned at par. Ordinarily, ARS can be bought or sold only at a Dutch Auction. Dutch Auctions are customarily held every seven, twenty-eight, or thirty-five days.

Under the typical procedures for a Dutch Auction, investors who wish to purchase ARS submit a bid to a broker-dealer selected by the entity that issued the ARS, which includes the minimum interest or dividend rate that the investors will accept. Holders of ARS may either choose to keep their securities until the next auction or submit an offer to sell their ARS. An auction agent collects all of the bids and offers for a particular auction. The final rate at which all of the ARS offered for sale are sold in the auction is the "clearing rate" that applies to that particular ARS until the next auction. Bids with the lowest rate and then successively higher rates are accepted until all of the sell orders are filled.

If there are not enough bids to cover the securities offered for sale in a Dutch Auction, then the auction will fail. In a failed auction, investors who want to sell securities are not able to do so, and hold their ARS until at least the next auction. In this event, the issuer pays the holders a maximum rate or "penalty" rate. These rates might be higher or lower than the prior clearing rate or market rates on similar products.

3. The Applicant states that to facilitate the auction process, the issuers of the ARS selected one or more broker-dealers to underwrite the offering and to manage the auction process. In many instances, these broker-dealers submitted their own bids to support the auctions and to prevent the auctions from failing. The Applicant states that it did not act as an underwriter, manager or agent for any issuer of ARS. Instead, the Applicant represents that it acted solely as an agent, both on a solicited and unsolicited basis, for its customers by submitting their bids to purchase and orders to sell ARS. Specifically, the Applicant would act as an order taker and process client-generated requests to purchase ARS. As a so-called "distributing" or "downstream" broker-dealer, the Applicant represents that it did not submit bids in an effort to support any of the Dutch Auctions or to prevent them from failing. The Applicant further represents that it did not hold any significant inventory of ARS in its proprietary accounts.[3] However, the Applicant represents that, in certain instances, it may have previously advised or otherwise caused a Plan to acquire and hold ARS.[4]

4. According to the Applicant, in the early part of 2008, the broker-dealers that acted as underwriters of the ARS offerings or as lead managers for the Dutch Auctions stopped submitting their own bids in support of the Dutch Auctions. As a result, by February 13, 2008, the ARS market began experiencing widespread auction failures, leaving investors unable to sell their ARS holdings. Consequently, Plans holding ARS may or may not have sufficient liquidity to make benefit payments, mandatory payments and withdrawals and expense payments when due.[5]

[3] The Applicant states that it did not have a practice of holding ARS in inventory or for investment purposes. The Applicant explains that at any given time and in the ordinary course of business, its Fixed Income Trading Desk (the Desk) may have held a nominal number of ARS units in proprietary accounts in between auctions as a result of data entry or communications errors that may have resulted in a customer account receiving more ARS units than the customer intended to purchase. The Applicant further explains that it was the Desk's practice to sell such units in the next auction. The Applicant also states that on other isolated occasions, it received the opportunity to obtain a nominal number of ARS units in connection with an initial public offering by the issuer. On such occasions, the Applicant states that it would obtain those units at a discount and sell them at par to clients seeking to purchase such securities.

The Applicant represents that the sales of ARS units out of its inventory to plans are exempt transactions under Part II of Prohibited Transaction Exemption (PTE) 75–1 (40 FR 50845, October 31, 1975, 71 FR 5883, February 3, 2006), with respect to principal transactions. In those isolated situations when it had ARS units in its inventory, the Applicant explains that it sold them to plans at par, which satisfies the condition of PTE 75–1 that the transaction be at least as favorable to the plan as an arm's length transaction with an unrelated party. This is because a plan would have paid the same price for the particular ARS unit regardless of where it purchased such unit.

The Department expresses no opinion herein on whether these transactions comply with the provisions of PTE 75–1. Accordingly, the Department is not proposing any relief beyond that offered by PTE 75–1.

[4] The relief contained in this proposed exemption does not extend to the fiduciary provisions of section 404 of the Act.

[5] The Department notes that PTE 80–26 (45 FR 28545 (April 29, 1980), as amended at 71 FR 17917 (April 7, 2006)), permits interest-free loans or other

5. The Applicant further states that from February 13, 2008 through the present, the ARS market continues to experience widespread failures, making many ARS holdings illiquid. Although ARS have been redeemed by their issuers since that time, numerous investors, including some of TD Ameritrade's customers, currently hold ARS that they have been unable to sell through the auction process or redeem by the issuers.

6. The Applicant is requesting exemptive relief for the sale of ARS under two different circumstances: (a) Where a Plan sells ARS to TD Ameritrade and such sale (*i.e.,* an Unrelated Sale) is unrelated to, is not made in connection with, and is entered into after the finalization of, a Settlement Agreement; and (b) where a Plan sells ARS to TD Ameritrade and such sale (*i.e.,* a Settlement Sale) is related to, and made in connection with, a Settlement Agreement. If granted, the exemption would be effective as of July 20, 2009.

7. With respect to Unrelated Sales, the Applicant represents that it may purchase ARS from its customers outside the Purchase Offer at times and on terms other than those provided in the Purchase Offer (*i.e.,* an Unrelated Offer). For example, TD Ameritrade may purchase ARS from Plans who failed to respond to the Purchase Offer prior to the expiration of the Purchase Offer or from Plans not covered by the Settlements and the Purchase Offer.[6] In determining whether to make an Unrelated Offer, TD Ameritrade will consider the relevant facts and circumstances. With respect to Plans covered by the Settlements and the Purchase Offer as well as Plans not covered by the Settlements and the Purchase Offer, any Unrelated Offer will be made at the same price offered under the Purchase Offer (*i.e.,* par plus accrued and unpaid interest and/or dividends). Therefore, TD Ameritrade is requesting retroactive relief (and prospective relief) for an Unrelated Sale that has occurred outside the Settlement process and in the event a sale of ARS by a Plan to TD Ameritrade occurs outside the Settlement process in the future.

8. With respect to Settlement Sales, the Applicant represents that it entered into Settlement Agreements with certain U.S. state and federal authorities in connection with TD Ameritrade's role in the acquisition and holding of ARS by various TD Ameritrade customers (the Eligible Customers), including Plans. As of July 20, 2009, the date that the Settlements were publicly announced, the Applicant's Eligible Customers held approximately $456 million in ARS. Of this amount, $5.8 million was held in 87 brokerage accounts for Eligible Customers of the Applicant that were Plans.

9. Pursuant to the Settlement Agreements, among other things, TD Ameritrade was required to send a written offer (*i.e.,* the Purchase Offer) to certain Plans that held ARS in connection with the brokerage services provided by TD Ameritrade. Only ARS purchased from the Applicant on or before February 13, 2008 that had failed at auction at least once since February 13, 2008 were considered "Eligible ARS" for purposes of the Purchase Offer. The Purchase Offer explained what Eligible Customers had to do to participate and it informed them of the relevant terms of the Settlement Agreement and other material terms regarding their rights. The Settlement Agreements required that the Purchase Offer be sent by August 10, 2009.

10. Eligible Customers had different lengths of time to respond to the Purchase Offer depending on various factors described in the Settlement Agreements. In general, Eligible Customers with assets of $250,000 or less as of March 13, 2009 had 75 days from the date the Purchase Offer was sent to respond; Eligible Customers with more than $250,000 had until March 23, 2010, which gave them as much as seven months or more to respond, depending on when they were identified as eligible.[7] As described in further detail below, Eligible Customers that accepted the Purchase Offer were permitted to sell the ARS to TD Ameritrade for cash equal to the par value of such securities, plus any accrued interest and/or dividends. Eligible Customers that did not respond to the Purchase Offer within a specified period of time were sent a second notice informing them of the Applicant's Purchase Offer, the relevant terms of the Settlement Agreement, and any other material issues regarding such customer's rights. To assist Eligible Customers, the Applicant established a dedicated toll-free telephone assistance line and a public Internet page to provide information and to respond to questions concerning the terms of the Settlement Agreements. The Applicant maintained the telephone assistance line and Internet page through March 31, 2010, the date of the Applicant's last payment under the Settlement Agreement.

11. The Applicant states that ARS units have been tendered by Plans to TD Ameritrade pursuant to a Purchase Offer issued by TD Ameritrade under a Settlement Agreement. In this regard, the Applicant states that with respect to the Purchase Offer that closed on March 23, 2010, it purchased approximately $302.9 million of ARS from approximately 1,180 Eligible Customers, which includes $5,525,000[8] in ARS held by thirty Eligible Customers that were Plans. The Applicant estimates that as of the close of the tender offer period on March 23, 2010, approximately $81.9 million in "Eligible ARS" remained outstanding, including ARS that had been transferred away from TD Ameritrade and that could not be confirmed. Accordingly, the Applicant is requesting exemptive relief retroactive to July 20, 2009 for Settlement Sales.

12. The Applicant opines that Settlement Sales and Unrelated Sales (hereinafter, each, a Covered Sale) are in the interests of Plans. In this regard, the Applicant states that the Covered Sales allow Plans to normalize their investments. The Applicant represents that each Covered Sale has been and will be for no consideration other than cash payment against prompt delivery of the ARS, and such cash has equaled and will equal the par value of the ARS, plus any accrued but unpaid interest or dividends. The Applicant represents further that Plans have not paid and will not pay any commissions or transaction costs with respect to any Covered Sale.

13. The Applicant also represents that the proposed exemption is protective of the Plans. The Applicant states that each Covered Sale has been made and

extensions of credit from a party in interest to a plan if, among other things, the proceeds of the loan or extension of credit are used only: (1) For the payment of ordinary operating expenses of the plan, including the payment of benefits in accordance with the terms of the plan and periodic premiums under an insurance or annuity contract, or (2) for a purpose incidental to the ordinary operation of the plan.

[6] The Applicant states that there has been only one Unrelated Sale since the close of the Purchase Offer under the Settlement Agreement and that the purchase occurred as if there had been a timely tender of the securities under the Purchase Offer. In that case, the widow of an IRA holder, who did not realize that her husband held ARS in his IRA, discovered the holding after the deadline had passed. TD Ameritrade waited until the tender period had closed and bought back the ARS on April 12, 2010. TD Ameritrade treated the Unrelated Sale as though the ARS holder had timely tendered under the Purchase Offer and used the pricing methodology set forth in the Settlement Agreement (*i.e.,* par plus accrued and unpaid interest and/or dividends).

[7] Pursuant to the Settlement Agreement, TD Ameritrade was permitted to extend the Purchase Offer period up until, but not beyond, June 30, 2010 for those Eligible Customers with more than $250,000 in "Eligible ARS".

[8] The Applicant represents that the amount of ARS involved in the Unrelated Sale described in Footnote 6 above is included in this amount.

will be made pursuant to a written Purchase Offer and the decision to accept such offer or retain the ARS has been made and will be made by a Plan fiduciary or Plan participant or IRA owner who is independent of TD Ameritrade. Additionally, each Purchase Offer has been delivered and will be delivered in a manner designed to alert a Plan fiduciary that TD Ameritrade is willing to purchase ARS from the Plan. Purchase Offers made in connection with a Settlement Agreement have specifically included, among other things: The background of the Purchase Offer; the method and timing by which a Plan may accept the Purchase Offer; the expiration date of the Purchase Offer; a description of certain risk factors relating to the Purchase Offer; how to obtain additional information concerning the Purchase Offer; and the manner in which information concerning material amendments or changes to the Purchase Offer will be communicated. Further, the Applicant states that, neither TD Ameritrade nor any affiliate has exercised or will exercise investment discretion or render investment advice within the meaning of 29 CFR 2510.3–21(c) with respect to a Plan's decision to accept the Purchase Offer or to retain the ARS.[9]

In addition, an Unrelated Offer made in connection with an Unrelated Sale has included and will include all of the material terms of the Unrelated Sale as follows: The identity and par value of the ARS; the interest or dividend amounts that are due with respect to the ARS; and the most recent information for the ARS (if reliable information is available). The Applicant represents further that Plans have not waived and will not waive any rights or claims in connection with any Covered Sale.

14. The Applicant further represents that the proposed exemption, if granted, would be administratively feasible. In this regard, the Applicant notes that each Covered Sale has occurred and will occur at the par value of the affected ARS, plus accrued but unpaid interest and dividends, to the extent applicable, and such value is readily ascertainable. The Applicant represents further that TD Ameritrade has maintained and will maintain the records necessary to enable the Department and Plan fiduciaries, among others, to determine whether the conditions of this exemption, if granted, have been met.

15. In summary, the Applicant represents that the transactions described herein have satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because, among other things:

(a) Each Covered Sale has been made and shall be made pursuant to a written Purchase Offer;

(b) Each Covered Sale has been and shall be for no consideration other than cash payment against prompt delivery of the ARS;

(c) The amount of each Covered Sale has equaled and shall equal the par value of the ARS, plus any accrued but unpaid interest or dividends;

(d) No Plan has waived nor shall waive any rights or claims in connection with any Covered Sale;

(e)(1) The decision to accept a Purchase Offer or retain the ARS has been made and shall be made by a Plan fiduciary or Plan participant or IRA owner who is independent of TD Ameritrade; and (2) neither TD Ameritrade nor any affiliate has exercised or shall exercise investment discretion or render investment advice within the meaning of 29 CFR 2510.3–21(c) with respect to the decision to accept the Purchase Offer or retain the ARS;

(f) Plans have not paid and shall not pay any commissions or transaction costs with respect to any Covered Sale;

(g) A Covered Sale has not been part of and shall not be part of an arrangement, agreement or understanding designed to benefit a party in interest to the affected Plan;

(h) With respect to any Settlement Sale, the terms and delivery of the Purchase Offer, and the terms of Settlement Sale, have been consistent with and shall be consistent with the requirements set forth in the Settlement Agreement;

(i) TD Ameritrade has made and shall make available in connection with an Unrelated Sale the material terms of the Unrelated Sale, including: (1) The identity and par value of the Auction Rate Security; (2) the interest or dividend amounts that are due but unpaid with respect to the Auction Rate Security; and (3) the most recent information for the Auction Rate Security (if reliable information is available).

(j) Each Purchase Offer made in connection with a Settlement Agreement has described or shall describe the material terms of the Settlement Sale, including the following (and shall not constitute a waiver of any claim of the tendering Plan): (1) How the Plan can determine: The ARS held by the Plan with TD Ameritrade, the number of shares and par value of the ARS, interest or dividend amounts, and purchase dates for the ARS, and (if reliable information is available) the most recent rate information for the ARS; (2) the background of the Purchase Offer; (3) the methods and timing by which the Plan may accept the Purchase Offer; (4) the purchase dates, or the manner of determining the purchase dates, for ARS pursuant to the Purchase Offer and the timing for acceptance by TD Ameritrade of tendered ARS for the payment; (5) the expiration date of the Purchase Offer; and (6) how to obtain additional information concerning the Purchase Offer.

Notice to Interested Persons

The Applicant represents that the potentially interested participants and beneficiaries cannot all be identified, and, therefore, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Anna Mpras Vaughan of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

Owens & Minor, Inc.,
Located in Mechanicsville, Virginia.
[Application No. D–11638]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570 Subpart B (55 FR 32836, 32847, August 10, 1990). If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply to the sale of certain shares in a hedge fund (the Shares) by the Owens & Minor, Inc. Pension Plan (the Plan) to Owens & Minor, Inc. (the Employer), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The sale is a one-time transaction for cash;

(b) The terms and conditions of the sale are at least as favorable to the Plan as those that the Plan could obtain in an arm's-length transaction with an unrelated third party;

[9] The Applicant states that while there may have been or may be communication between a Plan and TD Ameritrade subsequent to a Purchase Offer, such communication has not involved and will not involve advice regarding whether the Plan should accept the Purchase Offer.

(c) The sales price is the greater of: (1) $1,029.93 per Share (the highest per share purchase price paid by the Plan), or (2) the net asset value of the Shares reported in the most recently available monthly statement, as determined by the hedge fund manager, who is independent and unrelated to the Employer, (which is supported by the report of the independent auditors);

(d) The Plan pays no commissions, fees, or other expenses in connection with the sale;

(e) Upon termination of the Plan, the Plan participants and beneficiaries will be paid 100% of their accrued benefits from the assets of the Plan, as a result of the Employer's sufficiency contribution to the Plan;

(f) The Plan has not waived or released and does not waive or release any claims, demands, and/or causes of action that the Plan may have against the Employer, the Plan Fiduciary, or the hedge fund manager in connection with the acquisition, holding and sale of the Shares to the Employer; and

(g) The Employer maintains, or causes to be maintained, for a period of at least six (6) years from the date of the sale, such records as are necessary to enable the persons described in paragraph (h), below, to determine whether the conditions of this exemption, if granted, have been met, except that—

(1) No party in interest with respect to the Plan other than the Employer shall be subject to a civil penalty under section 502(i) of ERISA or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or are not available for examination, as required, below, by paragraph (h); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of the Employer, such records are lost or destroyed prior to the end of the six-year period; and

(h)(1) Except as provided in subparagraph (2), below, and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of ERISA, the records referred to in paragraph (g), above, are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the U.S. Securities and Exchange Commission;

(B) Any fiduciary of the Plan, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by the Plan or any authorized employee or representative thereof;

(2) None of the persons described above in paragraph (h)(1)(B) or (C) shall be authorized to examine trade secrets of the Employer, or commercial or financial information that is privileged or confidential; and

(3) Should the Employer refuse to disclose information on the basis that such information is exempt from disclosure, the Employer shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Summary of Facts and Representations

1. The Owens & Minor, Inc. Pension Plan (the Plan) is a defined benefit plan sponsored by Owens & Minor, Inc. (the Employer or the applicant), a distributor of national name-brand medical and surgical supplies who serves its healthcare provider customers from 55 distribution centers located throughout the United States. The Plan was originally established effective March 31, 1957 and was last amended and restated effective January 1, 2002. The Plan was frozen effective December 31, 1996. The aggregate fair market value of the Plan's assets was approximately $31,276,861, as of April 30, 2010. The Plan had 1,789 participants and beneficiaries, as of June 4, 2010. The Plan's trustee is Reliance Trust Company. The Employer sponsors two defined contribution plans, a 401(k) profit sharing plan and an employee stock purchase plan, in addition to the Plan.

On April 30, 2010, the Employer filed a request for a determination as to the Plan's qualified status with the Internal Revenue Service (IRS). The Employer filed PBGC Form 500 (Standard Termination Notice) with the Pension Benefit Guaranty Corporation (PBGC) by July 30, 2010. If PBGC does not object to the proposed termination of the Plan within the 60-day period following the filing of the Standard Termination Notice, the Plan must distribute all its assets by its "Distribution Date," which is the later of (i) 180 days after the end of PBGC's 60-day review period, or (ii) 120 days after receipt of a favorable determination from the IRS.

2. As of April 30, 2010, the assets of the Plan consisted of: (i) FDIC-guaranteed bank notes in the amount of $25,540,900, (ii) money market accounts valued at $1,835,666, (iii) a brokerage account consisting of several alternative investments valued at $3,058,882, and (iv) 943.66 shares of a non-publicly traded hedge fund (the Shares), with a value of $841,413 (based upon a net asset value (NAV) of $891.65 per share). The Plan's investments, including the Shares, are approved by the Compensation and Benefits Committee (the Committee) of the Employer's Board of Directors. The Plan purchased 2,570.42 Shares at $1,029.931 per share on November 28, 2007 and 99.56 Shares at $1,004.381 per share on July 30, 2008, at a total cost of approximately $2,747,351.37.[10] The Employer owns no shares in the Fund.

The hedge fund is the Selectinvest Institutional ARV ASW Fund (the Fund), which, in turn, invests substantially all its assets in a "fund of funds," (the Master Feeder Fund).

The Fund manager is Alternate Strategies Group (ASG), a wholly-owned subsidiary of Wells Fargo. The Master Feeder Fund is unrelated to ASG and is managed by Union Bancaire Privee Asset Management LLC (UBPAM), which is also its investment advisor. The Master Feeder Fund invests in the following three funds: Selectinvest ARV Ltd. (Master Fund I); Selectinvest ARV II Ltd. (Master Fund II); and Selectinvest ARV L.P. (Master Fund III). UBPAM is the investment manager for Master Fund I, Master Fund II, and Master Fund III (collectively, the Master Funds).[11] In February 2009, ASG announced that it intended to terminate all Selectinvest ARV Funds, including the Fund.[12]

ASG began the process of redeeming all interests in the Fund on March 31, 2009. Since that time, ASG has redeemed approximately 1,781 of the

[10] The Department expresses no opinion herein as to whether the acquisition and holding of the Shares by the Plan have met the requirements of Part 4 in Title I of the Act.

[11] It is represented that, in general, the standard investment management fees assessed by the Fund had been a 1.25% Advisory Fee per annum and a 0.35% Program Fee per annum. Because ASG is liquidating all investments in the Fund, however, the Advisory Fee was reduced to 0.50% per annum starting on March 31, 2009. The Limited Liability Company Agreement defines the term "Program" as comprised of Feeder Funds that provide access to underlying Master Funds; thus, the "Program Fee" is an annual fee charged to Fund members to participate in the Program. As is typical with mutual funds and other collective funds, the Advisory Fee and the Program Fee are netted out of the Fund's investment performance and published net asset value (NAV). The applicant further represents that the Plan is not paying duplicative fees at the underlying funds level.

[12] The exemption application states: "Although a secondary market exists for the Feeder Fund's investments, it is not active and individual transactions are typically not observable. When transactions do occur in this limited secondary market, they may occur at discounts to the reported net asset value. It is therefore reasonably possible that if the Feeder Funds were to sell these investments in the secondary market, a buyer may require a discount to the reported net asset value, and the discount could be significant."

Plan's Shares, approximately 67% of the Plan's interest in the Fund, in five separate redemptions. The Plan received its first redemption payment of $811,700 on May 13, 2009, in exchange for 972.11 shares, which represents a per share value of $834.988. On September 10, 2009, the Plan received its second redemption payment of $319,500, in exchange for 367.01 shares, which represents a per share value of $870.548. On January 21, 2010, the Plan received its third redemption payment of $203,100, in exchange for 225.09 shares, which represents a per share value of $902.306. On April 27, 2010, the Plan received its fourth redemption payment of $148,000, in exchange for 162.10 shares, which represents a per share value of $913.016. On October 20, 2010, the Plan received its most recent redemption payment of $48,100, in exchange for 54.79 shares, which represents a per share value of $877.897.

In order for ASG to redeem shares in the Fund, the Master Feeder Fund must have sufficient cash reserves. Because ASG's complete redemption request exceeded such reserves, the redemption of the Plan's Shares will likely not be finalized until a sufficient portion of the underlying assets of the Master Feeder Fund and its "down-stream" investments in the Master Funds are liquidated.

3. The Employer represents that all the assets of the Plan, including the remaining Shares, must be liquidated and the proceeds used to fund the purchase of annuity contracts and distributions of lump sum benefit amounts. The Plan is contractually prohibited from selling its Shares to a third party without the permission of ASG. There is only a very limited secondary market for the Shares. In the event that the Plan's Shares are not entirely redeemed by the Fund prior to the Distribution Date, the Employer proposes to purchase the remaining Shares from the Plan for a price that is the greater of: (1) $1,029.93 per Share (the highest per share purchase price paid by the Plan), or (2) the NAV of the Shares as determined by ASG. It is represented that the Plan will pay no commissions, fees, or other expenses in connection with the sale.

4. The applicant represents that ASG determines the Fund's NAV, which it publishes at the end of each month in its monthly statements, according to the Fund's membership agreement, based upon the current fair market value of the underlying investments (based on the NAV of the Master Feeder Fund, which in turn is based upon the Master Feeder Fund's interest in the Master Funds based upon their underlying investments). The applicant further represents that ASG is the only qualified appraiser to determine the value of the Plan's interest in the Fund because ASG is solely responsible for the determination of the Fund's NAV. It is represented that ASG's method of calculating the Fund's NAV meets the requirements of FAS 157.[13] It is also represented that ASG is independent from the Employer and receives no income from the Employer. The Fund's independent auditor is KPMG LLP, located in Boston, Massachusetts and the applicant represents that the net asset value of the Shares reported in the most recently available monthly statement, as determined by ASG, is supported by the report of KPMG.

The value of the Plan's membership interest in the Fund is calculated as the number of Shares owned by the Plan relative to all outstanding Fund shares. According to ASG's determination of the Fund's NAV as of April 30, 2010, the Plan's remaining Shares have a value of approximately $792,561.

The applicant represents that the Fund's NAV as set forth in ASG's most recently available statement prior to the date of the sale would be used to determine the dollar value of the Plan's Shares. Furthermore, the Committee, as the Plan fiduciary, will review and approve the valuation methodology used by ASG, ensure that such methodology is properly applied in determining the value of the Shares, and will also determine whether it is prudent to go forward with the proposed transaction. The proposed sale of the Shares is anticipated to take place on or about the Distribution Date, contingent upon obtaining the requested exemption from the Department.

5. Because of the Plan's underfunded status, as the final step in the Plan termination process, the Employer has made a commitment to contribute an estimated additional $1,000,000 to the Plan to ensure that the Plan has sufficient assets to satisfy all its accrued benefit obligations.

In accordance with the requirements for a Standard Termination under section 4041(b) of the Act and the PBGC guidelines, the amount that the Employer will contribute to the Plan to make it sufficient will be calculated as follows: The actuarial present value of the total Plan liabilities for accrued benefits less (the amount received for the remaining Shares, either through the redemption process or consummation of the proposed sale, plus the value of all other Plan assets).

The applicant represents that, if it completes the standard termination process for the Plan, the PBGC will not be liable or responsible for paying any Plan benefits, and, in fact, will not pay any Plan benefits. Upon termination of the Plan, the Plan participants and beneficiaries will receive 100% of their accrued benefits, as a result of the Employer's sufficiency contribution to the Plan.

6. According to the applicant, if the requested exemption is denied and the Shares are not fully redeemed prior to the Distribution Date, the Plan will lack sufficient liquid assets to satisfy the distribution deadline. The failure to distribute all accrued benefits by the Distribution Date could result in the PBGC issuing the Plan a notice of noncompliance, which would require re-starting the standard termination process and nullify all actions taken to date to terminate the Plan, including the re-issuance of the required multiple notices to the Plan participants and beneficiaries required by the termination process, and delay the distribution of plan benefits.

The applicant represents that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries because it will enable the Plan to convert an illiquid, non-marketable asset into cash in order to complete the standard termination process and purchase of annuity contracts and lump-sum distributions to satisfy all its accrued benefit obligations. The proposed transaction would also allow the Plan to avoid the discount that would be expected if the Shares were sold in the secondary market. The Employer is also bearing the costs of the exemption application and of notifying interested persons.

7. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) The sale will be a one-time transaction for cash; (b) the terms and conditions of the sale will be at least as favorable to the Plan as those that the Plan could obtain in an arm's length transaction with an unrelated third party; (c) the sales price will be the greater of: (1) $1,029.93 per Share (the highest per share purchase price paid by the Plan), or (2) the net asset value of the Shares reported in the most recently available monthly statement, as determined by the hedge fund manager, who is independent and unrelated to the Employer, (which is

[13] FAS 157 provides guidance for measuring the fair value of assets and liabilities, including hard-to-value alternative investments. Effective January 1, 2008, the Fund, the Master Feeder Fund, and each of the Master Funds adopted FAS 157. The description of these accounting policies appears in the financial statements of each fund.

supported by the report of the independent auditors); (d) the Plan will pay no commissions, fees, or other expenses in connection with the sale; and (e) upon termination of the Plan, the Plan participants and beneficiaries will be paid 100% of their accrued benefits from the assets of the Plan, as a result of the Employer's sufficiency contribution to the Plan.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 693–8557. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of December 2010.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2010–31570 Filed 12–15–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0012]

National Advisory Committee on Occupational Safety and Health (NACOSH)

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

ACTION: Announcement of meeting of the National Advisory Committee on Occupational Safety and Health (NACOSH) and NACOSH subgroup meetings.

SUMMARY: The National Advisory Committee on Occupational Safety and Health (NACOSH) will meet January 19 and 20, 2011, in Washington, DC.

DATES: *NACOSH meeting:* NACOSH will meet from 8:15 a.m. to 5 p.m., on Wednesday, January 19, and from 8:15 a.m. to 4:15 p.m., on Thursday, January 20, 2011.

Submission of comments, requests to speak, and requests for special accommodation: Comments, requests to speak at the NACOSH meeting, and requests for special accommodations for the NACOSH meeting must be submitted (postmarked, sent, transmitted) by January 12, 2011.

ADDRESSES: *NACOSH meeting:* NACOSH will meet in Room N–N4437 A/B/C/D, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Submission of comments and requests to speak: You may submit comments and requests to speak at the NACOSH meeting, identified by docket number for this **Federal Register** notice (Docket No. OSHA–2010–0012), by one of the following methods:

Electronically: You may submit materials, including attachments, electronically at *http://www.regulations.gov*, the Federal eRulemaking Portal. Follow the online instructions for making submissions.

Facsimile: If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Mail, express delivery, messenger or courier service: Submit three copies of your submissions to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–2350 (TTY (887) 889–5627). Deliveries (hand, express mail, messenger, courier service) are accepted during the Department of Labor's and OSHA Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m. e.t.

Requests for special accommodation: Submit requests for special accommodations for the NACOSH meeting by hard copy, telephone, or e-mail to Ms. Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999; e-mail *chatmon.veneta@dol.gov*.

Instructions: All submissions must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2010–0012). Because of security-related procedures, submission by regular mail may result in a significant delay in receipt. Please contact the OSHA Docket Office for information about security procedures for making submissions by hand delivery, express delivery, messenger or courier service. For additional information about submitting comments and requests to speak, see the **SUPPLEMENTARY INFORMATION** section of this notice.

Comments and requests to speak, including personal information provided, will be placed in the public docket and may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

Docket: To read or download documents in the public docket for this NACOSH meeting, go to *http://www.regulations.gov*. All documents in the public docket are listed in the index; however, some documents (e.g., copyrighted material) are not publicly available to read or download through *http://www.regulations.gov*. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office at the address above.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* MaryAnn Garrahan, OSHA, Office of Communications, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999.

For general information: Ms. Deborah Crawford, OSHA, Directorate of Evaluation and Analysis, U.S.

Department of Labor, Room N–3641, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1932; e-mail *crawford.deborah@dol.gov*.

SUPPLEMENTARY INFORMATION: NACOSH will meet Wednesday, January 19 and Thursday, January 20, 2011, in Washington, DC. NACOSH meetings are open to the public.

NACOSH is authorized by section 7(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651, 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the OSH Act. NACOSH is a continuing advisory body and operates in compliance with provisions in the OSH Act, the Federal Advisory Committee Act (5 U.S.C. App.), and regulations issued pursuant to those laws (29 CFR 1912a, 41 CFR part 102–3).

The tentative agenda of the NACOSH meeting will include:

- Remarks from the Assistant Secretary of Labor for Occupational Safety and Health (OSHA);
- Remarks from the Director of the National Institute for Occupational Safety and Health;
- Updates on Gulf Oil Spill response by OSHA and NIOSH staff;
- Discussions on injury and illness prevention programs by OSHA and NIOSH staff; and
- Discussions on recordkeeping issues by OSHA and NIOSH staff.

In addition, the Gulf Oil Spill subgroup was formed at the June 8, 2010, NACOSH meeting. The subgroup will meet from 1:30 p.m. until 5 p.m. on January 19, 2011, in Room N4437A/B/C and report back to the full committee on January 20, 2011. The recordkeeping workgroup was formed at the September 15, 2010, NACOSH meeting. This workgroup will meet from 1:30 p.m. until 5 p.m. on January 19, 2011, in Room N4437D and report back to the full committee on January 20, 2011.

NACOSH meetings are transcribed and detailed minutes of the meetings are prepared. Meeting transcripts and minutes are included in the public record of this NACOSH meeting (Docket No. OSHA 2010–0012).

Public Participation

Interested parties may submit a request to make an oral presentation to NACOSH by any one of the methods listed in the **ADDRESSES** section above. The request must state the amount of time requested to speak, the interest represented (e.g., organization name), if any and a brief outline of the presentation. Requests to address NACOSH may be granted as time permits and at the discretion of the NACOSH chair.

Interested parties also may submit comments, including data and other information using any one of the methods listed in the **ADDRESSES** section above. OSHA will provide all submissions to NACOSH members prior to the meeting.

Individuals who need special accommodations to attend the NACOSH meeting should contact Ms. Chatmon by any one of the methods listed in the **ADDRESSES** section.

Submissions and Access to Meeting Record

You may submit comments and requests to speak (1) electronically, (2) by facsimile, or (3) by hard copy. All submissions, including attachments and other materials, must identify the Agency name and the docket number for this notice (Docket No. OSHA–2010–0012). You also may supplement electronic submissions by uploading documents electronically. If, instead, you wish to submit hard copies of supplementary documents, you must submit three copies to the OSHA Docket Office using the instructions in the **ADDRESSES** section above. The additional materials must clearly identify your electronic submission by name, date and docket number.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of submissions. For information about security procedures concerning submissions by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office.

Meeting transcripts and minutes as well as comments and requests to speak at the NACOSH meeting are included in the public record of the NACOSH meeting (Docket No. OSHA–2010–0012). Comments and requests to speak are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates. Although all submissions are listed in the *http://www.regulations.gov* index, some documents (e.g., copyrighted materials) are not publicly available to read or download through that webpage. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

For information on using *http://www.regulations.gov* to make submissions and to access the docket, click on the "Help" tab at the top of the Home page. Contact the OSHA Docket Office for information about materials not available through that webpage and for assistance in using the Internet to locate submissions and other documents in the docket. Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov*. This notice, as well as news releases and other relevant information, is also available on the OSHA webpage at *http://www.osha.gov*.

Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 7 of the Occupational Safety and Health Act of 1970 (U.S.C. 656), 29 CFR 1912a, and Secretary of Labor's Order No. 4–2010 (75 FR 55355 (9/10/2010)).

Signed at Washington, DC, on December 13, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–31587 Filed 12–15–10; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice of Cancellation of a Teleconference Meeting

The National Science Board's Subcommittee on Facilities, pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the cancellation of a teleconference meeting.

The National Science Board's Subcommittee on Facilities teleconference meeting scheduled for December 15, 2010, at 11 a.m. to 12:30 p.m., to discuss NSF Principles & Portfolio Review, and Future Budgetary Issues FY 2012 and beyond, located at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, is hereby cancelled.

Point of contact for this meeting is: Jennie Moehlmann, National Science Board Office, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Daniel A. Lauretano,

Counsel to the National Science Board.

[FR Doc. 2010–31670 Filed 12–14–10; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee On Reactor Safeguards; Renewal

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of renewal of the Charter of the Advisory Committee on Reactor Safeguards (ACRS).

SUMMARY: The Advisory Committee on Reactor Safeguards was established by Section 29 of the Atomic Energy Act (AEA) of 1954, as amended. Its purpose is to provide advice to the Commission with regard to the hazards of proposed or existing reactor facilities, to review each application for a construction permit or operating license for certain facilities specified in the AEA, and such other duties as the Commission may request. The AEA as amended by PL 100–456 also specifies that the Defense Nuclear Safety Board may obtain the advice and recommendations of the ACRS.

Membership on the Committee includes individuals experienced in reactor operations, management; probabilistic risk assessment; analysis of reactor accident phenomena; design of nuclear power plant structures, systems and components; materials science; and mechanical, civil, and electrical engineering.

The Nuclear Regulatory Commission has determined that renewal of the charter for the ACRS until December 10, 2012 is in the public interest in connection with the statutory responsibilities assigned to the ACRS. This action is being taken in accordance with the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Andrew L. Bates, Office of the Secretary, NRC, Washington, DC 20555; *telephone:* (301) 415–1963 or at *ALB@NRC.GOV.*

Dated: December 10, 2010.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2010–31590 Filed 12–15–10; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–5; Order No. 604]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Penobscot Finance Station in Detroit, Michigan has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioner, and others to take appropriate action.

DATES: *Answer to application for suspension due (from Postal Service):* December 16, 2010; *administrative record due (from Postal Service):* December 21, 2010; *deadline for notices to intervene:* January 4, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

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 by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on December 6, 2010, the Commission received a petition for review of the closing of the Penobscot Finance Station in Detroit, Michigan. The petition, which was filed by Barbara Sherwood (Petitioner), is postmarked December 1, 2010, and was posted on the Commission's Web site December 8, 2010. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and designates the case as Docket No. A2011–5 to consider the Petitioner's appeal. If the Petitioner would like to further explain her position with supplemental information or facts, she may either file a Participant Statement on PRC Form 61 or file a brief with the Commission by no later than January 10, 2011.

Categories of issues apparently raised. The categories of issues raised include: Failure to consider the effect on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the administrative record with the Commission is December 21, 2010. 39 CFR 3001.113.

Application for suspension. Petitioner also requests a suspension of the determination to close the facility pending the outcome of the appeal. The facility is scheduled to close January 3, 2011. The answer to the request for suspension is due December 16, 2010. *See* 39 CFR 3001.114(b).

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. 39 CFR 3001.9(a) and 10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Intervention. Those, other than the Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111. Notices of intervention in this case are to be filed on or before January 4, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses

are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the administrative record in this appeal, or otherwise file a responsive pleading to the appeal, by December 21, 2010.

2. The answer to the request for suspension is due December 16, 2010.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Cassandra L. Hicks is designated officer of the Commission (Public Representative) to represent the interests of the general public.

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

PROCEDURAL SCHEDULE

December 6, 2010	Filing of Appeal.
December 16, 2010	Deadline for the Postal Service to answer application for suspension of the determination (*see* 39 CFR 3001.1114(a) and (b)).
December 21, 2010	Deadline for Postal Service to file administrative record in this appeal or responsive pleading.
January 4, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
January 10, 2010	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
January 31, 2011	Deadline for answering brief in support of Postal Service (*see* 39 CFR 3001.115(c)).
February 15, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
February 22, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
March 31, 2011	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–31553 Filed 12–15–10; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–6; Order No. 605]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Holmes Mill (Kentucky) Post Office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioner, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* December 22, 2010; *deadline for notices to intervene:* January 4, 2011; and deadline for petitioner's Form 61 or initial brief: January 11, 2011 *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

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 by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on December 7, 2010, the Commission received a petition for review of the closing of the Holmes Mill Post Office in Holmes Mill, Kentucky. The petition, which was filed by Dovie Hamblin (Petitioner), is postmarked December 2, 2010, and was posted on the Commission's Web site December 8, 2010. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and designates the case as Docket No. A2011–6 to consider the Petitioner's appeal. If the Petitioner would like to further explain his or her position with supplemental information or facts, the Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission by no later than January 11, 2011.

Categories of issues apparently raised. The categories of issues raised include: Failure to consider the effect on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the administrative record with the Commission is December 22, 2010. 39 CFR 3001.113.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. 39 CFR 3001.9(a) and 10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Intervention. Those, other than the Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111. Notices of intervention in this case are to be filed on or before January 4, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this

statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the administrative record in this appeal, or otherwise file a responsive pleading to the appeal, by December 22, 2010.

2. The procedural schedule listed below is hereby adopted.

3. Pursuant to 39 U.S.C. 505, Katrina Martinez is designated officer of the Commission (Public Representative) to represent the interests of the general public.

4. The Secretary shall arrange for publication of this Notice and Order and Procedural Schedule in the **Federal Register**.

PROCEDURAL SCHEDULE

December 7, 2010	Filing of Appeal.
December 22, 2010	Deadline for Postal Service to file administrative record in this appeal or responsive pleading.
January 4, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
January 11, 2010	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
January 31, 2011	Deadline for answering brief in support of Postal Service (*see* 39 CFR 3001.115(c)).
February 15, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
February 22, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
April 1, 2011	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–31554 Filed 12–15–10; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Securities Act of 1933 Release No. 9162/December 10, 2010; Securities Exchange Act of 1934 Release No. 63526/December 10, 2010]

Order Approving Public Company Accounting Oversight Board Supplemental Budget Request To Establish an Office of Outreach and Small Business Liaison in 2010

The Sarbanes-Oxley Act of 2002 [1] (the "Sarbanes-Oxley Act") established the Public Company Accounting Oversight Board (the "PCAOB") to oversee the audits of companies and related matters, to protect investors, and to further the public interest in the preparation of informative, accurate and independent audit reports. The PCAOB is to accomplish these goals through registration of public accounting firms and standard setting, inspection, and disciplinary programs. Section 109 of the Sarbanes-Oxley Act directs the PCAOB to establish a budget for each fiscal year in accordance with the PCAOB's internal procedures, subject to approval by the Securities and Exchange Commission (the "Commission").

The Commission's Rules of Practice related to its Informal and Other Procedures includes a rule to facilitate the Commission's review and approval of PCAOB budgets.[2] This budget rule provides, among other things, a timetable for the preparation and submission of the PCAOB budget, limits on the PCAOB's ability to incur expenses and obligations except as provided in the approved budget, and procedures relating to supplemental budget requests. In accordance with the Commission's budget rule, the PCAOB submitted to the Commission a budget for calendar year 2010 that was approved by the Commission on December 22, 2009.[3]

Effective July 21, 2010, Section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act [4] (the "Dodd-Frank Act") amended the Sarbanes-Oxley Act to authorize the PCAOB, among other things, to establish, subject to approval by the Commission, auditing and related attestation, quality control, ethics, and independence standards to be used by registered public accounting firms with respect to the preparation and issuance of audit reports to be included in broker-dealer filings with the Commission.[5] In light of this new authority, the PCAOB reassessed its communications and outreach strategy.

As a result of this reassessment, the PCAOB intends to enhance its outreach function by establishing a new Office of Outreach and Small Business Liaison ("Office of Outreach") to act as a liaison between the PCAOB and any PCAOB-registered public accounting firm, or any other person affected by the Board's regulatory activities, including in particular, entities in the small business community, such as the auditors of broker-dealers. In order to establish this office in 2010, the PCAOB is required under the budget rule to submit a supplemental budget request for Commission approval.[6] Pursuant to the procedures set forth in the budget rule, on October 28, 2010, the PCAOB submitted to the Commission a supplemental budget request seeking approval to establish the Office of Outreach in 2010.[7]

The Board believes that the creation of the Office of Outreach would not result in a net cost increase in 2010. To the extent that any unanticipated costs emerge, the PCAOB proposes to accommodate them from within available funds currently budgeted for the Office of Communications in 2010. Costs associated with the Office of Outreach in future years will be considered by the Commission as part of its review of the PCAOB budgets for those years.

Staff from the Commission's Offices of the Chief Accountant and Executive Director reviewed and analyzed the PCAOB's supplemental budget request and did not identify any matters that are inconsistent with Section 109 of the Sarbanes-Oxley Act or the Commission's budget rule. Upon considering the staff's review and analysis, the Commission has determined that the PCAOB's request to create the Office of Outreach in 2010 is consistent with Section 109 of the

[1] 17 U.S.C. 7202 *et seq.*

[2] 17 CFR 202.190. *See* Release No. 33–8724 (July 18, 2006) [71 FR 41998 (July 24, 2006)].

[3] *See* Release No. 34–61212 (Dec. 22, 2009).

[4] Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

[5] 15 U.S.C. 78a *et seq.*

[6] *See* 17 CFR 240.190(b)(10).

[7] 17 CFR 202.190(f).

Sarbanes-Oxley Act and the Commission's budget rule. Accordingly,

It is ordered, pursuant to Section 109 of the Sarbanes-Oxley Act, that the PCAOB's supplemental budget request to create the Office of Outreach in 2010 is approved.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–31537 Filed 12–15–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63524; File No. SR–CBOE–2010–110]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Options Regulatory Fee

December 10, 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 December 6, 2010, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by CBOE. 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

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to increase its Options Regulatory Fee. The text of the proposed rule change is available on the Exchange's Web site *http://www.cboe.org/legal/*, at the Exchange's Office of the Secretary, and at the Commission'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, CBOE 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. CBOE 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 charges an Options Regulatory Fee ("ORF") of $.004 per contract to each Trading Permit Holder for all options transactions executed or cleared by the Trading Permit Holder that are cleared by The Options Clearing Corporation ("OCC") in the customer range, excluding Linkage[3] orders, regardless of the exchange on which the transaction occurs. The ORF is collected indirectly from Trading Permit Holders through their clearing firms by OCC on behalf of the Exchange.[4]

The Exchange has reevaluated the current amount of the ORF in connection with its annual budget review. In light of increased regulatory costs and expected volume levels for 2011, the Exchange proposes to increase the ORF from $.004 per contract to $.0045 per contract. The proposed fee change would become operative on January 3, 2011.

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The Exchange will continue to monitor regulatory costs and revenues at a minimum on an annual basis. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange would adjust the ORF by submitting a fee change filing to the Commission. The Exchange notifies Trading Permit Holders of adjustments to the ORF via regulatory circular.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),[5] in general, and furthers the objectives of Section 6(b)(4)[6] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders. The Exchange believes the proposed ORF is reasonable because revenue from the proposed ORF, in combination with the Exchange's other regulatory fees and fines, will not exceed regulatory costs. The Exchange believes the proposed ORF is equitable because it would apply uniformly to all Trading Permit Holders who are being assessed the ORF.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(2) of Rule 19b–4[8] thereunder. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term "Linkage" refers to the Options Order Protection and Locked/Crossed Market Plan.

[4] The ORF was established in October 2008 as a replacement of Registered Representative fees. *See* Securities Exchange Act Release No. 58817 (October 20, 2008), 73 FR 63744 (October 27, 2008). The ORF was to be effective January 1, 2009. In December 2008 and January 2009, the Exchange filed proposed rule changes waiving the ORF for January and February, to allow additional time for the Exchange, OCC and firms to put in place appropriate procedures to implement the fee. *See* Securities Exchange Act Release No. 59182 (December 30, 2008), 74 FR 730 (January 7, 2009), and Securities Exchange Act Release No. 59355 (February 3, 2009), 74 FR 6677 (February 10, 2009). The ORF was amended three additional times in 2009. *See* Securities Exchange Act Release No. 59427 (February 20, 2009), 74 FR 9013 (February 27, 2009); Securities Exchange Act Release No. 60093 (June 10, 2009), 74 FR 28749 (June 17, 2009); and Securities Exchange Act Release No. 60513 (August 17, 2009), 74 FR 42719 (August 24, 2009). The ORF was amended in March 2010 to eliminate a reference to a one-cent charge per trade. *See* Securities Exchange Act Release No. 61641 (March 3, 2010), 75 FR 11220 (March 10, 2010).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

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–2010–110 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–2010–110. 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–CBOE–2010–110 and should be submitted on or before January 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–31625 Filed 12–15–10; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63527; File No. SR–BX–2010–088]

Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of the Trading Pause for Individual Stocks Contained in the Standard & Poor's 500 Index, Russell 1000 Index, and Specified Exchange Traded Products That Experience a Price Change of 10% or More During a Five-Minute Period

December 10, 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 December 7, 2010, NASDAQ OMX BX ("BX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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 extend the pilot period of the trading pause for individual stocks contained in the Standard & Poor's 500 Index, Russell 1000 Index, and specified Exchange Traded Products that experience a price change of 10% or more during a five-minute period, so that the pilot will now expire on April 11, 2011.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

IM–4120–3. Circuit Breaker Securities Pilot

The provisions of paragraph (a)(11) of this Rule shall be in effect during a pilot set to end on *April 11, 2011* [December 10, 2010]. During the pilot, the term "Circuit Breaker Securities" shall mean the securities included in the S&P 500® Index, the Russell 1000 Index, as well as a pilot list of Exchange Traded Products.

* * * * *

[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 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

On June 10, 2010, the Commission granted accelerated approval, for a pilot period to end December 10, 2010, for a proposed rule change submitted by the Exchange, together with related rule changes of the BATS Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE Amex LLC, NYSE Arca, Inc., and National Stock Exchange, Inc. (collectively, the "Exchanges"), to pause trading during periods of extraordinary market volatility in S&P 500 stocks.[3] The rules require the Listing Markets [4] to issue five-minute trading pauses for individual securities for which they are the primary Listing Market if the transaction price of the security moves ten percent or more from a price in the preceding five-minute period. The Listing Markets are required to notify the other Exchanges and market participants of the imposition of a trading pause by immediately disseminating a special indicator over the consolidated tape. Under the rules, once the Listing Market issues a trading pause, the other Exchanges are required to pause trading in the security on their markets. On September 10, 2010, the Commission approved the respective rule filings of the Exchanges to expand application of the pilot to the Russell

[3] Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010).

[4] The term "Listing Markets" refers collectively to NYSE, NYSE Amex, NYSE Arca, and NASDAQ.

1000® Index and specified Exchange Traded Products.[5]

The Exchange believes that the pilot program has been successful in reducing the negative impacts of sudden, unanticipated price movements in the securities covered by the pilot. The Exchange also believes that an additional four month extension of the pilot is warranted so that it may continue to assess whether additional securities need to be added and whether the parameters of the rule need to be modified to accommodate trading characteristics of different securities. Accordingly, the Exchange is filing to seek a four-month extension of the existing pilot.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act"),[6] which requires the rules of an exchange 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 proposed rule change also is designed to support the principles of Section 11A(a)(1)[7] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission has considered the Exchange's request to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program.[12] For this reason, the Commission designates the proposed rule change to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml;* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2010–088 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–088. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web Site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2010–088 and should be submitted on or before January 6, 2011.

[5] Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78k–1(a)(1).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of 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.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *Id.*

[12] For the purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–31563 Filed 12–15–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63514; File No. SR–EDGA–2010–23]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rule 11.14 To Extend the Operation of a Pilot Pursuant to the Rule Until April 11, 2011

December 9, 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 December 8, 2010, the EDGA Exchange, Inc. ("EDGA" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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 EDGA Rule 11.14 to extend the operation of a pilot pursuant to the Rule until April 11, 2011. The text of the proposed rule change is attached as Exhibit 5[3] and is available on the Exchange's Web site at *http://www.directedge.com,* at the Exchange's principal office, at the Public Reference Room of the Commission, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 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 proposes to amend EDGA Rule 11.14 to extend the operation of a pilot that allows the Exchange to provide for uniform market-wide trading pause standards for individual securities in the S&P 500 Index, securities included in the Russell 1000® Index ("Russell 1000"), and specified Exchange Traded Products ("ETP") that experience rapid price movement (collectively known as "Circuit Breaker Securities") through April 11, 2011.

Background

Pursuant to Rule 11.14, the Exchange is allowed to pause trading in any Circuit Break Securities when the primary listing market for such stock issues a trading pause in any Circuit Breaker Securities.

EDGA Rule 11.14 was approved by the Commission on June 10, 2010 on a pilot basis to end on December 10, 2010.[4] As the Exchange noted in its filing to adopt EDGA Rule 11.14, during the pilot period, the Exchange would continue to assess whether additional securities need to be added and whether the parameters of the rule would need to be modified to accommodate trading characteristics of different securities. The original pilot list of securities was all securities included in the S&P 500® Index ("S&P 500"). As noted in comment letters to the original filing to adopt EDGA Rule 11.14, concerns were raised that including only securities in the S&P 500 in the pilot rule was too narrow. In particular, commenters noted that securities that experienced volatility on May 6, 2010, including ETFs, should be included in the pilot.

In response to these concerns, various exchanges and national securities associations collectively determined to expand the list of pilot securities to include securities in the Russell 1000 and specified ETPs to the pilot beginning in September 2010.[5] The Exchange believed that adding these securities would address concerns that the scope of the pilot may be too narrow, while at the same time recognizing that during the pilot period, the markets will continue to review whether and when to add additional securities to the pilot and whether the parameters of the rule should be adjusted for different securities.

As noted above, during the pilot, the Exchange continued to re-assess, in consultation with other markets whether: (i) Specific ETPs should be added or removed from the pilot list; (ii) the parameters for invoking a trading pause continue to be the appropriate standard; and (iii) the parameters should be modified.

The Exchange believes that an extension of the pilot would continue to promote uniformity regarding decisions to pause trading and continue to reduce the negative impacts of sudden, unanticipated price movements in Circuit Breaker Securities. The Exchange believes that the pilot is working well, that it has been infrequently invoked in a six-month period, and that the Exchange will be in a better position to determine the efficacy of providing any additional functionality or changes to the pilot by continuing to assess its operation in consultation with other exchange and national securities associations. Therefore, the Exchange requests an extension of the pilot through April 11, 2011.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[6] which requires the rules of an exchange 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 proposed rule change also is designed to support the principles of Section 11A(a)(1)[7] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. Specifically, an extension will allow the Exchange additional time to determine the

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the Exhibit is attached to the filing itself, not to this notice.

[4] *See* Securities Exchange Act Release No. 62252 (June 10, 2010) (SR–EDGA–2010–01), 75 FR 34186 (June 16, 2010).

[5] *See* Securities Exchange Act Release No. 62884 (September 10, 2010) (SR–EDGA–2010–05), 75 FR 56618 (September 16, 2010).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78k–1(a)(1).

efficacy of providing any additional changes to the pilot.

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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6) [11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission has considered the Exchange's request to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program.[12] Therefore, the Commission designates the proposed rule change to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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–EDGA–2010–23 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–EDGA–2010–23. 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–EDGA–2010–23 and should be submitted on or before January 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–31562 Filed 12–15–10; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of 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.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *Id.*

[12] For the purposes only of waiving the operative delay of this proposal, 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).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63513; File No. SR–BYX–2010–007]

Self-Regulatory Organizations; BATS Y–Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Pilot Program Related to Trading Pauses Due to Extraordinary Market Volatility

December 9, 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 December 7, 2010, BATS Y–Exchange, Inc. ("BYX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to extend a pilot program related to Rule 11.18, entitled "Trading Halts Due to Extraordinary

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

Market Volatility." The Exchange proposes to extend the pilot program through April 11, 2011.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.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 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 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 filing is to extend the effectiveness of the Exchange's rule related to individual stock circuit breakers, which is contained in Rule 11.18(d) and Interpretation and Policy .05 to Rule 11.18. The rule, explained in further detail below, was approved to operate under a pilot program set to expire on December 10, 2010. The Exchange proposes to extend the pilot program to April 11, 2011.

On October 4, 2010, the Exchange filed an immediately effective filing to adopt various rule changes to bring BYX Rules up to date with the changes that had been made to the rules of BATS Exchange, Inc., the Exchange's affiliate, while BYX's Form 1 Application to register as a national security exchange was pending approval. Such changes included changes to the Exchange's Rule 11.18, on a pilot basis, to provide for uniform market-wide trading pause standards for individual securities in the S&P 500® Index, the Russell 1000® Index and specified Exchange Traded Products that experience rapid price movement.[3] The Exchange believes the benefits to market participants from the individual stock trading pause rule should be continued on a pilot basis.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[4] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[5] because it would 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. The proposed rule change is also consistent with Section 11A(a)(1) of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on 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: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[8] However, Rule 19b–4(f)(6)[9] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission has considered the Exchange's request to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program.[10] Therefore, the Commission designates the proposed rule change to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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–BYX–2010–007 on the subject line.

[3] Securities Exchange Act Release No. 63097 (October 13, 2010), 75 FR 64767 (October 20, 2010) (SR–BYX–2010–002).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of 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.

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] *Id.*

[10] For the purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–BYX–2010–007. 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–BYX–2010–007 and should be submitted on or before January 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–31561 Filed 12–15–10; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63512; File No. SR–NSX–2010–17]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend its Rules To Extend Pilot Program Regarding Trading Pauses in Individual Securities Due To Extraordinary Market Volatility

December 9, 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 December 7, 2010, National Stock Exchange, Inc. ("NSX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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

National Stock Exchange, Inc. ("NSX®" or "Exchange") is proposing to amend its rules to extend until April 11, 2011, a certain pilot program regarding trading pauses in individual securities due to extraordinary market volatility.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.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 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 parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

With this rule change, the Exchange is proposing to extend a pilot program currently in effect regarding trading pauses in individual securities due to extraordinary market volatility under NSX Rule 11.20B. Currently, unless otherwise extended or approved permanently, this pilot program will expire on December 10, 2010. The instant rule filing proposes to extend the pilot program until April 11, 2011.

NSX Rule 11.20B (Trading Pauses in Individual Securities Due to Extraordinary Market Volatility) was approved by the Securities and Exchange Commission (the "Commission") on June 10, 2010 on a pilot basis to end on December 10, 2010.[3] Similar rule changes were adopted by other markets in the national market system in a coordinated manner. As the Exchange noted in its filing to adopt NSX Rule 11.20B, during the pilot period, the Exchange, in conjunction with other markets in the national market system, would continue to assess whether additional securities need to be added and whether the parameters of the rule would need to be modified to accommodate trading characteristics of different securities. NSX Rule 11.20B was expanded to include additional exchange traded products on September 10, 2010.[4] The Exchange, in consultation with the Commission and other markets, has determined that the duration of this pilot program should be extended. Accordingly, pursuant to the instant rule filing, the expiration date of the pilot program referenced in Commentary .05 to Rule 11.20B is proposed to be changed from "December 10, 2010" to "April 11, 2011."

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) and Section 11A of the Act,[5] in general, and Section 6(b)(5) of the Act,[6] in particular, in that it is designed, among other things, to promote clarity, transparency and full disclosure, in so doing, to prevent fraudulent and manipulative acts and practices, to promote just and

[3] *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 36746 (June 28, 2010) (SR–NSX–2010 05).

[4] *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 59316 (September 27, 2010) (SR–NSX–2010–08).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

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. Moreover, the proposed rule change is not discriminatory in that it uniformly applies to all ETP Holders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on 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: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[9] However, Rule 19b–4(f)(6) [10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission has considered the Exchange's request to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program.[11] Therefore, the Commission designates the proposed rule change to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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–NSX–2010–17 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–NSX–2010–17. 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–NSX–2010–17 and should be submitted on or before January 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–31560 Filed 12–15–10; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of 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.

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] *Id.*

[11] For the purposes only of waiving the operative delay of this proposal, 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. 34–63507; File No. SR–EDGX–2010–22]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rule 11.14 To Extend the Operation of a Pilot Pursuant to the Rule Until April 11, 2011

December 9, 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 December 8, 2010, the EDGX Exchange, Inc. ("EDGX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend EDGX Rule 11.14 to extend the operation of a pilot pursuant to the Rule until April 11, 2011. The text of the proposed rule change is attached as Exhibit 5 [3] and is available on the Exchange's Web site at—*http://www.directedge.com,* at the Exchange's principal office, at the Public Reference Room of the Commission, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 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 proposes to amend EDGX Rule 11.14 to extend the operation of a pilot that allows the Exchange to provide for uniform market-wide trading pause standards for individual securities in the S&P 500 Index, securities included in the Russell 1000 ® Index ("Russell 1000"), and specified Exchange Traded Products ("ETP") that experience rapid price movement (collectively known as "Circuit Breaker Securities") through April 11, 2011.

Background

Pursuant to Rule 11.14, the Exchange is allowed to pause trading in any Circuit Break Securities when the primary listing market for such stock issues a trading pause in any Circuit Breaker Securities.

EDGX Rule 11.14 was approved by the Commission on June 10, 2010 on a pilot basis to end on December 10, 2010.[4] As the Exchange noted in its filing to adopt EDGX Rule 11.14, during the pilot period, the Exchange would continue to assess whether additional securities need to be added and whether the parameters of the rule would need to be modified to accommodate trading characteristics of different securities. The original pilot list of securities was all securities included in the S&P 500® Index ("S&P 500"). As noted in comment letters to the original filing to adopt EDGX Rule 11.14, concerns were raised that including only securities in the S&P 500 in the pilot rule was too narrow. In particular, commenters noted that securities that experienced volatility on May 6, 2010, including ETFs, should be included in the pilot.

In response to these concerns, various exchanges and national securities associations collectively determined to expand the list of pilot securities to include securities in the Russell 1000 and specified ETPs to the pilot beginning in September 2010.[5] The Exchange believed that adding these securities would address concerns that the scope of the pilot may be too narrow, while at the same time recognizing that during the pilot period, the markets will continue to review whether and when to add additional securities to the pilot and whether the parameters of the rule should be adjusted for different securities.

As noted above, during the pilot, the Exchange continued to re-assess, in consultation with other markets whether: (i) Specific ETPs should be added or removed from the pilot list; (ii) the parameters for invoking a trading pause continue to be the appropriate standard; and (iii) the parameters should be modified.

The Exchange believes that an extension of the pilot would continue to promote uniformity regarding decisions to pause trading and continue to reduce the negative impacts of sudden, unanticipated price movements in Circuit Breaker Securities. The Exchange believes that the pilot is working well, that it has been infrequently invoked in a six-month period, and that the Exchange will be in a better position to determine the efficacy of providing any additional functionality or changes to the pilot by continuing to assess its operation in consultation with other exchange and national securities associations. Therefore, the Exchange requests an extension of the pilot through April 11, 2011.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[6] which requires the rules of an exchange 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 proposed rule change also is designed to support the principles of Section 11A(a)(1) [7] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. Specifically, an extension will allow the Exchange additional time to determine the efficacy of providing any additional changes to the pilot.

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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9]

[3] The Commission notes that the Exhibit is attached to the filing itself, not to this notice.

[4] *See* Securities Exchange Act Release No. 62252 (June 10, 2010) (SR–EDGX–2010–01), 75 FR 34186 (June 16, 2010).

[5] *See* Securities Exchange Act Release No. 62884 (September 10, 2010) (SR–EDGX–2010–05), 75 FR 56618 (September 16, 2010).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78k–1(a)(1).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission has considered the Exchange's request to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program.[12] Therefore, the Commission designates the proposed rule change to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2010–22 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–EDGX–2010–22. 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://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–EDGX–2010–22 and should be submitted on or before January 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–31559 Filed 12–15–10; 8:45 am]

BILLING CODE 8011–01–P

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 notes that the Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *Id.*

[12] For the purposes only of waiving the operative delay of this proposal, 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).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63523; File No. SR–NASDAQ–2010–165]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Change Implementation Date for Direct Access Fees

December 10, 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 December 9, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes a rule change to assess "direct access" fees on customers receiving NASDAQ data within NASDAQ's co-location facility beginning on January 1, 2011, rather than December 1, 2010. Direct access fees applicable to such customers were Noticed [sic] in SR–NASDAQ–2010–152,[3] immediately effective as of the filing on November 24, 2010, with an implementation date of December 1, 2010. In order to assure complete and clear prior notification to all affected customers, the Exchange is changing the implementation date of the fee schedule change to January 1, 2011.

This change does not require a change in the language of the rule itself.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 63441 (December 6, 2010) (SR–NASDAQ–2010–152).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–NASDAQ–2010–152,[4] the Exchange amended its fee schedule to correct an anomaly that effectively exempted certain customers residing within NASDAQ's co-location facility from paying a monthly fee for direct access to NASDAQ data, while customers that receive data from an extranet and reside outside the co-location facility are assessed the fee. The inequity was a result of the definition of "direct access" in the fee schedule, which did not by its terms clearly apply to data feeds provided to customers through distributors located within the co-located facility. That rule filing expanded the definition of "direct access" and operated to assess the same direct access fee on all firms that have access to NASDAQ's raw data feeds, whether co-located or not.

The Notice of Filing and Immediate Effectiveness for this fee contained an implementation date of December 1, 2010. The effort to identify and notify all customers potentially affected by this rule change, however, has proven more time-consuming than expected. To assure that all customers that will be assessed the direct access fee have adequate prior notification, the Exchange is delaying implementation of the fee until January 1, 2011. None of the co-located customers that would have been newly subject to the direct access fee during December 2010 as a result of the fee amendment in SR–NASDAQ–2010–152 will be charged this fee during December 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections 6(b)(5) of the Act,[6] in particular. The proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The filing ensures clear and complete prior notification to customers affected by a fee change that permits transparent, uniform fees for direct access to Exchange data for all customers, whether co-located or not.

In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which The [sic] Exchange operates or controls. The Exchange notes that delayed implementation of the amendment will best serve the interests of customers affected by the fee change.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[9] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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–2010–165 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–2010–165. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–165 and should be submitted on or before January 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–31633 Filed 12–15–10; 8:45 am]

BILLING CODE 8011–01–P

[4] *Id.*

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(a)(ii).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63519; File No. SR–EDGA–2010–22]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

December 10, 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 December 3, 2010, the EDGA Exchange, Inc. (the "Exchange" or the "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by 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 its fee schedule applicable to Members [3] and non-members of the Exchange pursuant to EDGA Rule 15.1(a) and (c). Pursuant to the proposed rule change, the Exchange will commence charging fees for Members and non-members for certain logical ports used to enter orders into the Exchange's systems. The Exchange also proposes to amend its fees for physical ports. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.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 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to begin charging a monthly fee for logical ports used to enter orders in the Exchange's trading system. The Exchange recently began charging for "physical" ports, which are ports that are used by a Member or non-member to literally plug into the Exchange at the data centers where the Exchange's servers are located (*i.e.,* either a cross-connection or an external telecommunication circuit). By contrast, a "logical" port (also commonly referred to as a TCP/IP port) represents a port established by the Exchange within the Exchange's system for trading and billing purposes. Each logical port established is specific to a Member or non-member and grants that Member or non-member the ability to operate a specific application, such as FIX or High Performance API for order entry, or to receive market data. Multiple logical ports can be created and exist over a single physical port. The Exchange proposes to charge $500 per month for any logical ports other than ports used to receive or request retransmission of market data. Thus, this proposed charge will apply to all Exchange FIX, High Performance API, and DROP ports for both accessing the Exchange directly (Direct) [4] or through the ECN Translator.[5] Members and non-members will receive the first ten (10) sessions free of charge for Direct Sessions only and thereafter be charged the $500 fee per month. Free sessions will not apply to ECN Translator sessions to incent members and non-members to use Direct Sessions.

Based on the proposal, the change applies to Members that obtain ports for direct access to the Exchange and non-member service bureaus that act as conduit for orders entered by Exchange Members that are their customers. The Exchange believes that the imposition of logical port fees will help the Exchange to continue to maintain and improve its infrastructure, while also encouraging Exchange customers to request and enable only the ports that are necessary for their operations related to the Exchange.

[4] Direct Sessions will consist on one port at the Exchange's primary data center and one port at the Exchange's secondary data center.

[5] The ECN translator allows a Member or non-member who previously connected to Direct Edge's ECN to be re-directed automatically to EDGA Exchange, Inc. It can only be accessed through a FIX port.

The Exchange notes that other market centers provide similar services to their Members and non-members.[6]

Physical Ports

The Exchange currently charges Members and non-members the following annual fees for physical ports based on the connectivity service type:

Connection service type	Annual fee per physical port
1 Gb Copper	$5,000
1 Gb Fiber	7,500
10 Gb Fiber	10,000

Beginning January 1, 2011, the Exchange proposes to amend these physical port fees to offer Members and non-members the option of being charged month to month. The fees will be 20% higher on a monthly basis to offset increased administrative costs associated with processing monthly payments. The proposed monthly fees based on connectivity service type are as follows:

Connection service type	Monthly fee per physical port
1 Gb Copper	$500
1 Gb Fiber	750
10 Gb Fiber	1,000

The Exchange will implement the proposed rule change on January 1, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of the Act,[7] in general, and furthers the objectives of Section 6(b)(4),[8] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that its proposed logical and physical port fees are reasonable in light

[6] *See, e.g.,* Rule 7015 of The NASDAQ Stock Market LLC ("NASDAQ") (setting forth, among other fees for access services, port fees charged to members and non-members used to enter orders into NASDAQ trading systems). *See also* Securities Exchange Act Release Nos. 60546 (August 20, 2009), 74 FR 43184 (August 26, 2009) (SR–NASDAQ–2009–058) (increasing the monthly fee for each port used to enter orders in NASDAQ trading systems from $400 per month to $500 per month); 59337 (February 2, 2009), 74 FR 6441 (February 9, 2009) (SR–BX–2009–004) (establishing fees for ports used by members to enter orders). *See* Securities Exchange Act Release No. 60586 (August 28, 2009), 74 FR 46256 (September 8, 2009) (SR–BATS–2009–026) (establishing fees for ports used by members and non-members to enter orders).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

of the benefits to members of direct market access. In addition, the Exchange believes that its fees are equitably allocated among its constituents based upon the number of access ports that they require to submit orders to the Exchange. Furthermore, the fees associated with logical and physical ports will be equitably allocated to all constituents as the fees will be uniform in application to all Members and non-members. Finally, the Exchange believes that the fees obtained will enable it to cover its infrastructure costs associated with allowing Members and non-members to establish logical and physical ports to connect to the Exchange's systems and continue to maintain and improve its infrastructure, market technology, and services.

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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [9] and Rule 19b–4(f)(2) [10] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–EDGA–2010–22 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–EDGA–2010–22. 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 will also 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–EDGA–2010–22 and should be submitted on or before January 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–31626 Filed 12–15–10; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63525; File No. SR–CBOE–2010–104]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Professional and Voluntary Professional Fees

December 10, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 2, 2010, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by CBOE. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by CBOE under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its Fees Schedule as it relates to fees for certain orders. The text of the proposed rule change is available on the Exchange's Web site *http://www.cboe.org/legal,* at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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. CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to adopt fees for Professional and Voluntary Professional transactions in S&P 500 Index option series ("SPX") that trade on the Hybrid Trading System. The fees, which are described in more detail below, will be effective December 2, 2010.

By way of background, the Exchange currently operates the Hybrid Trading System and the Hybrid 3.0 Platform.[5] For the Hybrid Trading System, the Exchange has Professional and Voluntary Professional designations for non-broker-dealer customer orders.[6] However, these two designations are not available for non-broker-dealer customer orders in option classes trading on the Hybrid 3.0 Platform (which currently is only SPX).[7] Also by way of background, the particular trading platform on which index options trade is designated by the Exchange on a class-by-class basis pursuant to Rule 8.14, *Index Hybrid Trading System Classes: Market-Maker Participants.* However, CBOE recently amended Rule 8.14 to provide that, for each Hybrid 3.0 class, the Exchange may determine to authorize a group of series of the class for trading on the Hybrid Trading System.[8]

Currently, all series of the SPX option class trade on the Hybrid 3.0 Platform. Therefore, at this time there are no Professional or Voluntary Professional designations for SPX. Pursuant to Rule 8.14, as amended, however, the Exchange may determine to designate a group of series in the SPX index option class for trading on the Hybrid Trading System. As a result, the Professional and Voluntary Professional designations would be applicable to any such SPX series trading on the Hybrid Trading System.

In anticipation of the Exchange designating a group of SPX series for trading on the Hybrid Trading System, the Exchange is proposing to adopt fees for Professional and Voluntary Professional transactions in SPX that trade on the Hybrid Trading System. The Exchange proposes to charge such Professional and Voluntary Professional orders in the same manner that it charges broker-dealer orders. Specifically, the Exchange is proposing to amend the text of its Fees Schedule to assess a fee of $0.40 per contract for Professional and Voluntary Professional transactions in SPX option series that trade on the Hybrid Trading System. The Exchange notes that, in accordance with footnote 14 of its Fees Schedule, the index option surcharge fee would also apply to Professional and Voluntary Professional transactions in such SPX series. The Exchange also notes that the Options Regulatory Fee ("ORF") contained in section 12 of the Fees Schedule will apply to Professional and Voluntary Professional transactions in such SPX series. In addition, the Exchange notes that Professional and Voluntary Professional orders in such SPX series will not be subject to the order handling system order cancellation fee contained in section 14 of the Fees Schedule. No changes to the text are needed to reflect the applicability of these surcharge, ORF and cancellation fee provisions.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(4) of the Act,[10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders. The proposed fee changes would provide clarity on how the Exchange intends to implement the Professional and Voluntary Professional designation for SPX series trading the Hybrid Trading System.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii) of the Act[11] and subparagraph (f)(2) of Rule 19b–4[12] thereunder.

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–2010–104 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–2010–104. 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

[5] The "Hybrid Trading System" refers to the Exchange's trading platform that allows Market-Makers to submit electronic quotes in their appointed classes. The "Hybrid 3.0 Platform" is an electronic trading platform on the Hybrid Trading System that allows one or more quoters to submit electronic quotes, which represent the aggregate Market-Maker quoting interest in the series for the trading crowd. *See* Rule 1.1(aaa).

[6] The term "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account. A Professional will be treated in the same manner as a broker or dealer in securities for purposes of various CBOE Rules. The term "Voluntary Professional" means any person or entity that is not a broker or dealer in securities that elects, in writing, to be treated in the same manner as a broker or dealer in securities for purposes of various CBOE Rules. The Professional and Voluntary Professional designations are not available in Hybrid 3.0 classes. *See* CBOE Rules 1.1(fff) and (ggg).

[7] *Id.*

[8] *See* Securities Exchange Act Release No. 63186 (October 27, 2010), 75 FR 67417 (November 2, 2010) (SR–CBOE–2010–095).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

submission,[13] 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2010–104 and should be submitted on or before January 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–31634 Filed 12–15–10; 8:45 am]

BILLING CODE 8011–01–P

[13] The text of the proposed rule change is available on CBOE's Web site at *http://www.cboe.org/Legal*, on the Commission's Web site at *http://www.sec.gov*, at CBOE, and at the Commission's Public Reference Room.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63520; File No. SR–EDGX–2010–21]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

December 10, 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 December 3, 2010, the EDGX Exchange, Inc. (the "Exchange" or the "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fee schedule applicable to Members [3] and non-members of the Exchange pursuant to EDGX Rule 15.1(a) and (c). Pursuant to the proposed rule change, the Exchange will commence charging fees for Members and non-members for certain logical ports used to enter orders into the Exchange's systems. The Exchange also proposes to amend its fees for physical ports. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to begin charging a monthly fee for logical ports used to enter orders in the Exchange's trading system. The Exchange recently began charging for "physical" ports, which are ports that are used by a Member or non-member to literally plug into the Exchange at the data centers where the Exchange's servers are located (*i.e.,* either a cross-connection or an external telecommunication circuit). By contrast, a "logical" port (also commonly referred to as a TCP/IP port) represents a port established by the Exchange within the Exchange's system for trading and billing purposes. Each logical port established is specific to a Member or non-member and grants that Member or non-member the ability to operate a specific application, such as FIX or High Performance API for order entry, or to receive market data. Multiple logical ports can be created and exist over a single physical port. The Exchange proposes to charge $500 per month for any logical ports other than ports used to receive or request retransmission of market data. Thus, this proposed charge will apply to all Exchange FIX, High Performance API, and DROP ports for both accessing the Exchange directly (Direct) [4] or through the ECN Translator.[5] Members and non-members will receive the first ten (10) sessions free of charge for Direct Sessions only and thereafter be charged the $500 fee per month. Free sessions will not apply to ECN Translator sessions to incent members and non-members to use Direct Sessions.

Based on the proposal, the change applies to Members that obtain ports for direct access to the Exchange and non-member service bureaus that act as conduit for orders entered by Exchange Members that are their customers. The Exchange believes that the imposition of logical port fees will help the Exchange to continue to maintain and improve its infrastructure, while also encouraging Exchange customers to request and enable only the ports that are necessary for their operations related to the Exchange.

The Exchange notes that other market centers provide similar services to their Members and non-members.[6]

Physical Ports

The Exchange currently charges Members and non-members the following annual fees for physical ports based on the connectivity service type:

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

[4] Direct Sessions will consist on one port at the Exchange's primary data center and one port at the Exchange's secondary data center.

[5] The ECN translator allows a Member or non-member who previously connected to Direct Edge's ECN to be re-directed automatically to EDGX Exchange, Inc. It can only be accessed through a FIX port.

[6] *See, e.g.,* Rule 7015 of The NASDAQ Stock Market LLC ("NASDAQ") (setting forth, among other fees for access services, port fees charged to members and non-members used to enter orders into NASDAQ trading systems). *See also* Securities Exchange Act Release Nos. 60546 (August 20, 2009), 74 FR 43184 (August 26, 2009) (SR–NASDAQ–2009–058) (increasing the monthly fee for each port used to enter orders in NASDAQ trading systems from $400 per month to $500 per month); 59337 (February 2, 2009), 74 FR 6441 (February 9, 2009) (SR–BX–2009–004) (establishing fees for ports used by members to enter orders). *See* Securities Exchange Act Release No. 60586 (August 28, 2009), 74 FR 46256 (September 8, 2009) (SR–BATS–2009–026) (establishing fees for ports used by members and non-members to enter orders).

Connection service type	Annual fee per physical port
1 Gb Copper	$5,000
1 Gb Fiber	7,500
10 Gb Fiber	10,000

Beginning January 1, 2011, the Exchange proposes to amend these physical port fees to offer Members and non-members the option of being charged month to month. The fees will be 20% higher on a monthly basis to offset increased administrative costs associated with processing monthly payments. The proposed monthly fees based on connectivity service type are as follows:

Connection service type	Annual fee per physical port
1 Gb Copper	$500
1 Gb Fiber	750
10 Gb Fiber	1,000

The Exchange will implement the proposed rule change on January 1, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of the Act,[7] in general, and furthers the objectives of Section 6(b)(4),[8] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that its proposed logical and physical port fees are reasonable in light of the benefits to members and non-members. In addition, the Exchange believes that its fees are equitably allocated among its constituents based upon the number of access ports that they require to submit orders to the Exchange. Furthermore, the fees associated with logical and physical ports will be equitably allocated to all constituents as the fees will be uniform in application to all Members and non-members. Finally, the Exchange believes that the fees obtained will enable it to cover its infrastructure costs associated with allowing Members and non-members to establish logical and physical ports to connect to the Exchange's systems and continue to maintain and improve its infrastructure, market technology, and services.

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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act[9] and Rule 19b–4(f)(2)[10] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2010–21 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–EDGX–2010–21. 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 will also 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–EDGX–2010–21 and should be submitted on or before January 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–31627 Filed 12–15–10; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3).

[10] 17 CFR 240.19b-4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63521; File No. SR–BX–2010–089]

Self-Regulatory Organizations; The NASDAQ OMX BX Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Change Implementation Date for Direct Access Fees

December 10, 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 December 9, 2010, The NASDAQ BX OMX, Inc. LLC ("BX" or "The Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a rule change to assess "direct access" fees on customers receiving Exchange data within the Exchange's co-location facility beginning on January 1, 2011, rather than December 1, 2010. Direct access fees applicable to such customers were Noticed [sic] in SR–BX–2010–081,[3] immediately effective as of the filing on November 24, 2010, with an implementation date of December 1, 2010. In order to assure complete and clear prior notification to all affected customers, the Exchange is changing the implementation date of the fee schedule change to January 1, 2011.

This change does not require a change in the language of the rule itself.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BX 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. BX 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–BX–2010–081,[4] the Exchange amended its fee schedule to correct an anomaly that effectively exempted certain customers residing within the Exchange's co-location facility from paying a monthly fee for direct access to Exchange data, while customers that receive data from an extranet and reside outside the co-location facility are assessed the fee. The inequity was a result of the definition of "direct access" in the fee schedule, which did not by its terms clearly apply to data feeds provided to customers through distributors located within the co-located facility. That rule filing expanded the definition of "direct access" and operated to assess the same direct access fee on all firms that have access to the Exchange's raw data feeds, whether co-located or not.

The Notice of Filing and Immediate Effectiveness for this fee contained an implementation date of December 1, 2010. The effort to identify and notify all customers potentially affected by this rule change, however, has proven more time-consuming than expected. To assure that all customers that will be assessed the direct access fee have adequate prior notification, the Exchange is delaying implementation of the fee until January 1, 2011. None of the co-located customers that would have been newly subject to the direct access fee during December 2010 as a result of the fee amendment in SR–BX–2010–081 will be charged this fee during December 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections 6(b)(5) of the Act,[6] in particular. The proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The filing ensures clear and complete prior notification to customers affected by a fee change that permits transparent, uniform fees for direct access to Exchange data for all customers, whether co-located or not.

In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which The [sic] Exchange operates or controls. The Exchange notes that delayed implementation of the amendment will best serve the interests of customers affected by the fee change.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[9] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2010–089 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–089. 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

[3] Securities Exchange Act Release No. 63442 (December 6, 2010) (SR–BX–2010–081).

[4] *Id.*

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(a)(ii).

Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2010–089 and should be submitted on or before January 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–31628 Filed 12–15–10; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63522; File No. SR–Phlx-2010–175]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC To Change Implementation Date for Direct Access Fees

December 10, 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 December 9, 2010, NASDAQ OMX PHLX LLC ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a rule change to assess "direct access" fees on customers receiving Exchange data within the Exchange's co-location facility beginning on January 1, 2011, rather than December 1, 2010. Direct access fees applicable to such customers were Noticed [sic] in SR–PHLX–2010–170,[3] immediately effective as of the filing on November 24, 2010, with an implementation date of December 1, 2010. In order to assure complete and clear prior notification to all affected customers, the Exchange is changing the implementation date of the fee schedule change to January 1, 2011.

This change does not require a change in the language of the rule itself.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–PHLX–2010–170,[4] the Exchange amended its fee schedule to correct an anomaly that effectively exempted certain customers residing within the Exchange's co-location facility from paying a monthly fee for direct access to Exchange data, while customers that receive data from an extranet and reside outside the co-location facility are assessed the fee. The inequity was a result of the definition of "direct access" in the fee schedule, which did not by its terms clearly apply to data feeds provided to customers through distributors located within the co-located facility. That rule filing expanded the definition of "direct access" and operated to assess the same direct access fee on all firms that have access to the Exchange's raw data feeds, whether co-located or not.

[3] Securities Exchange Act Release No. 63443 (December 6, 2010) (SR–Phlx–2010–170).

[4] *Id.*

The Notice of Filing and Immediate Effectiveness for this fee contained an implementation date of December 1, 2010. The effort to identify and notify all customers potentially affected by this rule change, however, has proven more time-consuming than expected. To assure that all customers that will be assessed the direct access fee have adequate prior notification, the Exchange is delaying implementation of the fee until January 1, 2011. None of the co-located customers that would have been newly subject to the direct access fee during December 2010 as a result of the fee amendment in SR–PHLX–2010–170 will be charged this fee during December 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections 6(b)(5) of the Act,[6] in particular. The proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The filing ensures clear and complete prior notification to customers affected by a fee change that permits transparent, uniform fees for direct access to Exchange data for all customers, whether co-located or not.

In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which The [sic] Exchange operates or controls. The Exchange notes that delayed implementation of the amendment will best serve the interests of customers affected by the fee change.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[9] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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–2010–175 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–2010–175. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx-2010–175 and should be submitted on or before January 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–31630 Filed 12–15–10; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Alternate Energy Holdings, Inc.; Order of Suspension of Trading

December 14, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Alternate Energy Holdings, Inc. ("AEHI") because of questions regarding the accuracy and adequacy of disclosures by AEHI concerning, among other things: (1) The stock sales of certain AEHI officers, (2) the status and viability of funding to build a nuclear reactor, and (3) executive compensation. AEHI is quoted on the OTC Bulletin Board and on the Pink Sheets operated by Pink OTC Markets, Inc. under the ticker symbol "AEHI."

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EST, on December 14, 2010 through 11:59 p.m. EST, on December 28, 2010.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–31698 Filed 12–14–10; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2010–1220]

Airport Improvement Program: Proposed Changes to Benefit Cost Analysis (BCA) Threshold

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

ACTION: Notice of Availability of Draft Guidance and Request for Comments.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this Notice to advise that FAA has developed draft guidance modifying its policy requiring benefit cost analyses (BCA) for capacity projects when applying for Airport Improvement Program (AIP) grants for capacity projects at the discretion of the Secretary of Transportation. This modification proposes to raise the threshold at which BCAs are required, from $5 million to $10 million in AIP Discretionary funds.

FAA invites airport sponsors and other interested parties to comment on the draft guidance. FAA will consider these comments in promulgating final BCA guidance for airport sponsors.

DATES: Send your comments on or before January 31, 2011. The FAA will consider comments received on the proposed policy guidance. Any necessary or appropriate revision to the guidance resulting from the comments received will be adopted as of the date of a subsequent publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Dennis Walsh, Financial Analysis and Passenger Facility Charge Branch (APP–510), Room 619, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591;

telephone: (202) 493–4890, e-mail: *dennis.walsh@faa.gov.* A draft Program Guidance Letter is available on-line at *http://www.faa.gov/airports/aip/bc_analysis/.* In addition, hard copies can be reviewed at Room 619, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Comments Invited: **ADDRESSES:** You may send comments [identified by Docket Number FAA–2010–1220] using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Title 49 U.S.C. Section 47115(d) specifies that, in selecting projects for discretionary grants to preserve and enhance capacity at airports, the Secretary must consider the benefits and costs of the projects. In 1994, FAA established its policy on Benefit Cost Analysis (BCA) requirements for airport capacity projects; factors leading to these requirements included:

a. The need to improve the effectiveness of Federal airport infrastructure investments in light of a decline in Federal AIP budgets;

b. Issuance of Executive Order 12893, "*Principles for Federal Infrastructure Investments*" (January 26, 1994);

c. Guidance from Congress citing the need for economic airport investment criteria; and

d. Statutory language from 1994 included in Title 49 U.S.C. Section 47115(d) specifies that in selecting projects for discretionary grants to preserve and enhance capacity at airports, the Secretary shall consider the benefits and costs of the projects (*See* 49 U.S.C. 47115. Discretionary Fund).

The FAA implemented the BCA policy to include this requirement for capacity projects at all categories of airports in order to limit FAA's risks when investing large amounts of discretionary funds. The FAA uses the conclusions reached in the BCA review to determine policy and funding decisions on possible future Federal investments.

In 1997, FAA implemented a new BCA policy which transferred the responsibility of preparing the BCA from FAA to the sponsor. In addition, the policy lowered the dollar threshold from $10 million in AIP Discretionary funds (established in 1994) to $5 million, citing three reasons related to Executive Order 12893, technical feasibility of lowering the threshold and workload considerations.

The change to the $5 million threshold was made policy in 1997 and formalized in a 1999 **Federal Register** notice, *Federal Aviation Administration Policy and Final Guidance Regarding Benefit Cost Analysis (BCA) on Airport Capacity Projects for FAA Decisions on Airport Improvement Program (AIP) Discretionary Grants and Letters of Intent (LOI),* 64 FR 70107 (December 15, 1999).

Since 1997, policy has required sponsors to conduct BCAs for capacity projects for which more than $5 million in AIP Discretionary funding will be requested. In developing the draft guidance increasing the threshold, FAA reviewed the reasons why the BCA threshold amount was lowered in 1997 and concluded that the previous reasons do not present a sufficient basis to warrant maintaining the $5 million level threshold today.

FAA has gained valuable experience assessing the implementation of the policy and the need to further clarify the threshold requirements for BCA. The $5 million threshold has remained unchanged for over 13 years while the cost of construction has risen significantly. A construction cost of $5 million in 1997 was equivalent to $9.8 million in July 2008. The $5 million threshold has required both FAA and sponsors of non-primary and non-hub primary airports to devote substantial financial and staff resources in preparing and evaluating BCAs for relatively small projects with readily apparent capacity benefits.

Based on the increase in construction costs, FAA has concluded that $10 million in AIP Discretionary funds is the appropriate threshold for fiscal year 2011 and beyond. Further explanation for this conclusion is detailed in the draft PGL. Under the draft guidance, the BCA threshold is being increased to $10 million, the FAA would retain the right to require a BCA for any capacity project, in order to evaluate the reasonableness of project costs relative to project benefits.

Additionally, FAA is inviting airport sponsors and other interested parties to comment on the new $10 million threshold for which a BCA must be performed.

Issued in Washington, DC on December 8, 2010.

Frank San Martin,

Manager, Airports Financial Assistance Division.

[FR Doc. 2010–31614 Filed 12–15–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Compatibility Program Notice, Fort Worth Alliance Airport, Fort Worth, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the city of Fort Worth, Texas under the provisions of 49 U.S.C. (the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act") and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On September 7, 2006, the FAA determined that the noise exposure maps submitted by the city of Fort Worth, Texas under Part 150 were in compliance with applicable requirements. Subsequent to this determination, the future condition noise exposure map was revised to reflect additional military operations proposed by the Department of Defense. This revision delayed acceptance of the future condition noise exposure map until May 5, 2009. On December 1, 2010, the FAA approved the Fort Worth Alliance Airport noise compatibility program. Most of the recommendations of the program were approved. No program elements relating to new or revised flight procedures for noise abatement were proposed by the city of Fort Worth.

DATES: *Effective Date:* The effective date of the FAA's approval of the Fort Worth Alliance Airport noise compatibility program is December 1, 2010.

FOR FURTHER INFORMATION CONTACT: DOT/FAA Southwest Region, Mr. Paul Blackford, ASW–652B, 2601 Meacham Boulevard, Fort Worth, Texas 76137. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Fort Worth Alliance Airport, effective December 1, 2010.

Under section 47504 of the Act, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Fort Worth, Texas.

The city of Fort Worth submitted to the FAA on July 30, 2010, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from August 9, 2005 through July 30, 2010. The final Fort Worth Alliance Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on May 5, 2009. Notice of this determination was published in the **Federal Register** on May 14, 2009.

The Fort Worth Alliance Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from July 30, 2010, to the year 2014. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 47504 of the Act. The FAA began its review of the program on July 30, 2010 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained two proposed actions for noise mitigation off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the FAA effective December 1, 2010.

Outright approval was granted for all of the specific program elements. Approved action items include remedial land use mitigation measures consisting of land acquisition and a sound insulation program.

These determinations are set forth in detail in a Record of Approval signed by the Southwest Region, Airports Division Manager on December 1, 2010. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the city of Fort Worth. The Record of Approval also will be available on-line at *http://www.faa.gov/arp/environmental/14cfr150/index14.cfm.*

Issued in Fort Worth, Texas, December 3, 2010.

Kelvin L. Solco,

Manager, Airports Division.

[FR Doc. 2010–31510 Filed 12–15–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Special Permits Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Delmer F. Billings, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue, Southeast, Washington, DC 20590–0001, (202) 366–4535.

Key to "Reason for Delay"

1. Awaiting additional information from applicant.
2. Extensive public comment under review.

3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.

4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New application.

M—Modification request.

PM—Party to application with modification request.

Issued in Washington, DC, on December 9, 2010.

Donald Burger,

Chief, Special Permits and Approvals Branch.

Application No.	Applicant	Reason for delay	Estimated date of completion
	Modification to Special Permits		
10922–M	FIBA Technologies, Inc. Millbury, MA	4	12–31–2010
14167–M	Trinityrail, Dallas, TX	4	03–31–2011
13736–M	ConocoPhillips, Anchorage, AK	4	03–31–2011
6293–M	ATK Space Systems, Inc. (Former Grantee: ATK Thiokol, Inc.), Corine, UT	4	03–31–2011
14741–M	Weatherford International, Fort Worth, TX	4	03–31–2011
14650–M	Air Transport International, L.L.C., Little Rock, AR	4	03–31–2011
14926–M	Lynden Air Cargo, Anchorage, AK	4	11–30–2010
8826–M	Phoenix Air Group, Inc., Cartersville, GA	4	03–31–2011
10869–M	Norris Cylinder Company, Longview, TX	4	03–31–2011
10049–M	Martin Transport, Inc., Kilgore, TX	4	01–31–2011
8815–M	Florex Explosives, Inc., Crystal River, FL	4	01–31–2011
14447–M	SNF Holding Company , Riceboro, GA	4	01–31–2011
12561–M	Rhodia, Inc., Cranbury. NJ	4	01–31–2011
14617–M	Western International, Gas Cylinders, Inc., Bellville, TX	4	01–31–2011
3121–M	Department of Defense, Scott Air Force Base, IL	4	02–15–2011
12783–M	CryoSurgery, Inc., Nashville, TN	4	02–15–2011
14573–M	Polar Tank Trailer, LLC–FC, Holdingford, MN	4	02–15–2011
I0407–M	Thermo Process Instruments, LP (Former Grantee: Thermo MeasureTech), Sugar Land, TX	4	02–15–2011
14546–M	Linde Gas North America LLC–FC Murray Hill, NJ	4	02–15–2011
14763–M	Weatherford International, Forth Worth, TX	4	02–15–2011
10646–M	Schlumberger Technologies Corporation, Sugar Land, TX	4	02–15–2011
12929–M	Air Products & Chemicals, Inc., Allentown, PA	4	02–15–2011
11789–M	Mallard Creek Polymers, Inc., Charlotte, NC	4	02–15–2011
8445–M	Clean Harbors Environmental Services, Inc.—Fails MEF, Norwell, MA	4	02–15–2011
14860–M	Alaska Airlines, Seattle, WA	4	01–31–2011
	New Special Permit Applications		
14810–N	Olin Corporation, Chior Alkai Products Division, Cleveland, TN	4	03–31–2011
14813–N	Organ Recovery Systems, Des Plaines, IL	4	03–31–2011
14835–N	The Reusable Industrial Packaging Assoc., Washington, DC	4	03–31–2011
14839–N	Matheson Tn-Gas, Inc., Basking Ridge, NJ	3	11–30–2010
14851–N	Alaska Airlines, Inc., Seattle, WA	4	03–31–2011
14868–N	Wal-Mart Stores, Inc., Bentonville, AR	4	03–31–2011
14878–N	Humboldt County Waste Management Authority, Eureka, CA	4	03–31–2011
14872–N	Arkema, Inc., Philadelphia, PA	4	03–31–2011
14929–N	Alaska Island Air, Inc., Togiak, AK	4	11–30–2010
14945–N	Vulcan Construction Materials LP SE dlb/a Vulcan Materials Company, Atlanta, GA	4	03–31–2011
1495 1–N	Lincoln Composites, Lincoln, NE	1	11–30–2010
14960–N	Cheltec, Inc., Sarasota, FL	4	03–31–2011
14965–N	JiangXi Oxygen Plant Co., Ltd., Jiangxi Province	4	11–30–2010
14972–N	Air Products and Chemicals, Allentown, PA	4	11–30–2010
14977–N	Air Products and Chemicals, Inc., Allentown, PA	4	03–31–2011
14985–N	Southern States, LLC, Atlanta, GA	4	02–15–2011
14992–N	VIP Transport, Inc., Corona, CA	4	02–28–2010
14989–N	Vinci-technologies	4	02–28–2011
14994–N	Auto Chior System, Memphis, TN	4	02–28–2010
15003–N	Gebauer Company, Cleveland, OH	4	02–28–2011
15027–N	Northrop Grumman Corporation, Baltimore, MD	4	02–28–2011
15028–N	Roeder Cartage Company, LIMA, OH	4	02–28–2011
15031–N	Euro Asia Packaging (Guangdong) Co., Ltd. ZhongShan, Canton	4	02–28–2011
15036–N	UTLX Manufacturing, Incorporated, Alexandria, LA	4	02–28–2011
15175–N	Horizon Air Industries, Inc., Seattle, WA	4	02–28–2011

[FR Doc. 2010–31403 Filed 12–15–10; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Financial Management Service

Privacy Act of 1974, as Amended; System of Records

AGENCY: Financial Management Service, Treasury.

ACTION: Notice of proposed new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Financial Management Service gives notice of a proposed new Privacy Act system of records entitled "Treasury/FMS .008–Mailing List Records."

DATES: Comments must be received no later than January 18, 2011. The proposed new system of records will become effective January 18, 2011 unless comments are received which would result in a contrary determination.

ADDRESSES: You should send your comments to Peter Genova, Deputy Chief Information Officer, Financial Management Service, 401 14th Street, SW., Washington, DC 20227. Comments received will be available for inspection at the same address between the hours of 9 a.m. and 4 p.m. Monday through Friday. You may send your comments by electronic mail to *peter.genova@fms.treas.gov* or regulations.gov. All comments, including attachments and other supporting materials, received are subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Peter Genova, Deputy Chief Information Officer, (202) 874–1736.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Financial Management Service (FMS) is proposing to establish a new system of records entitled "Mailing List Records—Treasury/FMS .008." FMS proposes to obtain and use mailing list records from commercial database providers for the purpose of mailing information to low- to moderate-income individuals (individuals with income under $35,000 annually), who are more likely to be unbanked or underbanked, about options to receive Federal tax refund payments electronically. The letters will include information about a debit card account recommended by the U.S. Department of the Treasury (Treasury) to which Federal tax refund payments may be electronically deposited. Commercial database providers obtain information from publicly available records or through means that we understand to be compliant with applicable privacy laws.

FMS, a bureau within the U.S. Department of the Treasury (Treasury), is responsible for disbursing public money by paper check and electronic funds transfer (EFT) on behalf of most Federal agencies. Making payments by EFT, rather than by paper check, benefits both recipients and the Government. Direct deposit and other EFT payments are credited to recipients' accounts on the day payment is due, so the funds generally are available sooner than with check payments. Individuals receiving Federal payments electronically rarely have any delays or problems with their payments. In contrast, based on payment claims filed with FMS, nine out of ten problems with FMS-disbursed payments are related to paper checks even though checks constitute only 18 percent of all FMS-disbursed payments made by the Government. For example, in fiscal year 2010, FMS mailed more than 130 million Federal benefit checks to approximately 11 million benefit recipients, resulting in extra costs to taxpayers of more than $117 million that would not have been incurred had those payments been made by EFT. In the same fiscal year, only 63% of taxpayers received their tax refund payment electronically, with approximately 45 million tax refund payments being delivered by paper check, resulting in extra costs to the tax payers of more than $40 million that would not have been incurred had the payments been made by EFT. For individuals receiving EFT instead of paper check they receive their refund more quickly, with a much smaller chance of delay such as a lost or stolen check, and if they have no bank account without the need to pay for private check cashing service to get access quickly to the funds in their refund check.

For the 2010 tax filing season, FMS will mail approximately 600,000 letters to low- and moderate-income individuals offering them the opportunity to participate in a pilot program to establish a reloadable debit card account to which their Federal tax refund payments could be deposited electronically. For this purpose, FMS will purchase name and address information for low- to moderate-income individuals from a commercial database provider. In addition, the mailing list records may also be used to study the effectiveness of mailing outreach designed to streamline payment processes.

The records covered by the proposed system are necessary to allow FMS to offer electronic payment options to a wide variety of potential Federal payment recipients. The records may be received directly by FMS, its fiscal or financial agents, and/or contractors. The records include names and mailing addresses only as necessary to deliver information to individuals about the benefits of electronic payments and the availability of a Treasury-recommended debit card account that can be used to receive payments electronically. Without such information, FMS would have significant difficulty in reaching low- to moderate-income individuals who may be receiving a tax refund payment to inform them about the benefits of electronic payments and the availability of the Treasury-recommended debit card account for this purpose.

In addition to the purposes cited above, the information contained in the covered records will be used to study the effectiveness to evaluate how the group responded to account options, and whether they utilized them. To study program efficacy, FMS may use its mailing list records to collect aggregate statistical information on the success and benefits of direct mail and the use of commercial database providers.

FMS recognizes the sensitive nature of the confidential information it obtains when collecting individuals' names and addresses, and has many safeguards in place to protect the information from theft or inadvertent disclosure. When appropriate, FMS's arrangements with its fiscal and financial agents and contractors include requirements that preclude them from retaining, disclosing, and using the information for any purpose other than mailing of information about the benefit of electronic payments and account options and assessing the effectiveness of the outreach. In addition to various procedural and physical safeguards, access to computerized records is limited, through the use of access codes, encryption techniques and/or other internal mechanisms. Access to records is granted only as authorized by a business line manager at FMS or FMS's fiscal or financial agent to those whose official duties require access solely for the purposes outlined in the proposed system.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform of the House of Representatives, the

Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated November 30, 2000.

For the reasons set forth in the preamble, FMS proposes a new system of records Treasury/FMS .008–Mailing List Records, which is published in its entirety below.

Dated: December 8, 2010.

Melissa Hartman,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

Treasury/FMS .008

SYSTEM NAME:

Mailing List Records—Treasury/Financial Management Service.

SYSTEM LOCATION:

Records are located at the offices of Financial Management Service, 401 14th Street, SW., Washington, DC 20227, or its fiscal or financial agents at various locations. The addresses of the fiscal or financial agents may be obtained by contacting the System Manager below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Low- to moderate-income individuals, who are more likely to be unbanked or underbanked, who could potentially receive Federal tax refund payments, and whose names and addresses are included on mailing lists purchased from commercial providers.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may contain identifying information, such as an individual's name(s) and address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321; 31 U.S.C. chapter 33; 31 U.S.C. 3332; Title XII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, Jul. 21, 2010).

PURPOSE(S):

The purpose of this system is to maintain limited records (names and addresses) about low- to moderate income individuals, who are more likely to be unbanked or underbanked, and who could potentially receive Federal tax refund payments. The records are used to send letters to individuals informing them of the benefits of electronic payments and Treasury-recommended account options for receiving payments electronically. Without the information, FMS, its fiscal or financial agents and contractors, would not be able to directly notify prospective payment recipients about the benefits of electronic payments and the Treasury-recommended account options for the receipt of Federal payments electronically.

The information will also be used to study the effectiveness of offering account options to individuals for the purpose of receiving Federal payments. To study program efficacy, FMS may use its mailing list records to collect aggregate statistical information on the success and benefits of direct mail and the use of commercial database providers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) The U.S. Department of Justice ("DOJ") for its use in providing legal advice to the Department or in representing the Department in a proceeding before a court, adjudicative body, or other administrative body before which the Department is authorized to appear, where the use of such information by the DOJ is deemed by the Department to be relevant and necessary to the litigation, and such proceeding names as a party or interests: (a) The Department or any component thereof; (b) Any employee of the Department in his or her official capacity; (c) Any employee of the Department in his or her individual capacity where DOJ has agreed to represent the employee; or (d) The United States, where the Department determines that litigation is likely to affect the Department or any of its components.

(2) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(3) Fiscal agents, financial agents, and contractors for the purpose of mailing information to individuals about the benefits of electronic Federal payments and Treasury-recommended account options for receipt of federal payments electronically, including, but not limited to, processing direct mail or performing other marketing functions; and creating and reviewing statistics to improve the quality of services provided.

(4) Federal agencies, their agents and contractors for the purposes of implementing and studying options for encouraging current and prospective Federal payment recipients to receive their Federal payments electronically.

(5) Representatives of the National Archives and Records Administration (NARA) who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906.

(6) Appropriate agencies, entities, and persons when: (a) FMS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) FMS has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by FMS or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with FMS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and electronic media.

RETRIEVABILITY:

Records are retrieved by name, address, or other alpha/numeric identifying information.

SAFEGUARDS:

All official access to the system of records is on a need-to-know basis only, as authorized by a business line manager at FMS or FMS's fiscal or financial agent. Procedural and physical safeguards, such as personal accountability, audit logs, and specialized communications security, are utilized. Each user of computer systems containing records has individual passwords (as opposed to group passwords) for which he or she is responsible. Thus, a security manager can identify access to the records by user. Access to computerized records is limited, through use of access codes, encryption techniques, and/or other internal mechanisms, to those whose official duties require access. Storage facilities are secured by various means such as security guards, badge access, and locked doors with key entry.

RETENTION AND DISPOSAL:

Electronic and paper records for mail operations based on the use of the mailing list records will be retained in accordance with FMS's record retention requirements or as otherwise required by statute or court order. FMS disposes, or arranges for the disposal of records in

electronic media using industry-accepted techniques, and in accordance with applicable FMS policies regarding the retention and disposal of fiscal or financial agency records. Paper records are destroyed in accordance with fiscal or financial agency archive and disposal procedures and applicable FMS policies regarding the retention and disposal of fiscal agency records.

SYSTEM MANAGER(S) AND ADDRESS:

Agency Enterprise Solutions Division, Payment Management, Financial Management Service, 401 14th Street, SW., Washington, DC 20227.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974, as amended, shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th Street, SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether FMS maintains the records requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974, as amended, concerning procedures for gaining access to or contesting records should write to the Disclosure Officer. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C, and appendix G, concerning requirements of this Department with respect to the Privacy Act of 1974, as amended.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Information in this system is provided by commercial database providers based on publicly available information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–31534 Filed 12–15–10; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2003–45 and Revenue Procedure 2004–48

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2003–45, Late Election Relief for S Corporations, and Revenue Procedure 2004–48, Deemed Corporate Election for Late Electing S Corporations.

DATES: Written comments should be received on or before February 14, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Allan Hopkins, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedures should be directed to Elaine Christophe, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Revenue Procedure 2003–45, Late Election Relief for S Corporations, and Revenue Procedure 2004–48, Deemed Corporate Election for Late Electing S Corporations.

OMB Number: 1545–1548. Revenue Procedure Number: Revenue Procedure 2003–45 and Revenue Procedure 2004–48.

Abstract: Revenue Procedure 2003–45 provides a simplified method for taxpayers to request relief for late S corporation elections, Electing Small Business Trust (ESBT) elections, Qualified Subchapter S Subsidiary (QSub) elections. Generally, this revenue procedure provides that certain eligible entities may be granted relief for failing to file these elections in a timely manner if the request for relief is filed with 24 months of the due date of the election. Revenue Procedure 2004–48 provides a simplified method for taxpayers to request relief for a late S corporation election and a late corporate classification election which was intended to be effective on the same date that the S corporation election was intended to be effective.

Current Actions: There are no changes being made to these revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50,000.

Estimated Average Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 50,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 7, 2010.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. 2010–31589 Filed 12–15–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for HCTC Program Forms

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13930, Central Withholding Agreement.

DATES: Written comments should be received on or before February 14, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Allan Hopkins, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Elaine Christophe, (202) 622–3179, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Central Withholding Agreement.

OMB Number: 1545–2102.

Form Number: Form 13930.

Abstract: This form will be used by an individual who wishes to have a Central Withholding Agreement (CWA). This form instructs him how to make his application for consideration. IRC Section 1441(a) requires withholding on certain payments of Non Resident Aliens (NRAs). Section 1.1441–4(b)(3) of the Income Tax Regulations provides that the withholding can be considered for adjustment if a CWA is applied for and granted.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 2,300.

Estimated Time per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 9200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 8, 2010.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. 2010–31595 Filed 12–15–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0261]

Agency Information Collection (Application for Refund of Educational Contributions) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 18, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0261" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0261."

SUPPLEMENTARY INFORMATION:

Title: Application for Refund of Educational Contributions (VEAP, Chapter 32, Title 38, U.S.C.), VA Form 22–5281.

OMB Control Number: 2900–0261.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans and service persons complete VA Form 22–5281 to request a refund of their contribution to the Post-Vietnam Veterans Education Program. Contribution made into the Post-Vietnam Veterans Education Program may be refunded only after the participant has disenrolled from the program. Request for refund of contribution prior to discharge or release from active duty will be refunded on the date of the participant's discharge or release from activity duty or within 60 days of receipt of notice by the Secretary of the participant's discharge or disenrollment. Refunds may be made earlier in instances of hardship or other good reasons. Participants who stop their enrollment from the program after discharge or release from active duty contributions will be refunded within 60 days of receipt of their application.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 7, 2010, at pages 62187–62188.

Affected Public: Individuals or households.

Estimated Annual Burden: 142 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 850.

Dated: December 10, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–31567 Filed 12–15–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0474]

Agency Information Collection (Create Payment Request for the VA Funding Fee Payment System (VA FFPS); a Computer Generated Funding Fee Receipt) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 18, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0474" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or e-mail denise.mclamb@ va.gov. Please refer to "OMB Control No. 2900–0474."

SUPPLEMENTARY INFORMATION:

Title: Create Payment Request for the VA Funding Fee Payment System (VA FFPS); a Computer Generated Funding Fee Receipt, VA Form 26–8986.

OMB Control Number: 2900–0474.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans obtaining a VA-guaranteed home loan must pay a funding fee to VA before the loan can be guaranteed. The only exceptions are loans made to veterans receiving VA compensation for service-connected disabilities, (or veterans whom, but for receipt of retirement pay, would be entitled to receive compensation) and unmarried surviving spouse of veterans who died in active military service or from service-connected disability regardless of whether the spouse has his or her own eligibility.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 6, 2010, at page 61859.

Affected Public: Business or other for profit.

Estimated Annual Burden: 8,000 hours.

Estimated Average Burden per Respondent: 2 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 240,000.

Dated: December 10, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–31521 Filed 12–15–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0655]

Agency Information Collection (Residency Verification Report—Veterans and Survivors) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 18, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0655" in any correspondence

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0655."

SUPPLEMENTARY INFORMATION:

Title: Residency Verification Report—Veterans and Survivors, VA Form Letter 21–914.

OMB Control Number: 2900–0655.

Type of Review: Extension of a previously approved collection.

Abstract: VA Form Letter 21–914 is use to verify whether Filipino veterans of the Special Philippine Scouts, Commonwealth Army of the Philippines, organized guerilla groups receiving service–connected compensation benefits and survivors receiving service connected death benefits at the full-dollar rate, actually resides in the United States as United States citizens or as aliens lawfully admitted for permanent residence. The information is needed to determine whether the claimant continues to meet the United States residency requirements.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 7, 2010, at page 62186.

Affected Public: Individuals or households.

Estimated Annual Burden: 417 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 1,250.

Dated: December 10, 2010.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–31522 Filed 12–15–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0116]

Agency Information Collection (Notice to Department of Veterans Affairs of Veteran or Beneficiary Incarcerated in Penal Institution) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 18, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0116" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or e-mail *denise.mclamb@ va.gov.* Please refer to "OMB Control No. 2900–0116."

SUPPLEMENTARY INFORMATION:

Title: Notice to Department of Veterans Affairs of Veteran or Beneficiary Incarcerated in Penal Institution, VA Form 21–4193.

OMB Control Number: 2900–0116.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected on VA Form 21–4193 is used to determine whether a beneficiary's VA compensation or pension rate should be reduced or terminated when he or she is incarcerated in a penal institution in excess of 60 days after conviction.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 4, 2010, at pages 61247–61248.

Affected Public: State, Local or Tribal Governments.

Estimated Annual Burden: 416 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,664.

Dated: December 10, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–31523 Filed 12–15–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0706]

Agency Information Collection (Application for Reimbursement of National Test Fee) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 18, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0706" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0706."

SUPPLEMENTARY INFORMATION:

Title: Application for Reimbursement of National Test Fee, VA Form 22–0810.

OMB Control Number: 2900–0706.

Type of Review: Extension of a currently approved collection.

Abstract: Servicemembers, veterans, and eligible dependents complete VA Form 22–0810 to request reimbursement of national test fees. VA will use the data collected to determine the claimant's eligibility for reimbursement.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 7, 2010, at page 62187.

Affected Public: Individuals or households.

Estimated Annual Burden: 175 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 700.

Dated: December 10, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–31524 Filed 12–15–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0342]

Agency Information Collection (Other On-The-Job Training and Apprenticeship Training Agreement and Standards and Employer's Application To Provide Job Training) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 18, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's

OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0342" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0342."

SUPPLEMENTARY INFORMATION:

Titles:

a. Other On-The-Job Training and Apprenticeship Training Agreement and Standards, (Training Programs Offered Under 38 U.S.C. 3677 and 3687), VA Form 22–8864.

b. Employer's Application to Provide Job Training, (Under Title 38 U.S.C. 3677 and 3687), VA Form 22–8865.

OMB Control Number: 2900–0342.

Type of Review: Extension of a currently approved collection.

Abstract: VA uses the data on VA Form 22–8864 to ensure that all trainees receive a training agreement and to make certain that training programs and agreements meet statutory requirements for approval of an employer's job training program.

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 Federal Register Notice with a 60-day comment period soliciting comments on this collection of information was published on October 7, 2010, at pages 62188–62189.

Affected Public: Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Annual Burden:

a. Other On-The-Job Training and Apprenticeship Training Agreement and Standards, (Training Programs Offered Under 38 U.S.C. 3677 and 3687), VA Form 22–8864—2,500 hours.

b. Employer's Application to Provide Job Training, (Under Title 38 U.S.C. 3677 and 3687), VA Form 22–8865—4,500 hours.

Frequency of Response: On occasion.

a. Other On-The-Job Training and Apprenticeship Training Agreement and Standards, (Training Programs Offered Under 38 U.S.C. 3677 and 3687), VA Form 22–8864—30 minutes.

b. Employer's Application to Provide Job Training, (Under Title 38 U.S.C. 3677 and 3687), VA Form 22–8865—90 minutes.

Estimated Number of Respondents:

a. Other On-The-Job Training and Apprenticeship Training Agreement and Standards, (Training Programs Offered Under 38 U.S.C. 3677 and 3687), VA Form 22–8864—3,000.

b. Employer's Application to Provide Job Training, (Under Title 38 U.S. Code. 3677 and 3687), VA Form 22–8865—5,000.

Dated: December 10, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–31526 Filed 12–15–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0045]

Agency Information Collection (VA Request for Determination of Reasonable Value) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 18, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0045" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0045."

SUPPLEMENTARY INFORMATION:

Title: VA Request for Determination of Reasonable Value VA Form 26–1805 and 26–1805–1.

OMB Control Number: 2900–0045.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 26–1805 and 26–1805–1 are used to identify properties to be appraised and to make assignments to an appraiser. VA home loans cannot be guaranteed or made unless the nature and conditions of the property is suitable for dwelling purposes is determined; the loan amount to be paid by the veteran for such property for the cost of construction, repairs, or alterations does not exceed the reasonable value; or if the loan is for repair, alteration, or improvements of property, the work substantially protects or improves the basic livability of the property. VA or the lender's participating in the lender appraisal processing program issues a notice of values to notify the veteran and requester of the determination of reasonable value and any conditional requirements.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 6, 2010, at pages 61858–61859.

Affected Public: Individuals or households.

Estimated Annual Burden: 60,000 hours.

Estimated Average Burden per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 300,000.

Dated: December 10, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–31527 Filed 12–15–10; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
December 16, 2010

Part II

Department of Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Test Procedures for Refrigerators, Refrigerator-Freezers, and Freezers; Final Rule and Interim Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2009–BT–TP–0003]

RIN 1904–AB92

Energy Conservation Program for Consumer Products: Test Procedures for Refrigerators, Refrigerator-Freezers, and Freezers

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

ACTION: Final rule, Interim final rule.

SUMMARY: On May 27, 2010, the U.S. Department of Energy (DOE) issued a notice of proposed rulemaking (NOPR) to amend the test procedures for refrigerators, refrigerator-freezers, and freezers. That proposed rulemaking serves as the basis for today's action. DOE is issuing a final rule regarding Appendix A1 and Appendix B1, and an interim final rule for Appendix A and Appendix B. The final rule amends the current procedures, incorporating changes that will take effect 30 days after the final rule publication date. These changes will be mandatory for product testing to demonstrate compliance with the current energy standards and for representations starting 180 days after publication. These changes, which will not affect measured energy use, include test procedures to account for refrigerator-freezers equipped with variable anti-sweat heater controls, establishing test procedures for refrigerator-freezers equipped with more than two compartments, making minor adjustments to eliminate any potential ambiguity regarding how to conduct tests, and clarifying certain reporting requirements. The interim final rule establishes amended test procedures for refrigerators, refrigerator-freezers, and freezers that would be required for measuring energy consumption once DOE promulgates new energy conservation standards for these products. These new standards are currently under development in a separate rulemaking activity and will apply to newly manufactured products starting in 2014. Today's action also discusses the treatment of combination wine storage-freezer products that were the subject of a recent test procedure waiver, energy use measurement round-off, and additional topics raised by stakeholders during the rulemaking's comment period.

While the amended test procedures will be based largely on the test methodology used in the existing test procedures, they also include significant revisions with respect to the measurement of compartment temperatures and compartment volumes. These measurements will provide a more comprehensive accounting of energy usage by these products. The amended test procedure will modify the long-time automatic defrost test procedure to capture all energy use associated with the defrost cycle, establish a test procedure for products with a single compressor and multiple evaporators with active defrost cycles, incorporate into the energy use metric the energy use associated with icemaking for products with automatic icemakers, and clarify requirements on temperature control settings during testing.

DATES: The amendments to §§ 430.2, 430.3, 430.23 and Appendix A1 and Appendix B1 (the final rule) are effective January 18, 2011. The additions of Appendix A and Appendix B (the interim rule) are effective April 15, 2011.

The final rule changes will be mandatory for product testing starting June 14, 2011. Comments on the interim final rule are due February 14, 2011.

The incorporation by reference of ANSI/AHAM HRF–1–1979, ("HRF–1–1979"), (Revision of ANSI B38.1–1970), American National Standard, Household Refrigerators, Combination Refrigerator-Freezers and Household Freezers, approved May 17, 1979, IBR approved for Appendices A1 and B1 to Subpart B, in the final rule is approved by the Director of the Office of the Federal Register as of January 18, 2011.

The incorporation by reference of AHAM Standard HRF–1–2008 ("HRF–1–2008"), Association of Home Appliance Manufacturers, Energy and Internal Volume of Refrigerating Appliances (2008), including Errata to Energy and Internal Volume of Refrigerating Appliances, Correction Sheet issued November 17, 2009, IBR approved for Appendices A and B to Subpart B, in the interim rule is approved by the Director of the Office of the Federal Register as of April 15, 2011.

ADDRESSES: The public may review copies of all materials related to this rulemaking at the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Mr. Subid Wagley, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, 202–287–1414, e-mail: *Subid.Wagley@ee.doe.gov* or Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–8145. E-mail: *Michael.Kido@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: This final rule and interim final rule incorporate by reference into part 430 the following industry standards:

(1) ANSI/AHAM HRF–1–1979, (Revision of ANSI B38.1–1970), ("HRF–1–1979"), *American National Standard, Household Refrigerators, Combination Refrigerator-Freezers and Household Freezers,* approved May 17, 1979;

(2) AHAM Standard HRF–1–2008, ("HRF–1–2008"), Association of Home Appliance Manufacturers, Energy and Internal Volume of Refrigerating Appliances (2008), including Errata to Energy and Internal Volume of Refrigerating Appliances, Correction Sheet issued November 17, 2009.

You can purchase copies of AHAM standards from the Association of Home Appliance Manufacturers, 1111 19th Street, NW., Suite 402, Washington, DC 20036, 202–872–5955, or *http://www.aham.org.*

You can also view copies of these standards at the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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I. Background and Authority

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291, *et seq.;* "EPCA" or, "the Act") sets forth a variety of provisions designed to improve energy efficiency. (All references to EPCA refer to the statute as amended through the Energy Independence and Security Act of 2007 (EISA 2007), Pub. L. 110–140 (Dec. 19, 2007)). Part B of title III (42 U.S.C. 6291–6309), which was subsequently redesignated as Part A for editorial reasons, establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles." Refrigerators, refrigerator-freezers, and freezers (collectively referred to below as "refrigeration products") are all treated as "covered products" under this Part. (42 U.S.C. 6291(1)–(2) and 6292(a)(1)). Under the Act, this program consists essentially of three parts: (1) Testing, (2) labeling, and (3) Federal energy conservation standards. The testing requirements consist of test procedures that manufacturers of covered products must use (1) as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) for making representations about the efficiency of those products. Similarly, DOE must use these test requirements to determine whether the products comply with any relevant standards promulgated under EPCA.

By way of background, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, amended EPCA by including, among other things, performance standards for residential refrigeration products. (42 U.S.C. 6295(b)). On November 17, 1989, DOE amended these performance standards for products manufactured on or after January 1, 1993. 54 FR 47916. DOE subsequently published a correction to revise these new standards for three product classes. 55 FR 42845 (October 24, 1990). DOE again updated the performance standards for refrigeration products on April 28, 1997, for products manufactured on or after July 1, 2001. 62 FR 23102.

EISA 2007 amended EPCA to require DOE to determine by December 31, 2010, whether amending the energy conservation standards in effect for refrigeration products would be justified. (42 U.S.C. 6295(b)(4)). To comply with this requirement, DOE began a new rulemaking to examine the potential adoption of new energy conservation standards for these products. 75 FR 59470 (Sept. 27, 2010) (hereafter, "standards NOPR"). On September 18, 2008, DOE issued a framework document to initiate that rulemaking. 73 FR 54089. On September 29, 2008, DOE held a public workshop to discuss the framework document and issues related to the rulemaking. The framework document identified several test procedure issues, including: (1) Compartment temperature changes; (2) modified volume calculation methods; (3) products that deactivate energy-using features during energy testing; (4) variable anti-sweat heaters; (5) references to the updated AHAM Standard HRF–1–2008, ("HRF–1–2008"), Association of Home Appliance Manufacturers, Energy and Internal Volume of Refrigerating Appliances (2008), including Errata to Energy and Internal Volume of Refrigerating Appliances, Correction Sheet issued November 17, 2009; (6) convertible compartments; and (7) harmonization with international test procedures. ("Energy Conservation Standards Rulemaking Framework Document for Residential Refrigerators, Refrigerator-Freezers, and Freezers," RIN 1904–AB79, Docket No. EERE–2008–BT–STD–0012) DOE initiated this test procedure rulemaking in part to address these issues, and published a notice of proposed rulemaking on May 27, 2010, hereafter referred to as "the NOPR." 75 FR 29824.

In response to issue (3) mentioned above as applied to automatic icemakers, DOE separately published a guidance document addressing various aspects related to the icemaker, including the manner in which to measure icemaking energy usage as well as set-up issues during testing. ("Additional Guidance Regarding Application of Current Procedures for Testing Energy Consumption of Refrigerator-Freezers with Automatic Ice Makers," (December 18, 2009) published at 75 FR 2122 (January 14, 2010)).

General Test Procedure Rulemaking Process

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides in relevant part that "[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use * * * or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary [of Energy], and shall not be unduly burdensome to conduct." (42 U.S.C. 6293(b)(3)).

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments. (42 U.S.C. 6293(b)(2)). When considering amending a test procedure, DOE must determine "to what extent, if any, the proposed test procedure would alter the * * * measured energy use * * * of any covered product as determined under the existing test procedure." (42 U.S.C. 6293(e)(1)). If DOE determines that the amended test procedure would alter the measured energy use of a covered product, DOE must also amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2)).

With respect to today's rulemaking, DOE has determined that five of the amendments it is adopting (compartment temperature changes (described in section III.E.4), volume calculation method changes (described in section III.E.5), amendments to capture precooling and partial recovery energy use (described in section III.E.1), amendments in the test procedures for special compartments using heat addition to control temperature (described in section III.D.5), and new test procedures that address products with a single compressor with multiple evaporators with active defrost cycles (described in section III.E.2)) will change the measured energy use of refrigeration products when compared to the current test procedure. In such situations, EPCA requires a standards rulemaking to address such changes in measured energy efficiency. (42 U.S.C. 6293(e)(2)). DOE is considering the impacts of these changes as part of its standards rulemaking for refrigeration products, noted above.

Today's rule also fulfills DOE's obligation to periodically review its test procedures under 42 U.S.C. 6293(b)(1)(A). DOE anticipates that its next evaluation of this test procedure will occur in a manner consistent with the timeline set out in this provision.

Refrigerators and Refrigerator-Freezers

DOE's test procedures for refrigerators and refrigerator-freezers are found at 10 CFR part 430, subpart B, appendix A1. DOE initially established its test procedures for refrigerators and refrigerator-freezers in a final rule published in the **Federal Register** on September 14, 1977. 42 FR 46140. Industry representatives viewed these test procedures as too complex and eventually developed alternative test procedures in conjunction with AHAM that were incorporated into the 1979 version of HRF–1, "Household Refrigerators, Combination Refrigerator-Freezers, and Household Freezers" (HRF–1–1979). Using this industry-created test procedure, DOE revised its test procedures on August 10, 1982. 47 FR 34517. On August 31, 1989, DOE published a final rule establishing test procedures for variable defrost control (a system that varies the time intervals between defrosts based on the defrost need), dual-compressor refrigerator-freezers, and freezers equipped with "quick-freeze" (a manually-initiated feature that bypasses the thermostat and runs the compressor continuously until terminated). 54 FR 36238. DOE most recently amended these test procedures in a final rule published March 7, 2003, which modified the test period used for products equipped with long-time automatic defrost or variable defrost. 68 FR 10957. The term "long-time automatic defrost" identifies the use of an automatic defrost control in which successive defrosts are separated by more than 14 hours of compressor run time. The test procedures include provisions for determining the annual energy use in kilowatt-hours (kWh) and the annual operating cost for electricity for refrigerators and refrigerator-freezers.

Also, consistent with the regulations set out in 10 CFR part 430, the 1989 and 2003 final rules terminated all the previous refrigerator and refrigerator-freezer test procedure waivers that DOE had previously granted to manufacturers before the issuance of the 2003 rule. Since the issuance of that rule, DOE has granted 11 waivers, which fall into two broad groupings. First, on April 24, 2007, DOE granted a waiver to Liebherr Hausgeräte (Liebherr waiver), permitting testing of a combination wine storage-freezer line of appliances using a standardized temperature of 55 °F for the wine storage compartment, as opposed to the 45 °F temperature prescribed for fresh food compartments of refrigerators and refrigerator-freezers. 72 FR 20333, 20334.

Second, DOE has granted 10 waivers allowing manufacturers to use a modified procedure to test refrigeration products that use ambient condition sensors that adjust anti-sweat heater power consumption. These variable anti-sweat heaters prevent condensation on the external surfaces of refrigerators and refrigerator-freezers. The new control addressed by the waivers uses sensors that detect ambient conditions to energize the heaters only when needed. The procedure described by these waivers provides a method for manufacturers to determine the energy consumed by a refrigerator using this type of variable control system. The first of these waivers was granted to the General Electric Company (GE) on February 27, 2008. 73 FR 10425. The full set of such waivers is summarized in Table I.1 below.

TABLE I.1—VARIABLE ANTI-SWEAT HEATER CONTROL WAIVERS

Manufacturer	Waiver status	Case No.	Date	Federal Register citation
GE	Granted	RF–007	2/27/2008	73 FR 10425
Whirlpool	Granted	RF–008	5/5/2009	74 FR 20695
Electrolux	Granted	RF–009	12/15/2009	74 FR 66338
Electrolux	Granted	RF–010	3/11/2010	75 FR 11530
Samsung	Granted	RF–011	3/18/2010	75 FR 13120
Electrolux	Granted	RF–012	4/29/2010	75 FR 22584
Haier	Granted	RF–013	6/7/2010	75 FR 32175
Samsung	Granted	RF–014	8/3/2010	75 FR 45623
GE	Granted	RF–015	8/19/2010	75 FR 51262
LG	Granted	RF–016	8/19/2010	75 FR 51264

After granting a waiver, DOE regulations generally direct the agency to initiate a rulemaking that would amend the regulations to eliminate the continued need for the waiver. 10 CFR 430.27(m). This rulemaking addresses this requirement. Once today's final rule becomes effective, any waivers it addresses will terminate.

Freezers

DOE's test procedures for freezers are found at 10 CFR part 430, subpart B, appendix B1. DOE established its test

procedures for freezers in a final rule published in the **Federal Register** on September 14, 1977. 42 FR 46140. As with DOE's test procedures for refrigerators and refrigerator-freezers, industry representatives viewed the freezer test procedures as too complex and worked with AHAM to develop alternative test procedures, which were incorporated into the 1979 version of HRF–1. DOE revised its test procedures for freezers based on this AHAM standard on August 10, 1982. 47 FR 34517. The August 31, 1989, final rule mentioned above established test procedures for freezers with variable defrost control and freezers with the quick-freeze feature. 54 FR 36238. The test procedures were amended on September 20, 1989, to correct the effective date published in the August 31, 1989 rule. 54 FR 38788. The current test procedures include provisions for determining the annual energy use in kWh and annual electrical operating costs for freezers.

DOE has not issued any waivers from the freezer test procedures since the promulgation of the 1989 final rule.

Current Refrigeration Product Test Procedure Rulemaking

The NOPR for this rulemaking was published on May 27, 2010. 75 FR 29824. The public meeting was held June 22, 2010. At the meeting, DOE discussed the NOPR, detailed the proposed revisions, and solicited oral comments from meeting participants. Numerous stakeholders attended the meeting and/or provided written comments. These parties are identified in Table I.2 below.

TABLE I.2—STAKEHOLDERS THAT SUBMITTED ORAL OR WRITTEN COMMENTS

Name	Acronym	Type*	Oral comments	Written comments
AcuTemp/ThermoCor	ThermoCor	CS		✔
American Council for an Energy Efficient Economy	ACEEE	EA	✔	✔
Association of Home Appliance Manufacturers	AHAM	IR	✔	✔
California Investor-Owned Utilities	IOUs	U		✔
Earthjustice	Earthjustice	EA	✔	✔
Electrolux Major Appliances North America	Electrolux	M	✔	✔
Energy Solutions for California Investor-Owned Utilities	IOUs	U	✔	
Fisher & Paykel Appliances Ltd	Fisher & Paykel	M		✔
General Electric Consumer and Industrial	GE	M	✔	✔
NanoPore Insulation, LLC	NanoPore	CS		✔
National Institute of Standards and Technology	NIST	TE	✔	
Natural Resources Defense Council	NRDC	EA	✔	✔
People's Republic of China WTO/TBT National Notification & Enquiry Center.	PRC	FG		✔
Sanyo E&E Corporation	Sanyo	M	✔	
Sub Zero-Wolf, Inc	Sub Zero	M	✔	✔
Whirlpool Corporation	Whirlpool	M	✔	✔
Penfield Appliances	Penfield	I		✔

* IR: Industry Representative; M: Manufacturer; EA: Efficiency/Environmental Advocate; CS: Component Supplier: TE: Technical Expert: I: Individual; U: Utility; FG: Foreign Government Agency.

II. Summary of the Final Rule and Interim Final Rule

The final rule amends the current DOE test procedures for refrigeration products. These changes will not affect measured energy use of these products. Instead they will primarily clarify the manner in which to test for compliance with the current energy conservation standards. As indicated in greater detail below, these amendments apply to the current procedures in Appendices A1 and B1, to the definitions set forth in 10 CFR 430.2, to the current procedures in 10 CFR 430.23. These minor amendments will eliminate any potential ambiguity contained in these sections of the test procedures and clarify the regulatory text to ensure that regulated entities fully understand the long-standing views and interpretations that the Department holds with respect to the application and implementation of the test procedures. The current procedures are also being amended to help account for, among other things, the various waivers granted by DOE. The final rule also makes a minor change to the text of 10 CFR 430.32(a) in order to ensure consistency with the test procedure amendments.

The interim final rule establishes comprehensive changes to the manner in which the procedures are conducted by creating new Appendices A and B. These appendices include the modifications being adopted today as part of the modified Appendices A1 and B1 prescribed in this regulation. The procedures contained in the new Appendices A and B apply only to those products that would be covered by any new standard that DOE promulgates and are organized separately from the current test procedures found in Appendices A1 and B1. DOE will retain current Appendices A1 and B1 for this interim final rulemaking to cover products manufactured before any new standards DOE is currently considering would need to be met. However, once manufacturers are required to comply with any new standards, those appendices will be replaced by Appendices A and B, respectively.

The final rule amendments discussed in this notice will take effect 30 days after publication of this final rule. However, manufacturers do not need to use the new versions of Appendices A1 and B1 for testing to verify compliance with the energy standards until 180 days from the final rule's publication. The interim final rule will take effect 120 days after date of publication of this final rule. Manufacturers will not need to use the new Appendices A and B until the compliance date for the 2014 standards that DOE is considering. The date of compliance with those new standards has been set by Congress through EISA 2007 (i.e. January 1, 2014). See EISA 2007, sec. 311(a)(3) (42 U.S.C. 6295(b)(4)). In order to ensure that new Appendices A and B adequately address the new energy standards currently under development, DOE is issuing these appendices on an interim final basis and offering an additional 60 day comment period.

The revised Appendices A1 and B1 achieve three primary goals. First, they address certain issues raised throughout

the standards rulemaking. Second, they incorporate test procedures for refrigerator-freezers with variable anti-sweat heater controls that were the subject of test procedure waivers and interim waivers granted to GE and other manufacturers. Finally, the amendments clarify the test procedures for addressing special compartments and those refrigeration products that are equipped with more than one fresh food compartment or more than one freezer compartment.

The revisions also address areas of potential inconsistency in the current procedure, and eliminate an optional test that DOE understands is not used by the industry. None of these changes is expected to result in any change in measured energy efficiency or energy use of refrigeration products.

The additional test procedure revisions in the new Appendices A and B would (1) include new compartment temperatures and volume adjustment factors,[1] (2) include new methods for measuring compartment volumes, (3) modify the long-time automatic defrost test procedure to ensure that the test procedure measures all energy use associated with the defrost function, and (4) establish test procedures for products with a single compressor and multiple evaporators with active defrost cycles. The first two of these amendments will improve harmonization with relevant international standards and assure test repeatability. The compartment temperature changes will significantly impact the energy use measured by the test for refrigerators and refrigerator-freezers. The temperature changes will also affect the calculated adjusted volume, which is equal to the fresh food compartment volume plus a temperature-dependent adjustment factor multiplied by the freezer compartment volume. The new volume calculation method will affect the calculation for compartment volumes and adjusted volume for all refrigeration products. Since the standards for refrigeration products are expressed as equations that specify maximum energy use as a function of adjusted volume, the modifications impact the allowable energy use for all of these products. The changes also affect the energy factor, which is equal to adjusted volume divided by daily energy consumption.

The final rule also discusses the combination wine storage-freezer products that were the subject of the Liebherr waiver. DOE expects to propose modified product definitions to include coverage of wine storage products in a separate future rulemaking. This final rule treats wine coolers and other hybrid products that combine wine storage compartments with freezer or fresh food compartments in a consistent manner, by modifying the definition of electric refrigerator-freezer to require compartment temperatures in the fresh food compartment that effectively exclude combination wine storage-freezer products from coverage.

Lastly, the interim final rule also addresses the measurement of icemaking energy use. This measurement adds a fixed value to account for the energy used to produce ice in refrigeration products that are equipped with automatic icemakers. However, DOE intends to support development in 2011 of a test procedure for measurement of icemaker energy use and to initiate in 2012 a test procedure rulemaking to incorporate the new measurement into the refrigeration product test procedure. The icemaker energy use addition, which is included only in the new Appendices A and B, will improve the consistency of the measurement with the representative use cycle for such products.

III. Discussion

Table III.1 below summarizes the subsections of this section and indicates where the amendments would appear in the CFR. Seven of the subsections address changes in the CFR other than in appendices A1, B1, A, or B, and six of the subsections have no test procedure changes associated with them. Section E addresses the amendments that are part of the interim final rule. In addition, two of the interim final rule amendments are addressed in parts of section III.D (in sections III.D.2 and III.D.5). The remaining sections address the amendments that are part of the final rule.

TABLE III.1—SECTION III SUBSECTIONS

Section	Title	Affected CFR sections	Appendices			
			A1	B1	A	B
A	Products Covered by the Proposed Revisions.	430.2	NA			
B	Combination Wine Storage-Freezer Units	430.2	NA			
C	Establishing New Appendices A and B, and Compliance Dates for the Amended Test Procedures.	Subpt. B	✔	✔	✔	✔
D.1	Procedures for Test Sample Preparation	430.23, Subpt. B	✔	✔	✔	✔
D.2	Product Clearance Distances to Walls During Testing.	Subpt. B	✔	✔	✔	✔
D.3	Alternative Compartment Temperature Sensor Locations.	New pt. 429*, Subpt. B	✔	✔	✔	✔
D.4	Median Temperature Settings for Electronic Control Products and Establishment of Dual Standardized Temperatures.	Subpt. B	✔	✔	✔	✔
D.5	Test Procedures for Convertible Compartments and Special Compartments.	Subpt. B	✔	✔	✔	✔
D.6	Establishing a Temperature-Averaging Procedure for Auxiliary Compartments.	Subpt. B	✔	✔	✔	✔

[1] Volume adjustment factors are used in calculation of the adjusted volume, which is the basis for the energy conservation standard equations for refrigeration products.

TABLE III.1—SECTION III SUBSECTIONS—Continued

Section	Title	Affected CFR sections	Appendices			
			A1	B1	A	B
D.7	Modified Definition for Anti-Sweat Heater	Subpt. B	✔	✔	✔	✔
D.8	Applying the Anti-Sweat Heater Switch Averaging Credit to Energy Use Calculations.	430.23	NA			
D.9	Incorporation of Test Procedures for Products with Variable Anti-Sweat Heating Control Waivers.	Subpt. B	✔	✔	✔	✔
D.10	Elimination of Part 3 of the Variable Defrost Test.	Subpt. B	✔	✔	✔	✔
D.11	Simplification of Energy Use Equation for Products with Variable Defrost Control.	Subpt. B	✔	✔	✔	✔
	Energy Testing and Energy Use Equation for Products with Dual Automatic Defrost.	Subpt. B	✔		✔	
	Freezer Variable Defrost	Subpt. B		✔		✔
D.12	Including in Certification Reports Basic Information Clarifying Energy Measurements.	New pt. 429*	NA			
D.13	Rounding Off Energy Test Results	430.23, 430.32(a)	NA			
E.1	Modification of Long-Time and Variable Defrost Test Method to Capture Precooling and Temperature-Recovery Energy.	Subpt. B			✔	✔
E.2	Establishing Test Procedures for Multiple Defrost Cycle Types.	Subpt. B			✔	
E.3	Incorporating by Reference AHAM Standard HRF–1–2008 for Measuring Energy and Internal Volume of Refrigerating Appliances.	Subpt. B			✔	✔
E.4	Establishing New Compartment Temperatures.	Subpt. B			✔	✔
E.5	Establishing New Volume Calculation Method.	Subpt. B			✔	✔
E.6	Control Settings for Refrigerators and Refrigerator-Freezers During Testing.	Subpt. B			✔	✔
E.7	Icemakers and Icemaking	Subpt. B			✔	✔
F.1	Electric Heaters	No changes to the regulatory language are associated with these sections of the Final Rule				
F.2	Vacuum Insulation Panel Performance					
F.3	Metric Units					
G.1	Test Burden					
G.2	Potential Amendments to Include Standby and Off Mode Energy Consumption.					
G.3	Addressing Changes in Measured Energy Use.					

* See the Certification, Compliance, and Enforcement (CCE) NOPR, 75 FR 56796 (September 16, 2010). The changes discussed in section III.D.12 are discussed here but not included in this final rule—they will instead be implemented in the CCE rulemaking.

A. Products Covered by the Proposed Revisions

The NOPR solicited comments regarding certain definitions related to refrigeration products. In particular, DOE sought comment regarding a proposed modification to the electric refrigerator-freezer definition that would clarify that the fresh food compartments of these products are designed for the refrigerated storage of food at temperatures above 32 °F and below 39 °F. DOE proposed this change to address the coverage of combination wine storage-freezer products (i.e. to exclude them from coverage as electric refrigerator-freezers), and to improve consistency with the current definition for electric refrigerators. 75 FR 29828–29829.

Additionally, while DOE did not propose specific changes to the electric refrigerator definition, the agency solicited comments on possible improvements to enhance the definition's clarity. Most of these comments addressed concerns about the 32 °F to 39 °F temperature range, already part of the electric refrigerator definition, that DOE proposed in the NOPR to apply also to the electric refrigerator-freezer definition. These comments, applicable to both definitions, are discussed in section III.B below.

AHAM also recommended that any changes to the definition for "electric refrigerator" and/or "electric refrigerator-freezer" should also be made in the related Federal Trade Commission (FTC) Energy Guide labeling rules in order to ensure consistency across all government agencies. (AHAM, No. 16.1 at p. 4) DOE notes that to achieve

consistency, the FTC would need to update the definitions of "electric refrigerator" and "electric refrigerator-freezer" in 16 CFR part 305.2. DOE will work with FTC to ensure that consistency is maintained between the two sets of regulations.

With respect to freezers, DOE notes that its regulations currently define a freezer as "a cabinet designed as a unit for the freezing and storage of food at temperatures of 0 °F or below, and having a source of refrigeration requiring single phase, alternating current electric energy input only." 10 CFR 430.2. DOE did not propose altering this definition.

Earthjustice commented that all products that can store frozen food should be covered as freezers, even if they cannot maintain temperature as low as 0 °F. The comment pointed to walk-in freezers as an example, which are statutorily defined as commercial equipment that maintain a temperature at or below 32 °F. (Earthjustice, No. 22.1 at p. 2) See EISA 2007, sec. 312(a)(3) (codified at 42 U.S.C. 6311(20)) and 10 CFR 431.302. DOE could define freezers in a similar manner, and may consider doing so in a future rulemaking. However, several reasons militate against such an approach at this time.

Although Earthjustice raised the possibility that refrigeration products with compartment temperatures between 0 °F and 32 °F are being sold as freezers, they provided no information regarding how prevalent such sales might be, which would provide justification for immediate action. DOE is reluctant to apply the current energy standards for freezers to products that provide substandard performance because they do not achieve the temperatures specified for freezers. Instead, DOE would consider establishing standards with lower maximum energy levels for new freezer product classes that provide warmer freezing temperatures. However, such an approach would require developing appropriate product class definitions, as well as producing an analysis supporting the selection of appropriate energy standards. In order to properly examine Earthjustice's proposed approach, DOE believes that a separate rulemaking would be the appropriate means of addressing this issue and would provide all interested parties with a sufficient opportunity for comment. Such a process is not in the scope of the current test procedure rulemaking or within the applicable timeframe, but DOE may consider Earthjustice's approach when it re-examines this procedure. DOE also notes that creating such product classes and accompanying standards would create potential conflicts with the Joint Comment's proposed levels that DOE is currently considering as part of its separate standards rulemaking. (See Joint Comment, No. 20.1 at p. 2).

B. Combination Wine Storage-Freezer Units

In its November 19, 2001, final rule, DOE amended its definition of electric refrigerators to exclude wine storage products. 66 FR 57845. DOE modified the definition to exclude products that do not maintain internal temperatures below 39 °F to clarify that wine coolers are not covered by DOE's standards for refrigerators. The final rule explained that these products "are configured with special storage racks for wine bottles and in general do not attain as low a storage temperature as a standard refrigerator. These characteristics make them unsuitable for general long-term storage of perishable foods." *Id.* at 57846. The final rule also noted the small number of sales of these products and the likely absence of any significant impact from this approach. *Id.*

When this change occurred, wine storage-freezer appliances were unavailable as a consumer product. Subsequently, when Liebherr Hausgeräte (Liebherr) introduced a line of wine storage-freezer appliances in 2005, containing both freezer and wine storage compartments, they could not be accurately categorized by any of the current DOE product classes. Because of this gap, Liebherr petitioned the agency for a test procedure waiver to address this product, which DOE granted on April 24, 2007 (Liebherr waiver). 72 FR 20333. The waiver specified that testing shall be conducted following the test procedure for refrigerator-freezers, except that the standard temperature for the wine-storage compartment shall be 55 °F. *Id.* at 20334.

DOE believes that the arguments made in favor of excluding wine storage products from the definition of electric refrigerators also apply to combination appliances such as these wine storage-freezer appliances. Consequently, in the NOPR, DOE proposed modifying the definition of refrigerator-freezer to exclude products which combine a freezer and a wine storage compartment. 75 FR 29829. The proposed definition invoked the same clause used in the refrigerator definition, "designed for the refrigerated storage of food at temperatures above 32 °F and below 39 °F", which would be applied to any fresh food compartments of refrigerator-freezers. *Id.*

AHAM, NRDC, Sub-Zero and Whirlpool all agreed with the principle of excluding such products from the refrigerator-freezer definition (AHAM, No. 16.1 at p. 10; NRDC No. 21.1 at p. 5; Sub-Zero, Public Meeting Transcript, No. 10 at p. 32; Whirlpool No. 12.1 at p. 6). However, ACEEE, AHAM, Sub-Zero, and Whirlpool all opposed the wording of the temperature range clause, commenting that this change appears to exclude all products that have the capability of temperatures warmer than 39 °F in the fresh food compartment. In their view, this exclusion would be inappropriate. (ACEEE, No. 19.1 at p.1; AHAM, No. 16.1 at p. 4; AHAM, Public Meeting Transcript, No. 10 at p. 24; Whirlpool, Public Meeting Transcript, No. 10 at p. 27–28; Sub-Zero, Public Meeting Transcript, No. 10 at p. 32; Whirlpool, No. 12.1 at p. 1) Whirlpool suggested that the definition impose a 39 °F maximum when the controls are set in the coldest position. (Whirlpool, No. 10 at pp. 27–28; Whirlpool, No. 12.1 at p. 1)

As mentioned above, the clause, "designed for the refrigerated storage of food at temperatures above 32 °F and below 39 °F" was added to the electric refrigerator definition in 2001 to clarify that wine storage products are not refrigerators, since wine storage products are designed for warmer temperatures, and generally cannot achieve temperatures below 39 °F with temperature controls set in their coldest positions. 66 FR 57845.

DOE does not intend to exclude from coverage those refrigeration products that are capable of controlling fresh food compartments at temperatures cooler than 39 °F at cold settings and warmer than 39 °F at warm settings, including those currently available on the market characterized as wine storage products. In response to these comments and to prevent the inadvertent exclusion of products, DOE is adjusting the definitions of both "electric refrigerator" and "electric refrigerator-freezer" to clarify that temperature control above 39 °F is not a basis for exclusion from the definition. DOE will replace the temperature-range clause highlighted by stakeholders with "designed to be capable of achieving storage temperatures above 32 °F and below 39 °F". The words "designed to be capable" are intended to clarify that (1) the product can achieve temperatures below 39 °F, but that temperatures above 39 °F do not disqualify it from the definition, and (2) that a poorly constructed product that happens to be incapable of actually achieving the 39 °F is not excluded from coverage. Also, the specification of "storage temperatures" clarifies that the storage areas of the

product are subject to the 39 °F temperature requirement, rather than, for example, the evaporator, which may be somewhat colder during compressor operation. The storage temperature is distinct from "compartment temperature", which has a specific meaning as described in 10 CFR part 430, subpart B, appendix A1, section 5.1.2. In particular, storage temperature is not subject to the requirements for averaging of temperature sensors within the compartment. DOE further notes that the definition does not specify the ambient conditions for which the storage temperature range applies. Hence, a product that achieves the storage temperature range in a 70 °F ambient but not during a 90 °F energy test is not excluded from coverage.

Stakeholders also raised a related issue. AHAM asked if DOE had a proposal addressing combination wine storage-refrigerators, which Sanyo confirmed as having already been commercialized. (AHAM, Public Meeting Transcript, No. 10 at pp. 30–31; Sanyo, Public Meeting Transcript, No. 10 at pp. 33–34) DOE had been unaware of such products and had not developed a proposal to address them. In light of potential coverage concerns, DOE is treating these combination products as covered products. DOE is concerned that removing such combination products from coverage could create a potentially significant gap within its regulatory program that could, in turn, undermine the Department's efforts to improve the energy efficiency of consumer appliances. Manufacturers of products that cannot meet the required testing conditions prescribed by today's rule would, as currently required, need to avail themselves of the waiver regulations in 10 CFR 430.27. DOE intends, however, to address such wine storage-refrigeration combination products further in a separate rulemaking.

In light of these comments and concerns, DOE has modified its "electric refrigerator" definition to read as follows:

Electric refrigerator means a cabinet designed for the refrigerated storage of food, designed to be capable of achieving storage temperatures above 32 °F (0 °C) and below 39 °F (3.9 °C), and having a source of refrigeration requiring single phase, alternating current electric energy input only. An electric refrigerator may include a compartment for the freezing and storage of food at temperatures below 32°F (0 °C), but does not provide a separate low temperature compartment designed for the freezing and storage of food at temperatures below 8 °F (−13.3 °C).

DOE is also modifying its definition for "electric refrigerator-freezer" in a similar fashion to read as follows:

Electric refrigerator-freezer means a cabinet which consists of two or more compartments with at least one of the compartments designed for the refrigerated storage of food and designed to be capable of achieving storage temperatures above 32 °F (0 °C) and below 39 °F (3.9 °C), and with at least one of the compartments designed for the freezing and storage of food at temperatures below 8 °F (−13.3 °C) which may be adjusted by the user to a temperature of 0 °F (−17.8 °C) or below. The source of refrigeration requires single phase, alternating current electric energy input only.

These definitions exclude products with wine storage or other compartments that cannot attain temperatures suitable for fresh food storage.

The Liebherr waiver will terminate on the effective date of this final rule, as indicated in the waiver. 72 FR 20333 (April 24, 2007). To the extent that the products covered by this waiver do not meet the definition of electric refrigerator and electric refrigerator-freezer, DOE plans to address these wine storage and related refrigeration products in a separate rulemaking.

Finally, the Department clarifies that this final rule excludes most wine storage products because they are designed to be incapable of attaining temperatures suitable for fresh food storage (i.e., those temperatures below 39 °F) and not because they store beverages rather than solid food. Although EPCA does not define the term "food," a number of other federal statutes define "food" to include beverages. *See* 21 U.S.C. 321(f) (defining "food" in the Federal Food, Drug, and Cosmetic Act to include "articles used for food or drink for man or other animals"; 15 U.S.C. 55(b) (using same definition in the false advertising context); 42 U.S.C. 1791(b)(4) (defining "food" in the Bill Emerson Good Samaritan Food Donation Act as "any raw, cooked, processed, or prepared edible substance, ice, beverage, or ingredient used or intended for use in whole or in part for human consumption.") DOE believes that including beverages—such as milk, juice, wine and beer—within the meaning of the term "food" is likewise appropriate in the context of defining refrigeration products for purposes of the Federal energy conservation standards. Thus, those beverage storage products, including wine chillers, beer refrigerators, or other beverage refrigeration products, that are designed to be capable operating with storage temperatures below 39 °F are, and would continue to be treated as, refrigerators and would continue to remain subject to the current test procedures and energy conservation standards of 10 CFR part 430.

C. Establishing New Appendices A and B, and Compliance Dates for the Amended Test Procedures

DOE proposed to establish new Appendices A and B. In addition, DOE has now separated the amendments into two sets. The first set consists of amendments that must be in effect before the compliance date for the 2014 residential refrigeration products energy conservation standards. The second set consists of amendments that must go into effect starting on the compliance date for the 2014 standards. The majority of the first set of amendments will be implemented as part of the currently existing Appendices A1 and B1. (The remaining amendments in the first set include changes to other related sections of the CFR, such as 10 CFR 430.2 and 430.23.) The second set of amendments appears only in new Appendices A and B and constitutes the interim final rule of this notice. These new appendices will include all of the amendments implemented in Appendices A1 and B1.

As indicated earlier, while the effective date for the final rule amendments is 30 days after the publication of this final rule in the **Federal Register**, only the amendments to Appendices A1 and B1 and to 10 CFR 430.2 and 430.23 have an immediate impact on manufacturers. For purposes of representations, under 42 U.S.C. 6293(c)(2), effective 180 days after DOE amends a test procedure, manufacturers cannot make representations regarding energy use and efficiency unless the product was tested in accordance with the amended procedure. A manufacturer, distributor, retailer or private labeler may petition DOE to obtain an extension of time for making these representations. (42 U.S.C. 6293(c)(3)) For the purposes of this final rule, DOE interprets the date of amendment to be coincident with the date of publication of the final rule.

Manufacturers will need to use new Appendices A and B once they are required to comply with the amended energy conservation standards. Likewise, Appendices A and B will be mandatory for representations regarding energy use or operating cost of these products once manufacturers must

comply with the new energy conservation standards.

Under EPCA, DOE must determine by December 31, 2010, whether to amend energy conservation standards that would apply to refrigeration products manufactured in 2014. DOE has proposed amending its energy conservation standards for these products, as required by 42 U.S.C. 6293(e)(2). 75 FR 59470. The amended test procedures of Appendices A and B will be used in analyzing and finalizing the proposed standards.

DOE received no comments opposing the approach of using the proposed new Appendices A and B to organize the staging of implementation of test procedure amendments. Therefore, the establishment of the new appendices remains as proposed in the NOPR. However, the effective date for the new appendices has been delayed 90 days to allow time for the comment period associated with the interim final rule.

D. Amendments To Take Effect Prior to a New Energy Conservation Standard

This section primarily addresses amendments that manufacturers must use prior to the compliance date for the new energy conservation standards. As described above, these amendments become effective in 30 days and will be required for certifying compliance with the current energy conservation standards and for representation purposes for products sold starting in 180 days. As described for each of the subsections, these amendments are made in 10 CFR 430.23. 10 CFR 430.32(a), and to the appropriate sections of Appendices A1 and B1. These amendments also appear in the new Appendices A and B.

Two of the amendments discussed in this section are made only in Appendices A and B. These amendments are included in sections III.D.2 and III.D.5 because they fall under the general topics of these subsections, which also address amendments made in Appendices A1 and B1.

DOE invited comment on whether any of the proposed amendments would affect measured energy use and asked commenters to quantify any potential impacts. AHAM identified four proposed amendments that would have a significant impact on measured energy use: (1) The test method for products with variable anti-sweat heaters; (2) the test procedures for convertible and special compartments; (3) the modified test procedure for products with long-time or variable defrost to capture precooling energy use; and (4) the proposed changes addressing multiple defrost cycle types. (AHAM, No. 16.1 at p. 3). The PRC indicated that measured energy use would be increased by: (1) The proposed test procedures addressing products with variable anti-sweat heaters and (2) modification of test procedures for products with long-time or variable defrost to capture precooling energy use. (PRC, No. 15.1 at p. 4) Whirlpool commented that a number of the amendments proposed to take effect prior to the new energy conservation standards would have a significant impact on measured energy use, manufacturer cost, facilities, testing capability, lead time, or combination thereof and requested that they not take effect prior to January 1, 2014: (1) Revision of the refrigerator definition; (2) test procedures for convertible and special compartments; (3) test procedures for products with variable anti-sweat heating; (4) modification of the test procedure for long-time or variable defrost to capture precooling energy; (5) procedures for products with multiple defrost cycle types; (6) clarification of instructions regarding the presence of ice in the ice bin during testing; and (7) disallowing energy use ratings for products that fail to meet standardized temperatures. (Whirlpool, No. 12.1 at p. 2)

DOE obtained clarification from Whirlpool that all of the above-cited proposals would affect measured energy use. Whirlpool also clarified how two of these proposed amendments affect measured energy use. The proposed refrigerator definition change would, in Whirlpool's view, make it impossible to set fresh food compartments at temperatures above 39 °F during testing, as compared with current testing with temperatures bracketing the 45 °F standardized temperature because the reduced compartment temperature would result in higher thermal load and energy use. Whirlpool also asserted that the proposed test procedure clarification that ice should not be in the ice bin during testing would change the measurement for manufacturers that currently test with the ice bins filled. (Whirlpool provided no evidence that any manufacturer tests in this fashion). (Clarification of Written Comments Submitted by Whirlpool Corporation, No. 35 at p. 1) The available information indicates otherwise—that all manufacturers test products without ice in the bins, due to AHAM support of the CSA Informs Bulletin of August 24, 2009, which discusses "mechanically simulating an ice-bin-full condition that produces identical results to testing with a full bin of ice" (AHAM Preliminary Proposal for Refrigerator-Freezer Verification Program, No. 30 at p. 4). NRDC filed comments asking that the procedures be effective as soon as is practical but offered no information regarding the potential measured energy use impacts of the proposed amendments. (NRDC, No. 21.1 at p. 2)

No commenter quantified the energy measurement impacts of the proposed amendments cited as having an impact on measurements. Consequently, DOE has no data or other factual information—other than what it developed on its own—with which to analyze the possible impacts flowing from its proposed amendments. Nevertheless, DOE gave careful consideration to these comments and made several modifications to its proposals to address the concerns raised by individual commenters. These modifications are described in detail in the sections that follow.

1. Procedures for Test Sample Preparation

To make the current procedure more clear, the NOPR proposed changing the manner in which samples are prepared for testing. Specifically, DOE proposed the following:

- Removing the text "as nearly as practicable" from the current set-up instructions that require testing set up to be in accordance with the printed instructions supplied with the cabinet, and adding specific deviations from this requirement for test repeatability and flexibility. This change was proposed for section 2 of Appendices A1, B1, A, and B in lieu of the current test procedure's reference to HRF–1–1979. 75 FR 29830.
- Adding "anti-circumvention" language in 10 CFR 430.23(a) and (b). *Id.*
- Requiring manufacturers to seek a waiver in those cases where (1) the prescribed test procedures do not yield measurements that would be representative of the product's energy use during normal consumer use, or (2) the set-up instructions are unclear. These requirements were proposed to be codified by portions of the proposed text described in the first two bullets above (in section 2 of Appendices A1, B1, A, and B, and in 10 CFR 430.23(a) and (b)), and by a new section 7 of Appendices A1, B1, A, and B. *Id.*

As part of the changes described in the first bullet above, the NOPR proposed to add specific deviations from the installation instructions supplied with the product:

(a) Not requiring the connection of water lines and installation of water filters during testing;

(b) Requiring clearance requirements from product surfaces to be consistent

with those described elsewhere in the test procedure;

(c) Requiring the use of an electric power supply as described in HRF–1–2008, section 5.5.1;

(d) Applying the temperature control settings for testing as described in section 3 of Appendix A1, B1, A, or B but requiring the settings for convertible compartments and other temperature-controllable or special compartments to be those settings that are described elsewhere in the test procedure; and

(e) Not requiring the anchoring or securing of a product to prevent tipping during energy testing.

Id.

DOE sought comment on these proposals and specifically asked for suggestions regarding the need for additional deviations from the installation instructions.

AHAM and Whirlpool supported removing the words "as nearly as practical" from the test sample preparation language. (AHAM, No. 16.1 at p. 4; Whirlpool, No. 12.1 at p. 2). Electrolux commented that any deviations in product set-up should be specified in the owner's manual. (Electrolux, No. 17.2 at p. 1, cell H8). No other suggestions were offered by commenters.

In response to the Electrolux comment, DOE believes that most of the deviations proposed in the NOPR are necessary in order to allow for consistent and repeatable testing. For instance, voltage requirements can play a role in determining the measured energy use of a particular product. Product owner manuals, however, do not specify a voltage range with the tight tolerance specified in HRF–1–1979 section 7.4.1 (within 1% of 115 volts). Instead, they typically allow refrigeration products to operate with electric power sources with a range of voltages near the nominal values. GE's owner's manual for GE Profile Side by Side refrigerators is one such example. The instructions do not specify an allowable voltage range other than that "[t]he refrigerator should always be plugged into its own individual electrical outlet which has a voltage rating that matches the rating plate." (Profile Side by Side Refrigerators, No. 28 at p. 4) The online specifications for one of these products provide only a nominal voltage: "Volts/Hertz/Amps 120v; 60Hz; 15A" (GE ENERGY STAR 25.9 Cu. Ft. Side-by-Side Refrigerator with Dispenser, No. 29 at p. 2) DOE believes that the tight tolerance on the voltage specification specified in HRF–1–1979 is necessary in order to assure repeatable testing. Repeatable testing that yields measurements that can be compared across product lines requires the use of consistent testing conditions, such as the use of an electric supply with a voltage very close to the nominal 115 volts. This is just one example of the need for the specific deviations from manufacturer's instructions proposed in the NOPR. Likewise, many of the other proposed deviations are also necessary to assure test repeatability. DOE believes that some of the other proposed deviations, such as not requiring connection of water lines and waiving instructions to secure the product so that it will not tip, do not affect the energy use measurement. DOE notes that Electrolux did not identify which of the proposed deviations are problematic nor did it explain the reasons for its position. No other stakeholders expressed concern about the deviations. Hence, DOE is adopting these deviations as proposed.

Regarding the "anti-circumvention" language, AHAM and Whirlpool urged DOE to adopt the exact language of HRF–1–2008, as adopted by ENERGY STAR, which does not use the term "average consumer use". (AHAM, No. 16.1 at p. 4; Whirlpool, No. 12.1 at p. 2). AHAM requested that if DOE decides to use the term "average consumer use", DOE should define the term, provide the data upon which the determination is reached, and allow for comment before releasing the final rule. (AHAM, No. 16.1 at pp. 4–5). Electrolux commented that the language would be acceptable if the 70 °F ambient condition is highlighted. (Electrolux, No. 17.2 at p. 1, cell H12).

As discussed in the NOPR, DOE's proposal reflects the statutory requirement, and the Department's longstanding view, that the overall objective of the test procedure is to measure the product's energy consumption during a representative average use cycle or period of use. 42 U.S.C. 6293(b)(3). Further, the test procedure requires specific conditions during testing that are designed to ensure repeatability while avoiding excessive testing burden. DOE's test procedures are carefully designed and circumscribed in order to attain an overall calculated measurement of average energy consumption during representative use, though certain conditions may not individually appear to be representative of the average use cycle. DOE has held the consistent view that products should not be designed in a way that would cause energy consumption to drop during testing as a result of these apparently unrepresentative conditions. Doing so would result in a biased measurement that would be unrepresentative of average consumer use and would circumvent the total test procedure.

The concept of average consumer use is not intended to represent an annual energy use in kWh to which a measurement according to the test procedure can be compared. Nor is it intended to represent a specific set of conditions for parameters that can affect energy use (including ambient temperature, ambient humidity, door opening patterns, etc.). Instead, deviation of a test procedure measurement from average consumer use must be established based on the specific control features used by a product and consideration of whether the product or any of its components operate in a fundamentally different way during the energy test than they would during representative consumer use. To this end, the NOPR provided an example of a product with anti-sweat heaters that are controlled by a humidity sensor. In a test under the current test procedure, the humidity of the test chamber is uncontrolled. Because the relative humidity level during a test could be at any level between 0% and 100%, it is unlikely that the measured energy use of the anti-sweat heaters under the current test would yield results consistent with their average energy use in a home.

The average consumer use concept is also illustrated in DOE's "Additional Guidance Regarding Application of Current Procedures for Testing Energy Consumption of Refrigerator-Freezers With Automatic Ice Makers". 75 FR 2122 (January 14, 2010). This document provides guidance regarding test set up for icemakers, particularly for refrigerator-freezers with bottom-mounted freezers and through-the-door ice service. In explaining that the icemaker must remain on but not producing ice, DOE noted that "keeping the ice maker and its associated components on, but preventing them from making ice, better represents the average use of a refrigerator-freezer, such as when the machine has a full bin of ice in a consumer's home. Turning off either the ice maker or components associated with the ice maker, by contrast, does not represent the average use of a refrigerator-freezer, and may cause the machine to consume less energy than when the ice maker is on, but not making ice." *Id.* at 2123.

Hence, DOE believes that the concept of average consumer use, as used, for example, in the icemaker treatment guidance described above, is sufficiently understood in the context of the regulatory language. Therefore the phrase has neither been eliminated from the amended language nor specifically

defined. The concept is invoked in the proposed passage that requires manufacturers to obtain a waiver if a product operates in a way that makes the test procedure unsuitable for measuring its energy use. The language retains this passage to reinforce EPCA's requirement that the test procedures measure energy use under a representative average use cycle or period of use. 42 U.S.C. 6293(b)(3).

However, DOE has considered comments favoring the adoption of the existing anti-circumvention language in HRF–1–2008, which were based on the collective belief that harmonization of anti-circumventions language will improve compliance. The modified anti-circumvention language that DOE is adopting today retains all of the HRF–1–2008 text and reads as follows:

The following principles of interpretation should be applied to the test procedure. The intent of the energy test procedure is to simulate typical room conditions (approximately 70 °F (21 °C)) with door openings, by testing at 90 °F (32.2 °C) without door openings. Except for operating characteristics that are affected by ambient temperature (for example, compressor percent run time), the unit, when tested under this test procedure, shall operate in a manner equivalent to the unit in typical room conditions. The energy used by the unit shall be calculated when a calculation is provided by the test procedure. Energy consuming components that operate in typical room conditions (including as a result of door openings, or a function of humidity), and that are not exempted by this test procedure, shall operate in an equivalent manner during energy testing under this test procedure, or be accounted for by all calculations as provided for in the test procedure. If (1) a product contains energy consuming components that operate differently during the prescribed testing than they would during representative average consumer use and (2) applying the prescribed test to that product would evaluate it in a manner that is unrepresentative of its true energy consumption (thereby providing materially inaccurate comparative data), a manufacturer must obtain a waiver in accordance with the relevant provisions of 10 CFR 430. Examples:

1. Energy saving features that are designed to be activated by a lack of door openings shall not be functional during the energy test.

2. The defrost heater should not either function or turn off differently during the energy test than it would when operating in typical room conditions.

3. Electric heaters that would normally operate at typical room conditions with door openings should also operate during the energy test.

4. Energy used during adaptive defrost shall continue to be tested and adjusted per the calculation provided for in this test procedure.

This modification includes the specification of 70 °F as typical for room conditions, as requested in the Electrolux comment. (Electrolux, No. 17.2 at p. 1, cell H12). It also includes the proposed requirement that a manufacturer must petition for a waiver when the test procedure cannot be used to measure the energy use of a product.

DOE dropped the proposed text's description of a type of product feature that would make the energy test procedure unsuitable for testing the product: "smoothly varying functions of the operating conditions and the control inputs." AHAM viewed this clause as deficient. (AHAM, Public Meeting Transcript, No. 10 at p. 43). Upon re-examining this example, DOE acknowledges that the control systems that this example attempted to highlight are not necessarily incompatible with the test procedure. One such system is the variable anti-sweat heater control system, which can use on/off control or discrete power input steps rather than a gradual increase in power as humidity increases. An on/off control system is not "smoothly varying", but that does not necessarily mean that the test procedure cannot provide a representative measurement. Accordingly, DOE decided to eliminate this example from the proposed regulatory text.

Regarding the proposed requirement for a manufacturer to obtain a waiver, Whirlpool and AHAM commented that DOE should use an expedited process such as the FAQ process to address variations in setup instead of the complex and lengthy waiver process. (Whirlpool, No. 12.1 at p. 2; AHAM, No. 16.1 at p. 5). Whirlpool also commented that any process used to address exceptions should involve less disclosure of design details than the waiver process. (Whirlpool, No. 12.1 at p. 3).

DOE appreciates the significance of the issues raised by the commenters regarding the waiver process. Separate from this proceeding, DOE has launched a new online database offering guidance on the Department's test procedures for consumer products and commercial equipment. See *http://www1.eere.energy.gov/guidance/default.aspx?pid=2&spid=1.* The new database will provide a publicly accessible forum for anyone with questions about—or needing clarification of—DOE's test procedures. However, the Department's waiver process covers cases where "the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics * * * as to provide materially inaccurate comparative data." (10 CFR 430.27(a)(1)). The language DOE is adopting simply reiterates this requirement and illustrates specific cases in which it applies to refrigeration products. Hence, the amended test procedures retain the proposed language requiring manufacturers to seek a waiver if that product, when tested under the prescribed procedure, would produce results unrepresentative of that product's true energy consumption.

2. Product Clearance Distances to Walls During Testing

DOE proposed to modify the rear wall clearance requirement during testing by adding a new rear wall clearance subsection as part of section 2 of Appendices A1, B1, A, and B. 75 FR 29832. Wall clearance is a necessary element to refrigerator and refrigerator-freezer energy efficiency testing because condenser performance is affected by the amount of available air flow. The condenser removes heat from the refrigeration system to the ambient air and placing the back of a refrigerator closer to a wall can restrict the amount of condenser air flow. Reducing this air flow can impact the energy consumption of a tested product—the condenser will need to operate at a higher temperature, which implies a higher discharge pressure and higher power input for the compressor. Similarly, increasing the distance between the refrigerator and wall can ease the load on the compressor, which lowers the tested product's overall energy consumption. In this regard, the current procedure references HRF–1–1979, which provides that "[t]he space between the back [of the cabinet] and the wall shall be in accordance with the manufacturer's instructions or as determined by mechanical stops on the back of the cabinet." (HRF–1–1979, section 7.4.2) (10 CFR part 430, subpart B, appendix A1, section 2.2).

In contrast, HRF–1–2008 provides greater detail by specifying that "the space between the back and the test room wall or simulated wall shall be the minimum distance in accordance with the manufacturer's instructions or as determined by mechanical stops on the

back of the cabinet." (HRF–1–2008, section 5.5.2).

DOE proposed to include in Appendices A1, B1, A, and B, language that would help clarify the applicable clearance distances:

2.9 The space between the back of the cabinet and the test room wall or simulated wall shall be the minimum distance in accordance with the manufacturer's instructions. If the instructions do not specify a minimum distance, the cabinet shall be located such that the rear of the cabinet touches the test room wall or simulated wall. The test room wall facing the rear of the cabinet or the simulated wall shall be flat within ¼ inch, and vertical to within 1 degree. The cabinet shall be leveled to within 1 degree of true level, and positioned with its rear wall parallel to the test chamber wall or simulated wall immediately behind the cabinet. Any simulated wall shall be solid and shall extend vertically from the floor to above the height of the cabinet and horizontally beyond both sides of the cabinet.

75 FR 29832.

DOE believes that these proposed requirements are consistent with the current test procedures, as well as the clearance requirements found in HRF–1–1979 and HRF–1–2008.

AHAM and Whirlpool suggested using less complex language that simply required the space between the back of the cabinet and the wall to be the minimum distance in accordance with manufacturer's instructions. (AHAM, No. 16.1 at p. 9; Whirlpool, No. 12.1 at p. 6) Electrolux noted that some products lack automatic door closers, and that they are installed in an orientation tipped slightly rearward for gravity to assist in door closing. The product owner's manual includes instruction for further adjustment for unlevel flooring for proper operation of the product. (Electrolux, No. 17.2 at p. 1, cell H18).

NRDC requested that DOE specify the maximum distance allowable for clearance during testing to avoid potential gaming by manufacturers seeking to maximize the amount of cooling space around the condenser coil. (NRDC, No. 21.1 at p. 5). Fisher & Paykel suggested that the DOE test procedure be synchronized with the IEC test procedure by specifying a maximum allowable distance of not more than "50 mm from the plane of the back panel to the vertical surface unless any permanent rear spacers extend further than that. In that case, the appliance shall be located so that those spacers are in contact with the vertical surface." (Fisher & Paykel, No. 24.2 at p. 1).

Although DOE is adjusting its approach to account for the issues raised by some manufacturers, DOE shares the concerns of NRDC and Fisher & Paykel regarding the potential selection of a rear clearance instruction in owners' manuals that is unrealistically large. In some cases such as chest freezers, the specified rear clearance is consistent with reasonable best practice, but is still large enough that many consumers may ignore the instruction. For instance, the GE Model FCM20SUWW 20-cubic foot chest freezer's installation manual recommends a three-inch clearance (Food Freezers, No. 31 at p. 13), but DOE suspects that many consumers do not maintain this clearance. The purpose of requiring permanent mechanical spacers to be installed on the product if the rear clearance needs to be greater than a certain distance is to ensure consistency between the test procedure and field use of the product. By setting this requirement at a larger, rather than smaller, rear clearance, this approach has a greater potential to save energy in the field.

The modified requirement will incorporate the language suggested by AHAM. This modification is made to section 3 of Appendices A1, B1, A, and B.

The additional provision suggested by Fisher & Paykel requiring use of mechanical stops if testing is conducted with clearances larger than a threshold value will also be implemented in Appendices A and B, using the suggested 50 mm threshold value, which converts to 2 inches in English units.

3. Alternative Compartment Temperature Sensor Locations

DOE proposed to modify section 5.1 of Appendix A1 (alternative temperature sensor locations) in order to provide clearer instructions and to reduce the incidence of deviation from the standard temperature sensor locations. The proposal would have permitted manufacturer selection of new locations only in cases where small deviations from the standard locations were involved. Otherwise, a manufacturer would need to petition for a waiver. 75 FR 29832. DOE proposed this approach to facilitate the development of new diagrams addressing new compartment configurations. In DOE's view, these new diagrams would help ensure future coverage of a broader range of potential configurations in the standard set of diagrams that currently exist. Broader coverage in standardized diagrams would help improve test consistency. Additionally, DOE proposed that where sensor locations deviated less than 2 inches from their standard locations, a manufacturer could simply report that the locations changed in the certification report and identify the locations of these deviations in the product's certification test reports. *Id.*

DOE also sought comment on the frequency of temperature sensor location revisions from the specifications of the figures of HRF–1–1979, and on whether the proposed exception allowing for minor relocation of sensors is sufficient to limit to a reasonable level the potential number of waivers associated with the proposed requirement.

AHAM, Whirlpool, and Sub-Zero supported a requirement that manufacturers must report changes to temperature sensor locations as long as such information is treated confidentially until the certification report is submitted to DOE. (AHAM, No. 16.1 at p. 5; AHAM, Public Meeting Transcript, No. 10 at pp. 48–49; Whirlpool, No. 12.1 at p. 3; Sub-Zero, Public Meeting Transcript, No. 10 at p. 51). AHAM and Sub-Zero commented that alternative temperature sensor placement should not require a waiver under the current waiver procedure due to the public nature of the process and the delay in time to market that it can cause. (AHAM, No. 16.1 at p. 5; Sub-Zero, Public Meeting Transcript, No. 10 at pp. 51–52). Electrolux commented that HRF–1–2008 requires even spacing of shelving within the product, which can create conflicts between the placement of drawers or pans and the specified sensor locations. Electrolux also recommended reporting of alternative locations in certification reports. (Electrolux, No. 17.2 at p. 1, cell H20).

DOE appreciates the manufacturers' sensitivity regarding time and confidentiality. In light of this concern, and the absence of any comments to the contrary, DOE has decided to eliminate its proposed waiver requirement. Instead, the use of alternative temperature sensor locations will be required to be reported in the certification report. These nonstandard sensor locations, whether significant or minor deviations, would be reported in the certification test reports. These modified amendments make any public disclosure of proprietary information unnecessary until product certification, as requested by stakeholders. DOE will make these changes in section 5.1 of Appendices A1, B1, A, and B, which will include the requirement to identify the new sensor locations in test reports, and in a new 10 CFR part 429, which

will provide the amended list of data required in the certification report. The part 429 changes, if adopted, will be made as part of the Certification, Compliance, and Enforcement (CCE) rulemaking. See 75 FR 56796, 56819 (September 16, 2010). In addition, because new requirements for the maintenance of records are under consideration as part of a new 10 CFR part 429, the proposed clarification for the section 5.1 amendments regarding test reports (i.e., that manufacturers maintain test data records "in accordance with 10 CFR 430.62(d).") will be treated separately as part of the ongoing CCE rulemaking. This potential requirement is also discussed in section III.D.12.

4. Median Temperature Settings for Electronic Control Products and Establishment of Dual Standardized Temperatures

Median Temperature Settings

DOE proposed to modify the test procedure language related to temperature control settings, as detailed in section 3 of Appendix A1, to clarify the procedure for products with electronic controls. Many current products have electronic controls, which generally have setpoints indicating specific control temperatures. Section 3.2.1 indicates that a first test is conducted with temperature controls set in a median position. For electronic controls, an average of the coldest and warmest temperature settings is generally used as the median temperature for purposes of testing. However, in some cases there is no temperature setting exactly equal to this average, and the controls cannot be mechanically defeated as described in the procedure.

DOE proposed that the test procedure specify that products equipped with such electronic controls be tested using one of the following three options: (1) Use of a setting equal to the average of the coldest and warmest settings, (2) use of the setting that is closest to this average, or (3) if there are two settings whose difference with the average is the same, use of the higher of these two settings. This modification was proposed for Appendices A1 and B1 and would be retained for new Appendices A and B. 75 FR 29833.

AHAM supported the proposed approach. (AHAM, Public Meeting Transcript, No. 10 at p. 55; AHAM, No. 16.1 at p. 10). During the public meeting, the National Institute of Standards and Technology (NIST) recommended that DOE consider adopting what is commonly known as the "triangulation approach" in place of the interpolation approach. (NIST, Public Meeting Transcript, No. 10 at pp. 55–56). The triangulation approach, which has been a part of the Australian/New Zealand Standard AS/NZS 4474 [2] for many years, maps both the refrigerator and freezer compartment temperatures exactly to the target temperatures by allowing up to three control setting combinations surrounding the standardized compartment temperatures. GE concurred that this approach is more flexible and repeatable, because it gives results at the exact desired sets of temperatures (i.e. 0 °F/39 °F for testing starting in 2014—see section III.E.4 below) rather than close to those temperatures. (GE, Public Meeting Transcript, No. 10 at pp. 58–59). Whirlpool agreed that the triangulation approach may be appropriate for adopting into the DOE test procedure in the future, but that it would incur redevelopment expense if introduced now. (Whirlpool, Public Meeting Transcript, No. 10 at p. 59). GE indicated that the triangulation approach could be adopted as an option for temperature settings, rather than the required procedure. (GE, Public Meeting Transcript, No. 10 at p. 59). AHAM also supported adopting the triangulation approach as an option. (AHAM, No. 16.1 at p. 10).

While the triangulation method presents advantages with respect to temperature settings, the adoption of this method will require additional examination by DOE to ascertain its suitability for inclusion as part of its regulations. DOE may further examine this method with greater scrutiny as part of a future rulemaking to amend its test procedure. In light of the significant changes already being introduced to the final rule that is being adopted today, and in recognition of the fact that a procedure needs to be finalized in coordination with the parallel standards rulemaking that is underway, DOE is declining to adopt the triangulation method as part of today's rule.

Accordingly, based on the above considerations, DOE is adopting the proposed amendments addressing median temperature settings for electronic control products.

Dual Standardized Temperatures

DOE proposed extensive changes to instructions for setting temperatures as part of Appendices A and B. 75 FR 29843–29846. One concept adopted for these changes included using dual standardized temperatures for refrigerator-freezers and basic refrigerators—products that have two (or more) compartments. The current test procedures allow manufacturers to select "second-test" temperature settings based only on test results for the freezer compartment. (See Appendix A1, section 3.2 and sections 3.2.1 through 3.2.3). NIST advised DOE that, in practice, manufacturers use the warmest setting for the second test only when both compartments are cooler than their standardized temperatures during the first test. DOE asked stakeholders to help clarify the approach for setting of temperature controls for such products. 75 FR 29846.

GE commented that manufacturers currently use the approach described by DOE. (GE, Public Meeting Transcript, No. 10 at pp. 137–138). DOE received no comments indicating that its understanding of the manufacturers' approach to temperature settings is incorrect. In particular, DOE received no comments from any manufacturer that uses any different approach for setting of temperature controls. Hence, DOE will implement this change in Appendices A1 and A.

5. Test Procedures for Convertible Compartments and Special Compartments

DOE proposed changing the test procedure for special compartments to make this procedure consistent with the convertible compartment test procedure. 75 FR 29833. Under the current DOE test procedure, which references section 7.4.2 of HRF–1–1979, "compartments which are convertible from refrigerator to freezer are operated in the highest energy usage position." (This section of HRF–1–1979 is referenced in Appendix A1, section 2.2.) The procedure for special compartments calls for the controls to be "set to provide the coldest temperature". (HRF–1–1979 section 7.4.2) To simplify these requirements to make them consistent with each other, DOE proposed to require the highest energy use position for both convertible and special compartments. 75 FR 29833.

DOE also proposed to specify that if a convertible compartment has external doors (i.e. that the compartment's doors open directly to the exterior of the product), the compartment shall be tested as a fresh food or freezer compartment, whichever of these

[2] "Australian/New Zealand Standard, Performance of Household Electrical Appliances—Refrigerating Appliances, Part 1: Energy Consumption and Performance", AS/NZS 4474.1:2007, Appendix M, available for purchase at *http://infostore.saiglobal.com/store/results2.aspx?searchType=simple&publisher=all&keyword=AS/NZS%204474*

functions represents the highest energy use position. *Id.* Such an approach is different than requiring the highest energy use position for the compartment. For example, a compartment that can be controlled for any temperature between −5 °F and 35 °F would likely use the most energy at its −5 °F setting. However, testing the compartment as a freezer compartment, which would most likely represent a higher energy use than when testing that compartment as a fresh food compartment, would place its energy use at a 5 °F standardized temperature under the current test procedure. Testing the compartment as a freezer compartment would involve a temperature setting 10 °F warmer than testing in the highest energy use position. This scenario would most likely use less energy than using the −5 °F setting. The proposal retained the current instructions to use the highest energy use position to test convertible compartments that do not have external doors. DOE also proposed a definition for "separate auxiliary compartments" to identify compartments that have doors that open to the product's exterior. *Id.*

ACEEE supported the proposal to test special compartments in their highest energy usage position, adding that, in the absence of data detailing how such compartments are used by consumers, the highest energy usage position makes the most sense. (ACEEE, No. 19.1 at p. 1). NRDC also supported the proposal to test special compartments in their maximum energy use position to assure that energy ratings are not overly optimistic. (NRDC, No. 21.1 at p. 3).

Other stakeholders opposed the proposal for special compartments, and some offered alternative approaches. AHAM and Whirlpool claimed that a change from the lowest temperature setting to highest energy use would add test burden, because multiple tests may be required to determine which setting results in the highest energy use measurement. (AHAM, No. 16.1 at p. 5; AHAM, Public Meeting Transcript, No. 10 at p. 61; Whirlpool, No. 12.1 at p. 3). AHAM claimed that virtually every model, without identifying any representative models, has temperature controllable compartments, and thus the proposed change could dramatically increase the test burdens on all manufacturers. (AHAM, No. 16.1 at p. 5). Electrolux commented that the highest energy use approach is unclear. (Electrolux, No. 17.2 at p. 1, cell H28). Electrolux discussed some of the complications associated with the highest energy use position requirement, mentioning (a) the difference between externally-accessible and internally-accessible compartments (e.g. such as internal drawers), (b) the possibility that the highest energy use position is not necessarily consistent with normal use, and (c) compartments that may engage a feature that increases energy use for a limited period of time. (Electrolux, No. 17.2 at p. 1, cell H26). Electrolux also questioned DOE's suggestion of a 2 cubic foot maximum size delineator for special compartments. (Electrolux, No. 17.2 at p. 1, cell H28). The PRC echoed Electrolux's comment (b) above, indicating that use of the highest energy use position may not be the best representation of the "actual use". (PRC, No. 15.1 at p. 5).

Additionally, Electrolux pointed out the need for definitions to help clarify the functions of different compartments, indicating that there are many different types of compartments, and the test procedures may not be the same for all of them. (Electrolux, No. 17.2 at p. 1, cell H26). To this end, AHAM offered definitions for both "compartment" and "sub-compartment", presumably with the intent that the proposed amendments may apply to one of these types and not the other. (AHAM, No. 16.1 at p. 11). Whirlpool recommended that special compartments subject to the proposed approach should not exceed 10% of total capacity (total product volume), adding that temperatures should be volume-weighted, but did not elaborate. (Whirlpool, No. 12.1 at p. 3). AHAM recommended using volume-weighted temperature averaging for special compartments, but did not provide reasons for adopting this approach. (AHAM, No. 16.1 at p. 6). Electrolux recommended that DOE consider including a volume adjustment factor dependent on the (typically cooler) temperature of a special compartment when determining a product's adjusted volume. While such a change may impact the related energy usage calculations, it would not affect the manner in which test sample is set up or the test is conducted and Electrolux offered no explanation as to how its proposed change would affect the actual testing of a given product. (Electrolux, No. 17.2 at p. 1, cell H28). (DOE notes that the volume adjustment factor is used to calculate adjusted volume (see Appendix A1 section 6.1), which in turn is used to calculate energy factor (see 10 CFR 430.23(a)(4)) and maximum allowable energy use (see 10 CFR 430, subpart C, section 32(a)), none of which impact test set-up and conduct of the test. Since this discussion addresses the test set-up for special compartments, DOE concludes that the comment, addressing volume adjustment factor, is not relevant.)

AHAM, Whirlpool, and Electrolux asserted that the measured energy use under the proposed special compartment procedure would change. (AHAM, No. 16.1 at pp. 3, 5, 6; AHAM, Public Meeting Transcript, No. 10 at p. 61; Whirlpool, No. 12.1 at p. 3; Electrolux, No. 17.2 at p. 1, cell H26). Whirlpool further commented that the proposed change should not be adopted prior to 2014. (Whirlpool, No. 12.1 at p. 2). Whirlpool further commented that special compartments should be tested at their coldest temperature position. (Whirlpool, No. 12.1 at p. 3)

In consideration of AHAM's comment that nearly every refrigeration product has separate compartments with temperature control, DOE randomly reviewed the refrigerator-freezer product offerings of three major brands (Whirlpool, GE, and Frigidaire) on their Web sites. These are the major brands of Whirlpool, GE, and Electrolux, manufacturers who comprise more than 80% market share for standard-size refrigerator-freezers.[3] The research, involving five randomly selected products from three key product categories (Class 3: refrigerator-freezers—automatic defrost with top-mounted freezers without through-the-door ice service; Classes 5 and 5A: refrigerator-freezers—automatic defrost with bottom-mounted freezers; and Classes 4 and 7: refrigerator-freezers—automatic defrost with side-mounted freezers) of each of the three brands indicates that one-fifth of these products have special compartments. (These product classes are currently listed in 10 CFR 430.32.) (Special Compartment: Research Summary, No. 36 at p.1, cell F65). The examined classes are those that would be most likely to employ these types of features because they contain multiple sub-compartments such as drawers within their fresh food compartments and constitute a majority of the refrigeration products sold in the market (roughly 70% of refrigeration product shipments).[4] DOE also notes that of the eleven refrigerator-freezer products purchased for reverse engineering teardowns as part of the energy conservation standard rulemaking, only two had a separate compartment with separate temperature

[3] "32nd Annual Portrait of the U.S. Appliance Industry", *Appliance Magazine,* September 2009, Vol. 66, No. 7.

[4] Shipments of standard-size refrigerator-freezers were near 10 million in 2008, while shipments of compact refrigerators, standard-size freezers, and compact freezers totaled close to 4.5 million. See the TSD, Chapter 3, "Market and Technology Assessment", section 3.2.6.1.

control—both were refrigerator-freezers with bottom-mounted freezers. Hence, DOE believes that the level of test burden associated with these test procedure amendments would be less severe than predicted by AHAM.

Definitions of Compartment Types To Improve Clarity

DOE considered the need for additional definitions, for a variety of terms—e.g. "compartment" and "sub-compartment"—as suggested by AHAM, (AHAM, No. 16.1 at p. 11), to clarify which types of compartments are subject to the different requirements. Because AHAM indicated that the suggested definitions for these terms were derived from the Australian/New Zealand standards,[5] DOE considered this approach and factored in the international harmonization concerns raised by some stakeholders (AHAM, Public Meeting Transcript, No. 10 at pp. 42–43; AHAM, No. 16.1 at pp. 1, 7, 10, 11; Whirlpool, No. 12.1 at p. 5), when it examined the need for new definitions.

AHAM proposed to define a "compartment" as "an enclosed space within a refrigerating appliance, which is directly accessible through one or more external doors." Under the AHAM proposal, a compartment "may contain one or more sub-compartments and one or more convenience features." (AHAM, No. 16.1 at p. 11).

In DOE's view, this definition, if adopted, would define a compartment as having one or more external doors, in spite of the fact that the freezer compartments of many refrigeration products do not have external doors. The definitions for "electric refrigerator" and "electric refrigerator-freezer" do not prescribe that the compartments associated with these products have external doors (see 10 CFR 430.2), thus, the AHAM-proposed definition would conflict with the agency's use of the term "compartment" within its regulations. At this time, DOE declines to make this change.

DOE also considered whether any additional definitions are needed to clarify which instructions apply to which compartment types. The following discussion walks the reader through these considerations. The NOPR proposed a series of amendments regarding compartments:

- First, DOE proposed a definition for "separate auxiliary compartments" that defined this term as "a freezer compartment or a fresh food compartment of a refrigerator or refrigerator-freezer having more than two compartments that is not the first freezer compartment or the first fresh food compartment. Access to a separate auxiliary compartment is through a separate exterior door or doors rather than through the door or doors of another compartment. Separate auxiliary compartments may be convertible (e.g., from fresh food to freezer)." 75 FR 29833–29835.
- Next, DOE proposed a new section 2.7 (for Appendices A1 and A—parts of it also appear as section 2.5 in Appendices B1 and B) that would specify the manner in which convertible and special compartments would be tested: "Compartments that are convertible (e.g., from fresh food to freezer) shall be operated in the highest energy use position. For the special case of convertible separate auxiliary compartments, this means that the compartment shall be treated as a freezer compartment or a fresh food compartment, depending on which of these represents higher energy use. Other compartments with separate temperature control (such as crispers convertible to meat keepers), with the exception of butter conditioners, shall also be tested with controls set in the highest energy use position." *Id.* DOE notes that these "other compartments" fall under the "special compartment" definition in HRF–1–1979 and HRF–1–2008. DOE did not establish a definition for "special compartment" in its proposal, since it considered that the amended section 2.7 clarifies adequately that the highest energy use position would be used for the compartments that fit the description provided in the section.
- Finally, DOE proposed new text for sections 3.2 and 6.2 (for Appendices A1, B1, A, and B): "For the purposes of calculating per-cycle energy consumption, as described in this section, freezer compartment temperature shall be equal to a volume-weighted average of the temperatures of all applicable freezer compartments, and fresh food compartment temperature shall be equal to a volume-weighted average of the temperatures of all applicable fresh food compartments. Applicable compartments for these calculations may include a first freezer compartment, a first fresh food compartment, and any number of separate auxiliary compartments." *Id.* These sections describe the additional procedures associated with convertible separate auxiliary compartments when treated as fresh food or freezer compartments.

Table III.2 below notes the terminology used in the NOPR for the listed compartments and also lists the test procedure instructions as proposed.

TABLE III.2—COMPARTMENT TYPES OTHER THAN THE FIRST FRESH FOOD COMPARTMENT OR THE FIRST FREEZER COMPARTMENT

Temperature range	Doors accessible directly from exterior?	Separate temperature control	Notes	NOPR Testing instructions
Fresh Food	Y	Y	Separate Auxiliary Fresh Food Compartment.	Test as a Fresh Food compartment.
		N		
	N	Y	Special Compartment	Highest Energy Use.
		N	.....	None.
Freezer	Y	Y	Separate Auxiliary Freezer Compartment.	Test as a Freezer compartment.
		N		
	N	Y	Special Compartment	Highest Energy Use.
		N	.....	None.
Convertible	Y	Y	Convertible Separate Auxiliary Compartment.	Test as a Fresh Food or Freezer compartment, whichever results in the highest energy use.
		N	Not likely to exist	None.
	N	Y	Convertible Compartment	Highest Energy Use.
		N	Not likely to exist	None.

[5] "Australian/New Zealand Standard, Performance of Household Electrical Appliances—Refrigerating Appliances, Part 1: Energy Consumption and Performance", AS/NZS 4474.1:2007.

The NOPR proposed to require separate auxiliary compartments that are not convertible to be tested as either fresh food or freezer compartments, depending on their temperature range. The instructions for setting any temperature controls for these compartments are described in section 3 of proposed Appendices A1, B1, A, and B. The proposed section 2.7 specified that convertible separate auxiliary compartments would also be tested either as fresh food or freezer compartments, depending on which of these selections results in a higher energy use measurement. The proposed section 2.7 also specified that convertible compartments that are not separate auxiliary compartments would be tested using the highest energy use position. Finally, the proposed section 2.7 specified that other compartments with separate temperature control that are not butter conditioners would be tested in the highest energy use position.

After re-examining this proposal and considering the relevant comments received, DOE recognizes that additional clarification would help stress that, for testing purposes, special compartments have no external doors, i.e. doors directly accessible from the exterior. To clarify the procedure, in light of commenters' concerns that the compartments involved should be more clearly identified (Electrolux, No. 17.2 at p. 1, cell H26; AHAM, No. 16.1 at p. 11), DOE has added a definition for "special compartment" in section 1 of Appendices A1, B1, A, and B.

With respect to the issue of volume, Whirlpool suggested that DOE adopt a size limit of 10 percent of the total refrigerated volume of a product for special compartments, but did not provide information or data justifying such a limit. (Whirlpool, No. 12.1 at p. 3). In contrast, Electrolux criticized as arbitrary the 2-cubic foot size delineation used in the NOPR for discussion purposes. (This volume was not proposed as a size limit). (Electrolux, No. 17.2 at p. 1, cell H26). DOE notes that there is no available information indicating typical consumer usage patterns (i.e. typical temperature settings) for special compartments and the dependence of these temperature settings on compartment size. DOE believes, however, that most such compartments are small, as described in the NOPR. 75 FR 29834. DOE notes that the definitions for the term "special compartment" in HRF–1–1979 and HRF–1–2008 mention several compartment types that are typically small (i.e. less than 2 cubic feet in size): butter or margarine conditioners, cheese compartments, crispers, ice storage bins, and meat keepers (HRF–1–1979 section 3.18; HRF–1–2008 section 3.24). Because these compartments tend to be small, there is no clear need for a size limitation since manufacturers will likely continue to limit the sizes of these compartments. For this reason, and the absence of any available information to help support the selection of an appropriate size limit, DOE has decided not to incorporate a size limitation on special compartments. Accordingly, the new definition for special compartment reads as follows.

"Special compartment" means any compartment other than a butter conditioner, without doors directly accessible from the exterior, and with separate temperature control (such as crispers convertible to meat keepers) that is not convertible from fresh food temperature range to freezer temperature range.

(See section 1 of Appendices A1 and A. A similar definition has been inserted in Appendices B1 and B)

Instructions for Testing of Special Compartments

As discussed above, stakeholders expressed concern about DOE's proposal to require testing using the highest energy use positions of special compartments rather than the lowest temperature. The comments indicated that the requirement would potentially require manufacturers to conduct multiple tests to verify that the highest energy use position was used in a test. DOE acknowledges this possibility. To address this concern, DOE has decided to modify the amendments so that they are based on temperature settings rather than the highest energy use position. Further, DOE has decided to revert to the current test procedure requirement for the coldest setting for most special compartments. For products that use the addition of heat to adjust the temperature of temperature-controllable compartments, the test procedure will require averaging of tests conducted with the temperature settings in the warmest and coldest settings. In making these changes, the potential testing burden will be minimized while ensuring that the energy consumed by these features is sufficiently captured under the test procedure.

Based on its examination of a variety of refrigeration products, DOE expects that most of those products that are equipped with special compartments provide temperature control of these compartments by increasing or decreasing the amount of cold air diverted from the refrigeration system to the special compartment. (In other words, when more air is diverted into the special compartment, that compartment's compartment temperature is lower.) As mentioned above, two of the eleven refrigerator-freezers DOE purchased for its reverse engineering analysis for the energy conservation standard rulemaking had special compartments with separate temperature control. Both of these products were designed to adjust air flow to control the temperature in these compartments. When a greater quantity of cold air is diverted to provide a lower temperature in the special compartment, less air is available to cool the rest of the fresh food compartment. This situation extends the cooldown time for the fresh food compartment, which extends the compressor run time and increases the measured energy use of the product. For such compartments, the coldest temperature setting and the highest energy use setting are generally the same. Hence, the proposed approach should not create any change in energy use measurement.

DOE proposed the change calling for the highest energy use position to establish consistency with the requirements for convertible compartments (for which the highest energy use position is prescribed—see HRF–1–1979 section 7.4.2), and to assure that this highest energy approach is also applied to products that might use resistive heating to control the temperature in special compartments. For such products, the coldest temperature setting would likely be the lowest energy use setting, because less resistance heat would be needed to raise the temperature of such a compartment above its minimum temperature.

The modified amendments specify that the requirement for averaging tests with the settings in the coldest and warmest positions applies to special compartments that use any form of heat addition for any part of the controllable temperature range of the compartments. DOE has decided to modify its earlier proposal and implement this modification only in Appendices A and B, which will require manufacturers to use this procedure in conjunction with the new energy standards that DOE is currently considering promulgating. DOE believes that these changes in the amendments will eliminate most of the added test burden potentially associated with them, since DOE's examination of the market indicates that most products do not use heat addition for special compartment temperature control. By delaying implementation of the exception for heated temperature control, the change will also eliminate the impact of the test procedure change on products manufactured prior to the

compliance date for the new energy conservation standards. Likewise, because, as described above, the coldest and highest energy use settings are equivalent for most special compartments (i.e. those controlled by adjusting the flow of cooling air), DOE believes that this amendment (coldest position, except for the minority special compartments using heat addition) does not significantly alter the proposal (highest energy use position) and will adequately capture the energy use of these features.

DOE recognizes that the highest energy use position may not be consistent with normal use, as indicated by Electrolux and PRC (Electrolux, No. 17.2 at p. 1, cell H26; PRC, No. 15.1 at p. 5). ACEEE and NRDC both supported use of the highest energy use position in light of the lack of such consumer data. (ACEEE, No. 19.1 at p. 1: NRDC, No. 21.1 at p. 3) The modified amendment addresses the concerns of Electrolux and PRC by allowing the use of averaging of warmest-setting and coldest-setting measurements for products with special compartments with heated temperature control systems. Neither stakeholder submitted any information suggesting what temperature settings are used by consumers. There is no currently agreed-upon standard as to what constitutes a normal use setting for special and convertible compartments. Based on its careful analysis, DOE believes its selected averaging approach is likely to provide a reasonable representation of consumer use for these compartments, because the approach does not represent an extreme control setting.

Regarding Electrolux's comment about temporary functions associated with special compartments (Electrolux, No. 17.2 at p. 1, cell H26), Electrolux did not provide any description of the types of such functions that might be at issue. However, DOE notes that "features" are addressed by HRF–1–2008, section 5.5.2 which are manually initiated and which operate temporarily, such as quick-chill compartments. In response to these comments, DOE chose to modify the proposed amendment to clarify that the requirement for temperature setting of special compartments do not apply to any such temporary feature or functions. This change will appear in section 2.7 of Appendices A1 and A, and in section 2.5 of Appendices B1 and B.

Instructions for Testing of Separate Auxiliary Convertible Compartments

Convertible compartments are those compartments that can operate as either freezer compartments or fresh food compartments. As discussed above, a separate auxiliary convertible compartment would be tested as either a freezer compartment or a fresh food compartment, depending on which of these functions uses more energy. Because these compartments have temperature ranges spanning those of both freezer and fresh food compartments, using the standard coldest, median, and warmest settings during testing as a freezer or fresh food compartment may be inappropriate in certain cases. For example, a separate auxiliary convertible compartment could have a range of temperature settings from −6 °F to 46 °F. The median setting would be 20 °F, which is too high a setpoint for a freezer compartment of a refrigerator-freezer and too low for a fresh food compartment. To resolve this issue, DOE has added language in the final rule specifying settings (a) within 2 °F of the standardized temperatures as the median settings, (b) at least 5 °F above the standardized temperature as the warmest setting for testing the compartment as a freezer compartment, and (c) at least 5 °F below the standardized temperature as the coldest setting for testing as a fresh food compartment. The new language also indicates that if the control setpoints do not represent specific temperatures (i.e. as might be the case for mechanical controls), that the measured compartment temperatures rather than the setpoints must meet these requirements. This change is incorporated in section 3 of Appendices A1 and A.

Additional Discussion

DOE agrees in principle with AHAM's comment that volume-weighted temperature averaging may be appropriate for special compartments. However, as AHAM indicated (AHAM, No. 16.1 at p. 6), such an approach represents a departure from the current test procedure that would change the measured energy use. The current test procedure requires that these compartments be set in their coldest position and does not include a procedure to measure their temperatures. The modified test procedure established by the final rule and the interim final rule requires the coldest temperature position for these compartments for most products, i.e. those that do not utilize heat addition for temperature control. DOE has adopted this approach to maintain greater consistency with the current test procedure. DOE may consider use of volume-weighted temperature averaging in a future test procedure rulemaking.

The test procedure for special compartments established with the interim final rule modifies the test procedure only for products that use heat addition for temperature control. Based on available information, which suggests that few products have such special compartments, DOE expects the number of products that are likely to be impacted by this change to be modest. Stakeholders have not provided any information suggesting otherwise nor have they provided data that would permit DOE to evaluate the likely effects of this change. However, in consideration of these comments, DOE has modified the timing of the amendments. This change will not require manufacturers of products using heat addition for temperature control to use the new averaging approach until the new energy conservation standards take effect. As a result, manufacturers will have additional time to redesign such products to adjust to the new procedure. Hence, the final changes in the procedures for convertible and special compartments are (1) new definitions for "separate auxiliary compartment" and "special compartment" in Appendices A1, B1, A, and B; (2) clarification that the highest energy use position requirement for convertible compartments implies they shall be tested as a freezer or fresh food compartment only if they are separate auxiliary compartments in Appendices A1 and A; (3) requirements for special compartments reiterating current procedures calling for the coldest temperature settings in Appendices A1, B1, A, and B; and (4) instructions for temperature settings for separate auxiliary convertible compartments that take into account the wide temperature control range of these compartments, which will be inserted in Appendices A1 and A. In addition, the interim final rule change is an exception to the requirements for special compartments in products that use heat addition for temperature control, for which the averaging of the warmest- and coldest-temperature settings tests shall be used, which will be prescribed as part of Appendices A and B.

6. Establishing a Temperature-Averaging Procedure for Auxiliary Compartments

The NOPR proposed amendments that would address the testing of external-door compartments other than the two main compartments of a refrigerator-freezer. Specifically, DOE proposed requirements for (1) adjusting temperature controls, (2) measuring auxiliary compartment temperatures,

and (3) incorporating the auxiliary compartment temperature into the calculation of energy consumption. 75 FR 29833–29835. DOE proposed the following:

(1) Temperature settings, generally—Consistent with current requirements, the temperature controls for auxiliary compartments with external doors that have individual temperature control capability would be set at the same median, cold, or warm setting used for the first fresh food compartment and/or the first freezer compartment, or some combination thereof as described in section 3.2.1 of Appendix A1 or B1. *Id.*

(2) Auxiliary compartment temperature measurements—Measurement of external door-equipped auxiliary compartment temperatures would be done in the same manner as prescribed in the current test procedure for the main fresh food and freezer compartments, as described in section 5.1 of Appendix A1 or B1. *Id.*

(3) Incorporation of auxiliary compartment temperature measurements in the test procedure calculations—calculations for the freezer temperature for a product with more than one freezer compartment (including one or more auxiliary freezer compartments with external doors) would be performed using a volume-weighted average of the compartment temperatures measured within each freezer compartment. A similar approach would apply to fresh food compartments. These freezer and fresh food temperatures would be used to determine the appropriate temperature settings for subsequent testing, and to calculate the energy use. *Id.*

DOE proposed to insert these amendments into Appendices A1 and A to address those auxiliary compartments with external doors that are found in some refrigerators and refrigerator-freezers. DOE proposed similar amendments to Appendices B1 and B to address the auxiliary compartments found in some freezers. DOE further proposed to define "separate auxiliary compartments" to include auxiliary compartments with external doors in order to ensure they are treated consistently with other auxiliary compartments. *Id.*

Commenters generally supported this approach. For example, AHAM and Whirlpool both concurred that auxiliary compartment temperatures should be volume-weighted. (AHAM, Public Meeting Transcript, No. 10 at p. 65; Whirlpool, No. 12.1 at p. 4). AHAM provided an equation to illustrate the volume-weighted averaging of multiple compartments. (AHAM, No. 16.1 at p. 6).

While DOE agrees that AHAM's suggested equation properly represents the proposed approach, because it provides a weighted average of compartment temperatures in which the temperatures are weighted by the compartment volumes, the final rule and interim final rule adopt a more general equation that is functionally equivalent by averaging for a general number of fresh food compartments. DOE is also adopting an equivalent volume-averaging equation for the freezer compartment temperature. These changes have been made in Appendices A1, B1, A, and B. The requirements for testing of auxiliary compartments otherwise remain as they were proposed, except for the clarification regarding temperature settings for convertible separate auxiliary compartments, discussed above in section III.D.5.

7. Modified Definition for Anti-Sweat Heater

DOE proposed to modify the definitions of anti-sweat heater in both the refrigerator and refrigerator-freezer test procedures and in the freezer test procedures to clarify that such heaters can be used for both interior and exterior surfaces. 75 FR 29835.

The current DOE test procedure definition for anti-sweat heater applies to heaters that prevent the accumulation of moisture on the exterior surfaces of the cabinet (see 10 CFR part 430, subpart B, appendix A1, section 1.3 and appendix B1, section 1.2). However, some refrigerator-freezers also use anti-sweat heaters to prevent moisture accumulation on internal surfaces of the cabinet. In particular, manufacturers of French door refrigerator-freezers with through the door (TTD) ice service have used anti-sweat heaters to prevent moisture accumulation inside the fresh food compartment near the air duct embedded in the side wall that carries refrigerated air to the ice compartment.

To account for heaters that operate in this manner, DOE proposed to change the anti-sweat heater definition found in Appendices A1 and B1. DOE also proposed to include these modified definitions in Appendices A and B. This proposed modification would not change the test procedure but would clarify that interior heaters used to prevent sweating are to be treated as anti-sweat heaters for purposes of calculating energy usage under the procedure. *Id.*

AHAM, Whirlpool, ACEEE, and NRDC supported the DOE proposal for the anti-sweat heater to apply to both interior and exterior surfaces (AHAM, No. 16.1 at p. 6; Whirlpool, No. 12.1 at p. 4; ACEEE, No. 19.1 at p. 2; NRDC, No. 21.1 at p. 3). There were no comments objecting to this proposal.

DOE also sought comment on whether the proposed definition needed to be modified to indicate that a heater that prevents the accumulation of moisture, irrespective of whether that heater is designated as an anti-sweat heater, should be defined as an anti-sweat heater. Commenters provide no views on this issue.

In light of the support from commenters for DOE's proposed approach, and the absence of any additional comment regarding any further modifications to address heaters that prevent moisture accumulation, DOE has decided to adopt its proposal to modify the definition of anti-sweat heater to apply to interior as well as exterior cabinet surfaces.

8. Applying the Anti-Sweat Heater Switch Averaging Credit to Energy Use Calculations

DOE proposed to modify the calculation for annual energy use to make it consistent with the annual operating cost calculation. 75 FR 29835. Currently, the energy conservation standards for refrigeration products are based on the annual energy use calculated for these products. This value is calculated based on a "standard cycle." (see 10 CFR 430.23(a)(5) and (b)(5)). The standard cycle is defined as "the cycle type in which the anti-sweat heater control, when provided, is set in the highest energy consuming position." (see Appendix A1, section 1.7 or Appendix B1, section 1.5).

In contrast, the annual operating cost, which serves as the basis for the figures reported on the Federal Trade Commission's EnergyGuide label, can be calculated based on the average of energy consumption test results using the standard cycle and a cycle with the anti-sweat heater switch "in the position set at the factory just prior to shipping". (see 10 CFR 430.23(a)(2) and (b)(2)). Manufacturers generally set the switch off prior to shipping. Thus, the annual operating cost is calculated as an average of tests with the switch on and off. This is referred to as the "anti-sweat heater switch averaging credit" for the purposes of this discussion. DOE understands that most manufacturers test and rate refrigeration products equipped with anti-sweat heater switches using the averaging credit and use the same results for reporting both energy use and annual operating cost.

DOE proposed to modify the annual energy use calculation to ensure consistency with the annual operating cost calculation by making changes to

10 CFR 430.23(a) and 10 CFR 430.23(b). 75 FR 29835.

Electrolux favored preserving the current test procedure for testing with an anti-sweat heater switch and sought clarification regarding the agency's rationale for its proposed change. (Electrolux, No. 17.2 at p. 1, cell H50). DOE received no comments calling for elimination of the anti-sweat heater switch averaging credit. To clarify, DOE's proposed modification would change the test procedure to ensure consistency with the manner in which manufacturers already test products—by averaging the test results with the anti-sweater heater switch positioned in the on and the factory-set positions. As explained in the NOPR, this approach was the original intent of the test procedure, and there is nothing from the preamble to the final rule that first established the annual energy use metrics of 10 CFR 430.23(a) and 430.23(b) (see 54 FR 6062 (February 7, 1989)) to indicate that the omission of the anti-sweat heater averaging credit in these metrics was anything but an oversight. 75 FR 29835. Having received no other comment from stakeholders, DOE has decided to proceed with the proposed modification.

9. Incorporation of Test Procedures for Products With Variable Anti-Sweat Heating Control Waivers

Variable anti-sweat heating (VASH) control systems are used to adjust the use of anti-sweat heaters based on ambient conditions. These systems are typically active under high humidity conditions but deactivate when their sensors detect that ambient humidity conditions are dry enough such that their operation is not required. Commercialized products incorporating such control systems have been tested for certification under test procedure waivers using a test procedure based on calculation rather than measurements. This procedure was initially proposed in a GE waiver petition, which was granted February 27, 2008 (GE waiver). 73 FR 10425, 10427. This procedure calculates the additional energy use of the anti-sweat heaters based on manufacturers' data for average heater power input at 10 different humidity levels. *Id.* To address products that have these systems, the NOPR proposed an alternative test procedure prescribing a method for measuring the energy use impact of the anti-sweat heaters during the product's operation, rather than the procedure described in the GE waiver. 75 FR 29835–29837.

The proposed test would require measuring a product's energy use in a chamber controlled at 72 °F at three different humidity levels, including a low humidity level for which the anti-sweat heater would be expected to be inactive. The difference in energy use measurements made in moderate- and high-humidity tests and the energy use measurement of the low-humidity test would provide a measurement of the energy use associated with the heaters operating under VASH control. These measurements would be used to calculate the energy use contribution associated with the anti-sweat heaters at the 10 humidity levels of the GE waiver. A weighted average of these energy use contributions, based on the same weighting factors of the GE waiver procedure, would constitute an adjustment factor that a manufacturer would add to the energy use measured during a test in a 90 °F ambient with the anti-sweat heaters deactivated, similar to the approach of the GE waiver. DOE had proposed that deactivation of the anti-sweat heaters in this 90 °F test would be achieved by requiring a low ambient humidity (i.e. less than 35% relative humidity) to ensure that the VASH control system would not engage the heaters. DOE proposed this procedure rather than adopt the GE waiver's calculation approach because DOE initially did not consider the calculation approach amenable to verification. DOE also proposed to use the standard cycle for calculating energy use for products with VASH control and anti-sweat heater switches rather than using the averaging credit for such products, as allowed in the GE waiver procedure because of concern that the additional energy savings associated with the switch is not likely to occur during consumer use if the VASH control already turns off the heaters when they are not needed. *Id.*

Responding to this proposal, AHAM, Fisher & Paykel, and Whirlpool, asserted that (1) it is possible to independently verify published energy consumption measured under the GE waiver, (2) DOE's proposal imposes undue test burden on the manufacturer without a corresponding increase in accuracy, (3) DOE's proposal penalizes variable anti-sweat heater systems compared to fixed anti-sweat heater systems (because of the proposed elimination of the anti-sweat heater switch averaging credit), and (4) DOE's proposal has a significant impact on measured energy use, requiring adjustment of the energy conservation standards. (AHAM, No. 16.1 at pp. 2–3; Fisher & Paykel, No. 24.3 at p. 1; Whirlpool, No. 12.1 at pp. 4–5). GE also asserted that an independent laboratory could verify the reported energy consumption by measuring the wattage of the heater at the various humidity levels at the appropriate ambient temperature. (GE, Public Meeting Transcript, No. 10 at pp. 80–81).

AHAM noted that the requirement to control relative humidity in test chambers below 35 percent would increase test burden. (AHAM, Public Meeting Transcript, No. 10 at p. 85) GE added that achieving 95 percent relative humidity is difficult because of the heavy amount of condensation that would result during testing. (GE, Public Meeting Transcript, No. 10 at p. 166) Electrolux expressed concern over the significant transition time when changing chamber humidity levels and allowing the product to reach equilibrium. (Electrolux, Public Meeting Transcript, No. 10 at pp. 167–168) Whirlpool, Electrolux, and GE reiterated that available humidity chambers are not currently capable of achieving the required accuracy for measuring energy consumption with the prescribed level of accuracy under the proposed procedure and that making the required upgrades to achieve this accuracy would not be possible within the proposed 30-day period.[6] Whirlpool requested that these proposed changes take place in conjunction with the 2014 standards that DOE is currently promulgating, but not earlier. (Whirlpool, Public Meeting Transcript, No. 10 at pp. 78–79; Electrolux, No. 17.2 at p. 1, cell H65; GE, Public Meeting Transcript, No. 10 at pp. 165–166).

AHAM and Fisher & Paykel urged DOE to adopt the GE waiver in its entirety without modification. (AHAM, No. 16.1 at pp. 2–3; Fisher & Paykel, No. 24.3 at p. 1) In addition, AHAM stated in the public meeting that there is industry consensus around several issues: (1) 30 days is insufficient to begin testing under this proposed procedure, (2) the increase in test burden would likely not change the test results, (3) Japanese researchers have presented data showing that the 1.3 system factor[7] is accurate, and (4) DOE should harmonize with IEC and Canada where possible. (AHAM, Public Meeting Transcript, No. 10 at pp. 79–80) DOE notes that the IEC has not yet published

[6] Stakeholders apparently have interpreted the effective date of the test procedure amendments, which is 30 days after the final rule, to also be the date that representations regarding energy use of manufactured products must start to be based on the amended test procedures. As explained earlier, the transition to representations based on the amended test procedure must occur within 180 days of the final rule.

[7] The 1.3 system factor is used in the GE waiver test procedure to convert energy use of the anti-sweat heaters to energy use of the product.

a test procedure incorporating the GE waiver procedure.

The PRC requested that the test procedure should use relative humidity measurement points of 35 percent and 80 percent instead of 25 percent and 95 percent in order to yield representative results. The PRC asserted that a 25 percent relative humidity (RH) level would likely not require an anti-sweat heater and 95 percent RH conditions are rare. (PRC, No. 15.1 at p. 4) Whirlpool and Electrolux noted that the infiltration load (i.e. the thermal load added to the refrigeration system associated with leakage of ambient air into the cabinet) increases as ambient humidity increases. Hence, the adjustment factor determined using the measurement would include an adjustment for infiltration that is not associated with the anti-sweat heaters, which would exaggerate the impact of the heater energy use. (Whirlpool, Public Meeting Transcript, No. 10 at p. 167; Electrolux, Public Meeting Transcript, No. 10 at p. 71–73).

NRDC supported DOE's proposal to measure variable anti-sweat heater energy and to define the moisture content of the test chamber. (NRDC, No. 21.1 at p. 4) NRDC suggested that DOE should allow manufacturers to apply for a waiver to avoid the test burden associated with achieving 95 percent RH and allow manufacturers to use an alternative maximum-humidity condition for the test. NRDC also indicated that manufacturers should report the anti-sweat heater wattages at different humidity levels to aid DOE's verification efforts. *Id.* ACEEE noted that Thermotron, Cincinnati Sub Zero, and Scientific Climate Systems all supply temperature- and humidity-controlled environmental chambers capable of achieving a relative humidity range of 20 percent to 98 percent within 2–3 degrees of accuracy. (ACEEE, No. 19.1 at p. 2).

NIST also made a general request during the public meeting that DOE require manufacturers to report their heater control algorithms in certification reports. NIST also requested that DOE modify the test requirements to ensure that the humidity levels used during testing are selected based on the algorithm details to provide the most appropriate test for verifying the performance of a tested product's anti-sweat heater. (NIST, Public Meeting Transcript, No. 10 at pp. 75–76) Electrolux also pointed out that different products may use different control strategies. (Electrolux, No. 17.2 at p. 1, cell H53).

The IOUs recommended that DOE investigate VASH control characteristics to ensure that the test procedure favors those systems that use more adaptive controls. The IOUs also asked that DOE consider requiring confirmation during the test that the anti-sweat heater is off at the 25 percent RH condition to prevent circumvention of the test procedure. (IOUs, No. 14.1 at p. 4). Fisher & Paykel also voiced concern about the potential for circumvention associated with heaters that do not deactivate at 25 percent RH (Fisher & Paykel, No. 24.3 at p. 2). The company explained that because the incremental energy use associated with the proposed test at 65 percent and 95 percent relative humidities involves subtracting the measured energy use of those tests from the energy use measured in the 25 percent relative humidity test, any activation of the heaters in the 25 percent test would increase the energy measured in the 25 percent test, which would reduce the incremental energy use calculated by the subtractions for the 65 and 95 percent tests. A manufacturer can simply reduce the energy use adjustment determined for the anti-sweat heaters (which is determined based on the incremental measurements of the 65 and 95 percent tests) by allowing activation of the heaters during the 25 percent test. However, DOE notes that this concern was intended to be alleviated in the proposed procedure by also requiring that the 90 °F ambient test be conducted using sensor-based deactivation of the heaters, also in a 25 percent relative humidity ambient. Any reduction of measured heater energy use in the 72 °F/25 percent relative humidity test due to heater activation would be negated by higher energy measurement in the 90 °F/25 percent relative humidity test.

Fisher & Paykel also indicated that the proposed equations for the energy differences at 65 percent and 95 percent relative humidities presented in the proposed new Appendix A were incorrect, using minus signs where equals signs should have been. (Fisher & Paykel, No. 24.2 at p. 3). See 75 FR at 29864.

DOE acknowledges the potential burden associated with the proposed VASH test procedure and that the proposal did not fully address all VASH control variants, nor the possibility of exaggeration of the measurement as a result of infiltration (as suggested by the Electrolux and Whirlpool comments). Notwithstanding this fact, DOE continues to believe that the adoption of a measurement-based test as opposed to a calculation to account for the energy use of products employing these types of control systems is critical to ensuring that the procedures yield meaningful information regarding the performance of products equipped with these systems. Without such a method, DOE's ability to resolve cases of circumvention (i.e. a manufacturer claiming that a product has variable anti-sweat heater control when it does not) would be significantly weakened. This is because, although DOE could conduct tests to verify manufacturers' claims regarding their control algorithms, as suggested by some stakeholders (AHAM, No. 16.1 at pp. 2–3; Fisher & Paykel, No. 24.3 at p. 1; Whirlpool, No. 12.1 at pp. 4–5), the test procedures used for such verification are not codified and could be called into question. Also, the direct measurement of anti-sweat heater wattage as suggested in the comments may be difficult or impossible, depending on the routing of wires to these heaters. However, in lieu of a more comprehensive VASH test procedure, DOE is codifying the procedure that DOE previously approved as part of the test procedure waivers granted to several manufacturers. This approach will provide a uniform method to help account for the energy used by these systems until such time that DOE re-examines this procedure and decides on potentially more comprehensive modifications. Hence, the GE waiver procedure has been adopted in Appendices A1 and A.

DOE believes that the use of the averaging credit for products with anti-sweat heaters and VASH control is inconsistent with field usage, because, as described in the NOPR, an anti-sweat heater switch is not likely to provide additional savings if the VASH controls already respond to ambient conditions and turn off the heaters when they are not needed. 75 FR 29837. However, DOE believes that this provision should remain in place at this time, as specified in the GE waiver procedure, because without the ability to turn off the anti-sweat heater with such a switch, it would be difficult to conduct the test as specified in the waiver because turning off the heaters would require disconnecting the wires supplying their power, which may be difficult or impossible with damaging the product. It is not clear that universally-applicable instructions could be developed for running the 90 °F ambient test with the anti-sweat heater disengaged for products without such switches. Developing a general procedure addressing VASH systems would likely need to include development of an approach to address this issue for these products in order to ensure that the

procedure provides results comparable to the energy usage found in the field.

DOE also sought comment on whether the VASH test procedures should apply to freezers as well as refrigerator-freezers. AHAM and Fisher & Paykel both indicated that these test procedures should apply to freezers (AHAM, No. 16.1 at p. 3: Fisher & Paykel, No. 24.2 at p. 1). Based on these responses, the final rule will add these procedures to Appendices B1 and B.

10. Elimination of Part 3 of the Variable Defrost Test

DOE proposed eliminating the optional third part of the test currently in place for products equipped with a variable defrost capability. 75 FR 29839–29840. The current procedure, which appears at 10 CFR part 430, subpart B, appendix A1, section 4.1.2.3, was added to the test procedures in 1989. 54 FR 36238. This test was designed to measure the mean time between defrosts for variable defrost-equipped products. DOE included this optional step to provide manufacturers with an alternative to the default specification for the CT value (10 CFR part 430, subpart B, appendix A1, section 5.2.1.3) that would ordinarily be used when calculating energy use. (CT represents the number of hours of compressor operation between defrost cycles)

As the NOPR explained, the time required to conduct this part of the test ranges from 1 to 2 weeks. To ascertain the impact on accuracy of using the default calculation for CT rather than the optional test, DOE tested a variable defrost product using the optional procedure. The test results showed that the calculated energy use using the CT determined by the optional third part of the test differs from the energy use determined using the default value of CT by less than 0.4% (Third Part Test, No. 33 at p. 1, cell E57). DOE is unaware of any manufacturer that has used the optional procedure to rate a refrigeration product, which indicates to DOE that the industry generally considers the default equation for CT to be adequately represent the performance of variable defrost systems. For this reason, and to simplify the test procedure, DOE proposed to eliminate this optional test from Appendices A1, B1, A, and B. 75 FR 29839–29840.

Both AHAM and Whirlpool supported the proposal to eliminate the optional third part of the test. (AHAM, No. 16.1 at p. 6; Public Meeting Transcript, No. 10 at p. 111; Whirlpool, No. 12.1 at p. 4) DOE did not receive any comments from manufacturers or other parties that indicate that the test has been used to rate a product's energy use. DOE did not receive any comments in favor of retaining this optional step. Hence, DOE has decided to adopt its proposal to eliminate this optional step.

11. Corrections and Other Test Procedure Language Changes

This section discusses three other amendments to the current test procedure.

Simplification of Energy Use Equation for Products With Variable Defrost Control

DOE proposed modifying Appendix A1 by removing the clarifying equations for F, ET_M, and ET_L, eliminating references to the optional third part of the test (see section III.D.10 above, which discusses eliminating this part of the test), and correcting the units in the definitions for CT_M (maximum time between defrosts in hours of compressor run time) and CT_L (lowest time between defrosts in hours of compressor run time). Additionally, DOE proposed that parallel changes be made in Appendices B1, A, and B. (In Appendix B1, the change would be made in the current section 5.2.1.3.) 75 FR 29840.

AHAM supported the proposed modifications. (AHAM, No. 16.1 at pp. 6–7) Fisher & Paykel commented that the proposed language would not sufficiently clarify that the CT, CT_M and CT_L values represent compressor run time rather than clock time.

In order to address Fisher & Paykel's comment, DOE has modified the sections of the test procedure that use CT in the energy use equations (e.g. sections 5.2.1.2 through 5.2.1.5 of the new Appendix A) to help clarify that these values represent compressor run time rather than clock time. DOE notes that not all of these sections required exactly the same modifications. Similar adjustments have also been made in Appendices A1, B1, and B.

Energy Testing and Energy Use Equation for Products With Dual Automatic Defrost

DOE proposed to amend Appendix A1 to correct certain errors in the instructions for testing dual automatic defrost-equipped products. These proposed amendments affected two areas. First, DOE proposed to modify the text in section 4.1.2.4 of Appendix A1 to explicitly include the compressor and defrost heater in the list of components associated with each system that must have their energy use separately measured. Second, DOE proposed to correct errors in the energy use equation that addresses this class of products (section 5.2.1.5 of Appendix A1 of the current test procedure). 75 FR 29841.

DOE received no comments objecting to these proposed changes. However, AHAM suggested that DOE adopt a different approach. Specifically, AHAM suggested removing the dual compressor system equations of section 5.2.1.4, removing the proposed test procedure for products with multiple defrost cycle types (proposed as section 5.2.1.6 of Appendix A—see section III.E.2 below), and inserting a more general procedure addressing multiple compressor systems as well as single-compressor systems with more than one active defrost cycle. AHAM's written comments included a draft test procedure for DOE's consideration. AHAM explained that the modified equations would be simpler and more efficient, and that, because they are under consideration by the IEC and other countries, their adoption would enhance international standards harmonization. (AHAM, No. 16.1 at p. 7) Sub Zero supported AHAM's comment regarding this issue. (Sub-Zero, No. 23.1 at p. 1)

DOE notes that a key distinction between the energy use calculations of proposed section 5.2.1.6 and the calculations of section 5.2.1.4 is that the former applies to products with a single compressor with multiple defrost cycle types, while the latter applies to products with two compressors. DOE believes that testing products equipped with two compressors is significantly more complicated than testing products with single compressors and multiple defrost cycle types because, when conducting the second part of the test that measures defrost cycle energy use for one of the two or more refrigeration systems, the operation of these other compressors continues. Unless the average energy use of these compressors and their fans is the same during the second part of the test conducted for the first compressor as it is for the first part of the test, the difference in their energy use for the two parts of the test will be added to or subtracted from the first-compressor defrost cycle energy measurement. The only way to avoid this addition or subtraction is by separately measuring the systems during both the first part of the test and during the second part of the test. In contrast, for a system with a single compressor but multiple evaporators, the compressor turns off during the defrost cycle for any of the evaporators, which allows the product's measured overall energy use to accurately measure defrost cycle energy use. Hence, establishing the proposed section 5.2.1.6 will both permit a simpler approach to testing single-compressor products with

multiple defrost cycle types and ensure that energy measurement for these products is accurate.

After analyzing this alternative proposal for multiple compressors, DOE does not believe that it simplifies testing of systems with two or more compressors. In particular, it does not alleviate the test procedure burden associated with having to separately measure the energy use for the different systems, which is part of the procedure of the current dual-compressor product test procedure. DOE understands that this is a key difficulty in testing such systems since it introduces burden and that, in some cases, it may be impossible to accomplish, depending on the details of the internal wiring of such products. DOE is not convinced that AHAM's approach avoids the need for a separate measurement. AHAM's proposed equation includes a term $EP2_j$ that is defined as the average power for system "j" while system "i" is in defrost and recovery. Measuring the average power for this system would still require a separate measurement, as provided under the current test procedure for dual compressor systems. Thus, the AHAM-proposed procedure appears to represent little or no improvement over the current procedure.

DOE acknowledges that this final rule does not eliminate the difficulty of obtaining separate energy use measurements required in the test procedure for dual compressor products. However, as discussed above, neither does the AHAM-proposed approach. Additionally, as far as DOE is aware, the AHAM procedure has not been subject to the review of interested parties. It is a fairly complex procedure and its adoption into DOE's regulations would require review and comment by the public. In light of DOE's statutory obligation to finalize the refrigeration product energy conservation standard rulemaking by the end of this year, a complete evaluation of AHAM's procedure is not possible within the context of this rulemaking. Hence, DOE has retained in Appendices A1 and A, the dual-compressor system test procedure with the modifications proposed in the NOPR. DOE may consider further revising this part of the procedure in a future rulemaking to address the measurement issues discussed in this section and may reconsider AHAM's proposal at that time.

Freezer Variable Defrost

This section discusses an issue independently raised by stakeholders and is not directly related to any of the specific NOPR proposals. In the test procedures set out for variable defrost-equipped freezers, AHAM pointed out that the energy use equations are missing the freezer correction factor k. (AHAM, No. 16.1 at p. 11) The factor k adjusts the measured energy use for freezers for consistency with consumer usage patterns of these products. Its value is 0.85 for upright freezers and 0.7 for chest freezers. Applying these values means that the calculated energy use of upright freezers is 15% lower than the measured energy use. Correspondingly, the calculated energy use of chest freezers is 30% lower than the measured energy use.

DOE notes that the other energy use equations of the current version of Appendix B1 (sections 5.2.1.1 and 5.2.1.2), which collectively address products that are not equipped with variable defrost, include the factor k. Variable defrost was introduced into the test procedures for refrigerators, refrigerator-freezers, and freezers in the 1989 final rule. 54 FR 36238. That final rule did not address the omission of the freezer correction factor in the equations for energy use of freezers with variable defrost. From the absence of any discussion of this issue in the preamble, there is nothing to suggest that DOE intended to treat variable defrost freezers differently from freezers not having this type of control. Hence, today's final rule corrects this oversight.

12. Including in Certification Reports Basic Information Clarifying Energy Measurements

This section describes amendments for reporting that were proposed in the NOPR but will be adopted in the CCE rulemaking. 75 FR 56819. DOE proposed to modify its regulation to require that certification reports explain how products with advanced controls features (e.g. variable defrost control or variable anti-sweat heater control) or with temperature sensor locations different from the standard locations are tested. 75 FR 29841–42. The energy use of such products cannot be measured properly without knowing specific information regarding these control systems or how the temperature sensor locations have been modified from their standard locations. This information impacts how such a product is tested and how its energy use is calculated. In order to allow verification of the energy use ratings for such products by parties other than their manufacturers, DOE proposed that information clarifying these test details be included in certification reports. *Id.*

DOE proposed that manufacturers identify in their certification reports whether the product has (1) variable defrost control, and if so, the values of CT_L and CT_M used in the energy use calculation, (2) variable anti-sweat heater control, and (3) internal design details requiring adjustment during testing of temperature sensor locations from their standard locations. The NOPR proposed modifying 10 CFR 430.62(a)(4)(xii) to implement these changes. This section of the CFR lists the information specific to refrigeration products that must be provided in certification reports. The NOPR proposed that the relocation of temperature sensors from standard locations be allowed without petitioning for a waiver only if the new locations are no more than 2 inches from the standard locations. *Id.*

DOE sought comment and suggestions on its proposal. AHAM and Whirlpool supported adding the proposed data to the certification report reporting requirements if parallel changes are made to DOE's online data submission template. (AHAM, No. 16.1 at p. 11; Whirlpool, No. 12.1 at p. 8) However, AHAM added that the temperature sensor locations would need to remain confidential until the certification reports are submitted to DOE. (AHAM, Public Meeting Transcript, No. 10 at p. 48) As described in section III.D.3, stakeholders opposed using the waiver process for reporting any deviation from the standard locations. DOE has decided not to include a requirement for waivers in case of temperature sensor relocation since it will be receiving this information as part of a certification report.

Stakeholders also encouraged DOE to add a requirement to report the wattage values used in the variable anti-sweat heating energy use calculation. See Section III.D.9, above. Based on these comments and the absence of any objections, DOE is modifying this proposal within the context of the CCE rulemaking to require manufacturers to report the wattages used in the variable anti-sweat heating energy use calculation for products having this type of control system.

Any such changes that DOE may make to these reporting requirements would be made through the ongoing CCE rulemaking and would be set out in a new 10 CFR part 429. 75 FR 56819. DOE will also make any necessary updates to its online data submission template as appropriate.

13. Rounding Off Energy Test Results

DOE requested comment on whether it needed to clarify the test procedure to specify the required precision in reporting refrigeration product energy use. 75 FR 29847.

AHAM and Whirlpool both supported rounding annual energy use to the nearest kilowatt-hour. (AHAM, No. 16.1 at p. 10–11; AHAM, Public Meeting Transcript, No. 10 at p. 162; Whirlpool, No. 12.1 at p. 7) No commenters objected to this approach. Hence, with this final rule, DOE will implement this requirement in 10 CFR 430.23(a), for refrigerators and refrigerator-freezers, and in 10 CFR 430.23(b), for freezers.

DOE recognizes that, if energy use is reported to the nearest kilowatt-hour, the specification of maximum allowable energy use must also be rounded to the nearest kilowatt-hour to prevent a reporting error. For example, if the energy standard was 500.7 kWh for a product whose energy use measurement was 500.6 kWh, rounding the measurement to 501 kWh might appear to show energy use higher than the maximum allowable under the standard. Hence, DOE also proposed that the maximum allowable energy use under the energy conservation standard be rounded to the nearest kilowatt-hour as part of the energy conservation standard rulemaking. 75 FR 59570.

Because this change is primarily clerical and does not represent a change in the measured energy use of these products, DOE is not delaying the implementation of this provision as part of the new standards that are under consideration for 2014. Accordingly, this provision will be inserted into 10 CFR part 430, subpart C, section 32(a).

E. Amendments To Take Effect Simultaneously With a New Energy Conservation Standard

This section discusses additional proposed changes that would apply to manufacturers when demonstrating compliance with any standard levels that DOE sets as part of its parallel rulemaking for amended energy conservation standards, scheduled to take effect in 2014. DOE had initially proposed that two of these changes be required for testing products prior to the compliance date of the new energy conservation standards, but, due to stakeholders comments, DOE has shifted these so that they will be required for testing starting on the compliance date of the new energy standards. These two changes include (1) modifying the test procedures for products with long-time or variable defrost functions to capture precooling energy use and (2) establishing test procedures for products with multiple defrost cycle types. (Sections III.E.1 and III.E.2 below discuss these amendments.) DOE further notes that some of the amendments that it had proposed have been modified to mitigate their potential impacts. These include the proposed amendments affecting convertible and special compartments and test procedures for products with variable anti-sweat heater control, discussed in sections III.D.5 and III.D.9 above. These changes were made to help ensure that manufacturers obtain test results that are representative of average consumer use.

Responding to the NOPR, stakeholders commented that DOE should adjust the new energy conservation standard to address the potential changes in measured energy use associated with several of the proposed test procedure amendments. AHAM and ACEEE jointly commented that if DOE adopts the energy standards jointly proposed by industry and energy advocates, the standards should be revised to ensure that there is no change in the stringency of the allowable energy use before and after the changes to the test procedures. (Joint Comments, No. 20.1 at p. 3) The standard levels proposed in the energy conservation standard NOPR (see 75 FR 59471–59472) were set taking into consideration the impacts of the compartment temperature changes and the modified volume calculation method. These test procedure amendments are described below in sections III.E.4 and III.E.5. Commenters indicated that additional adjustment of the new energy conservation standards might be necessary. These issues are discussed in other sections of this notice. However, DOE notes that the adjustment of the energy conservation standard is not within the scope of today's notice and does not provide a final resolution of these issues.

1. Modification of Long-Time and Variable Defrost Test Method To Capture Precooling and Temperature-Recovery Energy

DOE proposed to revise the test procedures for products with long-time or variable defrost to capture precooling energy. 75 FR 29837–29839. Long-time defrost is defrost control in which compressor run time between defrosts exceeds 14 hours. Variable defrost is a type of defrost control in which the time interval between defrosts is adjusted based on need, i.e. when a sufficient amount of moisture has collected on the evaporator as frost to reduce refrigeration performance.

Precooling involves cooling the compartment(s) of a refrigerator-freezer to temperatures significantly lower than the user-selected temperature settings prior to an automatic defrost cycle. This technique may be employed in certain systems to limit maximum freezer compartment temperature during defrost cycles. A precooling control system initiates an extra long compressor run before the defrost cycle to reduce the temperature of the cabinet or one of its compartments significantly more than would occur during a normal compressor cycle. An extra long compressor run is one where the compressor on-cycle continues for at least 10% longer than the length of a typical compressor on-cycle after the compartment temperature has dropped down to the temperature at which the compressor typically turns off during steady state cycling operation between defrosts.

Although precooling consumes energy in refrigeration products used by consumers, the current test procedure does not include this energy use. The current long-time defrost test (used also for products with variable defrost) consists of two parts. The first part measures the steady cycling energy use of the refrigerator-freezer with no contribution from the defrost cycle. The second part measures the energy use contribution associated with the defrost cycle. The second part of the test starts when the last compressor cycle before the defrost stops. Appendix A1, section 4.1.2.1. If this last compressor cycle is a precooling cycle, representing more average energy use than is measured during part 1 of the test, the test cannot measure all of the energy use associated with the defrost cycle. This situation presents a potential loophole in the current test procedure that the amendment described in this section is closing.

The DOE test procedure for products with automatic defrost in which defrost cycles are separated by less than 14 hours of compressor run time specify that the test period be "from one point during a defrost period to the same point during the next defrost period." 10 CFR part 430, subpart B, appendix A1, section 4.1.2. In 1982, DOE amended the test procedures to include the alternative procedure for long-time defrost (section 4.1.2.1 of Appendix A1) to accommodate long periods of time between defrosts (i.e. significantly greater than 24 hours of test time) without making the energy test period unduly burdensome. 47 FR 34517 (August 10, 1982). This change, made to reduce test burden, was made at a time when control systems capable of precooling were not in general use—hence, the time period defined for the test did not include precooling compressor cycles. The change does not imply that DOE had intended that part of the energy use associated with defrost does not need to be measured.

The variable defrost test, introduced in 1989, accommodates even longer times between defrosts compared to the time periods in the long-time defrost test. (See 54 FR 36238 discussing calculated values of CT (hours of compressor run time between defrosts to be used in the equation for energy consumption) with values ranging from 28.96 to 45 hours, as compared to approximately 14 hours for long-time defrost).

DOE proposed to make the following modifications to address precooling energy use:

• Modifying the long-time defrost test procedure description to read as follows.

4.1.2.1 Long-time Automatic Defrost. If the model being tested has a long-time automatic defrost system, the two-part test described in this section may be used. The first part is the same as the test for a unit having no defrost provisions (section 4.1.1). The second part starts when the compressor turns off at the end of a period of steady-state cycling operation just before initiation of the defrost control sequence. If the compressor does not cycle during steady-state operation between defrosts, the second part starts at a time when the compartment temperatures are within their ranges measured during steady state operation, or within 0.5 °F of the average during steady state operation for a compartment with a temperature range during steady state operation no greater than 1 °F. This control sequence may include additional compressor operation prior to energizing the defrost heater. The second part terminates when the compressor turns on the second time after the defrost control sequence or 4 hours after the defrost heater is energized, whichever occurs first. See Figure 1. 75 FR 29838–39.

• Modifying Figure 1, which shows the long-time defrost test period to reflect the proposed language discussed above and adding a second illustration showing the appropriate measurement technique when there is precooling. *Id.*

ACEEE, NRDC, and the IOUs supported the proposed language for the long-time automatic defrost test method (ACEEE, No. 19.1 at p. 3; NRDC, No. 21.1 at p. 4; IOUs, No. 14.1 at p. 5) Whirlpool supported modifying the test procedure to clarify that the second part of the test starts when the compartment temperatures are at steady state operation, adding parenthetically that this could be interpreted to mean within 0.5 °F. (Whirlpool, No. 12.1 at p. 6) GE supported the inclusion of a means to measure precooling energy use in the test procedure. (GE, Public Meeting Transcript, No. 10 at p. 97)

AHAM suggested that the test procedure specify that the average temperatures be the averages calculated from the first part of the long-time defrost test. AHAM also commented that the test procedure should rely on temperature control cycles instead of compressor time in order to address variable speed compressors. (AHAM, No. 16.1 at p. 8; AHAM, Public Meeting Transcript, No. 10 at p. 105)

Fisher & Paykel supported starting (and stopping) the defrost and recovery measurements in steady state conditions. (Fisher & Paykel, No. 24.2 at p. 2)

Electrolux expressed two key concerns regarding the proposed test procedure language. It noted that (1) the procedure must be able to address both cycling and variable-speed compressors and (2) the proposed test procedure does not sufficiently clarify how to determine when the test starts, i.e. what temperature criteria are used. (Electrolux, No. 17.2 at p. 1, cell H74)

AHAM, Whirlpool, GE, Electrolux, PRC, and NIST noted that the proposed modification to the test procedure for pre-cooling energy would affect tested energy use. (AHAM, Public Meeting Transcript, No. 10 at p. 104; AHAM, No. 16.1 at p. 8; Whirlpool, No. 12.1 at p. 6; GE, Public Meeting Transcript, No. 10 at pp. 96–97; Electrolux, No. 17.2 at p. 1, cell H74; PRC, No. 15.1 at p. 4; NIST, Public Meeting Transcript, No. 10 at pp. 103–104) AHAM, Whirlpool, GE, and NIST also indicated that this impact should be considered as part of the new energy conservation standard and that the test procedure amendment should not be implemented prior to 2014. *Id.*

DOE notes the contrast between statements of Fisher-Paykel indicating that the proposed language ("steady state conditions") is sufficient to describe the starting point for the second part of the test and those of Electrolux indicating that the start time is ambiguous. (Fisher-Paykel, No. 24.2 at p. 2; Electrolux, No. 17.2 at p. 1, cell H74) Whirlpool suggested that DOE quantify the temperature criterion for the start time of the second part of the test, i.e. 0.5 °F (Whirlpool, No. 12.1 at p. 6) DOE received later clarification that this statement meant that the second part of the test should start when the compartment temperature is within 0.5 °F of the average temperature of the first part of the test. (Clarification of Written Comments Submitted by Whirlpool Corporation, No. 35 at p. 2) DOE recognizes the value of providing a set specification, and the interim final rule addresses this concern.

As described below, DOE considered what criterion could be used to specify start of the second part of the test.

DOE notes that specifying a start time for the second part of the test when the compartment temperature is within 0.5 °F of its first-part average is not generally appropriate, because this requirement would conflict with the typical start time of the second part under the current test procedure for a product with a cycling compressor—at the end of a compressor on-cycle, when the compartment temperature should be near the minimum temperature measured during the first part of the test. However, DOE notes that selecting a start time for the second part when the compartment temperature is within 0.5 °F of its minimum temperature measured during the first part is also inappropriate, since a manufacturer could program a control to provide one temperature minimum during the first part at a low extreme and repeat this low extreme just prior to the defrost. The added energy use associated with the extended compressor operation to achieve this low extreme during the first part of the test might be mitigated in the energy use calculation because (a) an extended compressor shutdown as the compartment temperature rises again would lower measured energy use, (b) the relatively long duration of the first part of the test reduces the average power impact of the single extended compressor run, and (c) the average compartment temperature during this extended compressor run and its subsequent off period would be lower than during steady state operation, thus reducing the temperature measured for the first part of the test, which reduces the energy use calculated as described in Appendix A1, section 6.2. Such a control approach (initiating one extended compressor run during the first part of the test) could eliminate precooling energy from the energy use measurement without a significant energy use penalty (i.e. without a significant increase in the energy use measured during the first part of the test as a result of the single extended compressor run).

DOE considered a start for the second part of the test when the compartment temperature is within 0.5 °F of the average of the minimum temperatures achieved at the ends of each of the compressor runs during the first part. However, such a requirement would be complicated and potentially burdensome to calculate.

DOE will instead provide a specification based on the averaging of compartment temperatures over a full compressor cycle to clarify what it

means to be at the end of such a period of steady state operation. The clauses describing the starting time for cycling compressor systems during the second part of the test is as follows: "* * * the second part starts at the termination of the last regular compressor "on" cycle. The average temperature of the compartment measured from the termination of the previous compressor "on" cycle to the termination of the last regular compressor "on" cycle must be within 0.5 °F of the average temperature of the compartment measured for the first part of the test." This change responds to stakeholders' desires for a specification based on temperature measurement.

In response to the concerns expressed by AHAM and Electrolux regarding the treatment of products with variable-speed compressors, DOE's proposed language specifies how to start the test for such products. To cover these systems, the proposal included the following language: "If the compressor does not cycle during steady-state operation between defrosts, the second part starts at a time when the compartment temperatures are within their ranges measured during steady state operation, or within 0.5 °F of the average during steady state operation for a compartment with a temperature range during steady state operation no greater than 1 °F." 75 FR 29839. However, DOE agrees with AHAM that the reference to steady state operation for this part of the test procedure should clarify that the reference is to the steady state operation of the first part of the test. Hence, DOE will modify this text to read, "the second part starts at a time before defrost during stable operation when the compartment temperature is within 0.5 °F of the average temperature of the compartment measured for the first part of the test." The clause uses "stable operation" rather than "steady state" to distinguish from the definition of steady state in Appendix A1 section 2.5.

Responding to comments that the proposed test procedure amendment to address precooling would alter the measured energy use, DOE has decided to remove this proposed language from Appendices A1 and B1 and to retain them for Appendices A and B. In DOE's view, the overall objective of the test procedure is to measure the product's energy consumption during a representative average use cycle or period of use. 42 U.S.C. 6293(b)(3). To ensure that its procedures sufficiently measure the energy consumption of these regulated products, DOE believes it is necessary to capture the energy consumption of precooling systems.

Amendments To Address Partial Recovery

DOE also requested comment on whether DOE should consider an amendment in the long-time and variable defrost test procedure to capture energy use associated with temperature recovery after the end of the second part of the test currently contained in the test procedure. (the "partial recovery" issue) 75 FR 29839.

The energy use associated with the defrost cycle includes energy used by the refrigeration system to remove the heat added to the compartment by the defrost heater and the thermal load added to the compartment while the compressor was not operating. The compressor runs for an extra long period after defrost to remove this heat and bring the compartment temperature down to the levels typical for steady state. For a cycling compressor system, this generally means that the temperature at the end of this long run would be close to the typical temperature measured during the first part of the test after each regular compressor on-cycle. The second part of the test ends when the compressor starts the second time after defrost (see Appendix A1 section 4.1.2.1). If the compartment temperature at the end of the first long compressor run after defrost is still significantly warmer than the typical first part compressor-stop temperature, a portion of the post-defrost cooldown is not captured by the second part of the test, and part of the energy used during consumer use is not measured by the test. As with precooling, this is a loophole in the test procedure that the amendments described in this section are closing.

DOE did not propose a specific method to address partial recovery. Instead, DOE raised three possible options for stakeholders to consider, including (1) providing a temperature recovery specification for the compartment to define the end of the second part of the test, (2) extending the test by a specific amount of time after the defrost to assure temperature recovery, or (3) considering the average compartment temperature measured during the second part of the test when determining the average temperature that is used in the energy use calculation interpolation. 75 FR 29839.

Stakeholders generally supported amending the procedure to capture the energy use associated with temperature recovery. NIST suggested that test procedure changes should be made to address partial recovery. It noted Working Group 12 of Technical Committee 59 of the IEC, which is developing IEC 62552, an international standard for testing refrigeration products, is considering incorporating the temperature of the second part of the test when calculating energy use. (NIST, Public Meeting Transcript, No. 10 at p. 104) Fisher & Paykel commented that the second part of the test should both start and end during steady state conditions. (Fisher & Paykel, No. 24.2 at p. 2) ACEEE and the IOUs supported DOE's proposal to address partial temperature recovery. However, the IOUs noted that SCE found through its own testing of several products that the impact of partial recovery on energy use was small. (ACEEE, No. 19.1 at p. 3; IOUs, No. 14.1 at p. 5) ACEEE recommended that DOE specify that the automatic defrost test continue until average freezer temperature is within 0.5 °F of the average lowest temperature attained during steady-state operation. (ACEEE, No. 19.1 at p. 3)

AHAM requested that DOE use a holistic approach in modifying the test procedure to address both precooling and partial recovery. (AHAM, No. 16.1 at p. 8)

DOE considered different approaches to address partial recovery in the second part of the test, as described below.

DOE first considered the approach suggested by NIST in treating partial recovery. DOE concluded that such an approach would increase the measured energy use of refrigeration products, whether or not they exhibit partial recovery, since the energy use interpolation would be based on a measurement associated with a higher temperature. This result would occur because the energy use is calculated as an interpolation, which is a weighted average of the two measurements made at the two different temperature control settings. (See, e.g., Appendix A1, section 6.2.2.2) The first equation in this section is $E = ET1 + ((ET2 - ET1) \times (45.0 - TR1)/(TR2 - TR1))$, where E is the energy use, ET1 and ET2 are the energy use measurements for the first and second tests, respectively, and TR1 and TR2 are the fresh food compartment temperatures for the first and second tests, respectively. In those cases where T2 is warmer than T1, ET2 would be less than ET1 (less energy would be measured when the compartments are warmer). The equation can be rearranged to read:

$$ET = ET1\left(\frac{T2 - 45}{T2 - T1}\right) + ET2\left(\frac{45 - T1}{T2 - T1}\right)$$

If both T1 and T2 were raised by a fixed increment, associated with including the temperature measured during the second part of the test in the compartment temperature measurement, the value used to multiply ET1 in the equation would increase, and the value used to multiply ET2 would decrease. This result would increase the weighting of ET1, the higher energy use measurement, in the calculation for ET. In order to maintain better consistency with the current test procedure and avoid an energy standard adjustment to be applied to all products with long-time or variable anti-sweat heater control, DOE rejected applying the compartment temperature measured during the second part of the test to this equation.

DOE next considered the approach suggested by ACEEE to require the second part of the test to continue until the compartment temperature is within 0.5 °F of the average lowest temperature attained during steady state operation. DOE points out two issues with this approach, as follows.

First, the current test procedure requires the second part of the test to stop when the compressor cycles on the second time after the defrost. 10 CFR part 430, subpart B, appendix A1, section 4.1.2.1. The test stop time suggested by ACEEE, when the compartment temperature is within 0.5 °F of a minimum temperature measured in the first part of the test, is a time at the end of a period of compressor operation, since the compressor must operate to bring the temperature down to this minimum, and the compartment temperature starts to increase again shortly after the compressor stops. Using a stop time for the second part of the test when the compressor stops would make a significant impact on the measured energy use, as reported in the NOPR public meeting presentation. (Public Meeting Presentation, No. 9 at p. 53)

Second, the "average lowest temperature" is the average of the series of minimum temperatures associated with the ends of compressor on-cycles during the first part of the test. Such an average would be burdensome to calculate, as described above in the discussion of precooling.

DOE agrees, however, with using a temperature specification rather than a compressor event to determine the stop time for the second part of the test. DOE feels this is appropriate because the temperature is an indicator of the thermal state of the product, while the control system could start and stop the compressor at any time, whether or not stable conditions have been reached. Consistent with the amendment described above associated with the start time of the test, the new amendment will provide a means to indicate for systems with cycling compressors whether a given system has re-entered steady state operation. This amendment will provide that "[t]he test period for the second part of the test ends at the initiation of the first regular compressor cycle after the compartment temperatures have fully recovered to their stable conditions." Additionally, "[t]he average temperature of the compartment measured from this initiation of the first regular compressor "on" cycle until the initiation of the next regular compressor "on" cycle must be within 0.5 °F of the average temperature of the compartment measured for the first part of the test." These changes will appear in Appendices A and B in a new section 4.2.1.1.

For products with variable speed compressors, specifying a stop time for the second part of the test is similar to the specification of start time. In this instance, "[t]he second part stops at a time after defrost during stable operation when the compartment temperature is within 0.5 °F of the average temperature of the compartment measured for the first part of the test." This is a simple requirement, consistent with the requirement for start of the second part of the test, and consistent with the recommendations of AHAM to address variable speed compressors.

The selection of stop times for the second part of the test, as described above addresses both cycling and variable speed compressors. It also uses compartment temperature rather than compressor cycling to define the test—both of these test characteristics were specifically requested by stakeholders. See the discussion above in this section. For non-cycling compressors, this amendment also reduces test time by allowing for the second part of the test to terminate prior to the four hours currently required by the test procedure. The current procedure specifies that the second part "terminates at the second turn "on" of the compressor or four hours from the initiation of the defrost heater, whichever comes first." 10 CFR part 430, subpart B, appendix A1, section 4.1.2.1. DOE will, however, retain the 4-hour limit for the second part of the test, to limit test duration in case of extremely slow recovery.

The modified procedure for the second part of the test that DOE is adopting today for incorporation as section 4.2.1 reads as follows: [8]

4.2.1 Long-time Automatic Defrost

If the model being tested has a long-time automatic defrost system, the two-part test described in this section may be used. The first part is a stable period of compressor operation that includes no portions of the defrost cycle, such as precooling or recovery, that is otherwise the same as the test for a unit having no defrost provisions (section 4.1). The second part is designed to capture the energy consumed during all of the events occurring with the defrost control sequence that are outside of stable operation.

4.2.1.1 Cycling Compressor System

For a system with a cycling compressor, the second part starts at the termination of the last regular compressor "on" cycle. The average temperature of the compartment measured from the termination of the previous compressor "on" cycle to the termination of the last regular compressor "on" cycle must be within 0.5 °F of the average temperature of the compartment measured for the first part of the test. If any compressor cycles occur prior to the defrost heater being energized that cause the average temperature in the compartment to deviate from the first part temperature by more than 0.5 °F, these compressor cycles are not considered regular compressor cycles and must be included in the second part of the test. As an example, a "precool" cycle, which is an extended compressor cycle that lowers the compartment temperature prior to energizing the defrost heater, must be included in the second part of the test. The test period for the second part of the test ends at the initiation of the first regular compressor cycle after the compartment temperatures have fully recovered to their stable conditions. The average temperature of the compartment measured from this initiation of the first regular compressor "on" cycle until the initiation of the next regular compressor "on" cycle must be within 0.5 °F of the average temperature of the compartment measured for the first part of the test. The second part of the test may be terminated after 4 hours if the above conditions cannot be met. See Figure 1.

4.2.1.2 Non-cycling Compressor System

For a system with a non-cycling compressor, the second part starts at a time before defrost during stable operation when the compartment temperature is within 0.5 °F

[8] DOE is also simplifying the numbering of section 4, which currently includes a section 4.1, but no section 4.2. The "1." representing the second level of the numbering system will be removed from all of the current section numbers.

of the average temperature of the compartment measured for the first part of the test. The second part stops at a time after defrost during stable operation when the compartment temperature is within 0.5 °F of the average temperature of the compartment measured for the first part of the test. The second part of the test may be terminated after 4 hours if the above conditions cannot be met. See Figure 2.

To help clarify these procedures, DOE is modifying the already existing Figure 1 by adding both power input and compartment temperature information. Accordingly, Figure 1 will show the relationship between compressor power input and compartment temperature. DOE has also provided a figure illustrating the second part test period for a non-cycling compressor system as a new Figure 2.

Additional Test Period and Temperature Measurement Procedure Changes

DOE determined that some additional test procedure changes are needed because of the compartment-temperature-based determination of start and stop times for the second part of the test. These changes include (1) further emphasis that the first part of the test does not include any portion of the defrost cycle such as precooling or temperature recovery, (2) use of the same test period for both energy and temperature measurements, and (3) clarification that if the defrosting of evaporators in both the freezer and fresh food compartments occurs simultaneously, the freezer compartment temperature shall serve as the basis of the second part start and stop. The first two changes are discussed in this section, while the third change is discussed in section III.E.2, below.

The current specifications for the first part of the test for products with long-time or variable defrost prescribe that "[a] first part would be the same as the test for a unit having no defrost provisions (current section 4.1.1)." (Appendix A1, section 4.1.2.1) Current section 4.1.1 specifies a test period at least three hours long and consisting of two or more whole number of compressor cycles; for non-cycling compressors, a three-hour test period is specified. (Appendix A1, section 4.1.1) This definition of the first part of the test does not clearly indicate that it may not include any portion of a precooling period or a recovery period. The inclusion of such periods would add to the energy measurement for the first part of the test some of the defrost cycle energy use, which is intended to be included only in the measurement for the second part of the test.

However, because of the current specification for determining the compartment temperature, including precooling and/or recovery periods within the first part of the test could also weaken the temperature-based definition for the start and stop of the second part of the test. Appendix A1, section 5.1.2.1, which applies to products with cycling compressors, specifies that the temperature measurement includes a number of complete compressor cycles equal to the number of minutes between temperature measurements rounded up to the nearest whole number. It also specifies that the last complete compressor cycle of the test period should be included in this measurement.

DOE believes that all testing is currently conducted using modern computer-based data acquisition systems [9] that provide much greater measurement capabilities at much lower cost than systems that were in use when the test procedures were first written. DOE believes that the time interval between measurements does not generally exceed 1 minute, which allows a technician to use the last complete compressor cycle of the test period of the first part of the test to determine the compartment temperature. If a test period is chosen that occurs just before a defrost cycle and includes a precooling cycle, the criterion for the start of the second part of the test may be the comparison of the average temperature for this precooling compressor cycle to itself, which is a meaningless comparison. Even if the last compressor cycle in the test period is not a precooling cycle, but is the last regular compressor cycle during stable operation, the criterion for the second part of the test could still be the comparison of the temperature measured for this period to itself, because (1) this last regular compressor cycle could be the basis of the temperature measurement for the first part of the test if it is the last compressor cycle in the test period, and (2) the new approach for determining start of the second part of the test compares the temperature average for this last regular compressor cycle to the temperature measurement for the first part of the test.

To remedy this situation, DOE is first modifying the current section 4.1.2.1 (to be renumbered section 4.2.1) to specify that the first part of the test includes only the stable system operation between defrosts that do not include any portions of the defrost cycle, "such as precooling or recovery". Second, DOE is modifying the temperature measurement procedures by requiring that temperature measurements be averages for the full test period specified in section 4. This will ensure examination of at least two compressor cycles to obtain the temperature measurement for the first part of the test, thus avoiding the meaningless comparison of a temperature to itself to determine start of the second part of the test. For non-cycling and incomplete-cycling systems, requiring examination of the same test period for energy use measurement and temperature measurement also strengthens the temperature-based determination of start and stop times for the second part of the test, because it avoids the current focus of the temperature measurement on the end of the test period used for energy measurement. (The current temperature measurement for non-cycling systems is for the last 32 minutes of the 3-hour test period (see Appendix A1 sections 4.1.1 and 5.1.2.2) and for incomplete-cycling systems it is for the last 3 hours of the 24-hour test period (see Appendix A1 sections 4.1.1 and 5.1.2.3)). In any case in which the control system reduces temperature (i.e. engages precooling) for the short temperature-measurement period, the new temperature-based determination of second-part start can be shifted to a time after this precooling has occurred. Hence, DOE is extending the temperature measurement to cover the entire test period for all of these system types.

These changes to sections 4 and 5 have been made in Appendices A and B.

2. Establishing Test Procedures for Multiple Defrost Cycle Types

DOE proposed adding procedures to address products with one compressor and two or more evaporators in which each evaporator undergoes active defrost cycles that use electric defrost heaters to melt frost. Also, DOE proposed adding a definition for "defrost cycle type" by defining this term as "a distinct sequence of control whose function is to remove frost and/or ice from a refrigerated surface." 75 FR 29839. DOE noted in this proposed definition that there may be variations in the defrost control sequence, such as the number of defrost heaters energized, and that each of these variations establishes a separate distinct defrost cycle type. DOE also noted that defrost achieved regularly during the compressor off-cycles by warming of the evaporator without active heat addition

[9] See, for example, the data acquisition products offered by National Instruments, *http://www.ni.com/*.

is not a defrost cycle type. See generally 75 FR 29839.

Products with one compressor and multiple evaporators with active defrost may use multiple defrost cycle types. This amendment would not address products that are equipped with two or more evaporators that defrost simultaneously. In this case, there is only one defrost cycle type, which includes the defrosting of all of the evaporators. The procedure would also not address a product equipped with a freezer evaporator that undergoes conventional automatic defrost and a fresh food evaporator that undergoes off-cycle defrost (in which frost is melted between compressor cycles by the fresh food compartment air, which is above freezing temperature). Such a product also would have just one defrost cycle type, which consists of defrosting only the freezer evaporator.

DOE proposed these amendments to address primarily those products equipped with long-time or variable defrost. *Id.* Long-time defrost refers to defrost control in which defrost cycles are separated by 14 or more hours of compressor operation. Variable defrost refers to defrost control in which the compressor operation time between defrosts varies (and generally exceeds 14 hours). The proposal also clarified how to determine which defrost cycle test procedure should be used for products with multiple defrost cycle types—i.e. long-time, variable, or the simplified automatic defrost control procedure. (See, e.g. 10 CFR part 430, subpart B, appendix A1, section 4.1.2) This proposed clarification indicated that, assuming the defrost control is not variable, the test technician would consider the number of hours of compressor operation between defrosts for each of the defrost cycle types. If the largest of these numbers of hours is less than 14 hours, the current procedure from Appendix A1 section 4.1.2 (automatic defrost) would apply. Otherwise, the proposed test procedure for these products would apply. 75 FR 29839.

The point of the amended test procedure is to ensure that the energy use from each defrost cycle type, using the appropriate factors representing its frequency, is included in the total energy use calculation. Currently, the energy use for products with long-time or variable defrost (for conventional products having a single defrost cycle type) is calculated by adding the energy use from the measured steady-state operation between defrosts (the first part of the test) to the energy use from the defrost cycle (the second part of the test). See 10 CFR part 430, subpart B, appendix A1, sections 5.2.1.2 (long-time defrost) and 5.2.1.3 (variable defrost). The energy use per defrost cycle is adjusted in this energy use equation to account for defrost frequency. DOE proposed an energy use equation for products with multiple defrost cycle types that adds the energy use separately for each defrost cycle type and adjusts for the different defrost cycle frequencies that may be present. 75 FR 29839. The energy use equation provided in the proposal was generic, allowing for any number of defrost cycle types by using summation notation indicating that the defrost energy use contribution would be summed for all defrost cycle types. *Id.* at 29863.

Whirlpool supported the proposed changes that would address products with multiple defrost cycle types. (Whirlpool, No. 12.1 at p. 6) However, Whirlpool also indicated that this proposed amendment was one of several in the NOPR that would have a significant impact on a product's measured energy use, manufacturer cost, facilities, testing capability and/or lead time, and requested that it not take effect until 2014. (Whirlpool, No. 12.1 at p. 2) AHAM generally supported the proposal, but expressed several concerns. (AHAM, Public Meeting Transcript, No. 10 at pp. 108–109; AHAM, No. 16.1 at p. 9) These concerns included (a) the proposed time between defrosts of the freezer section may not apply to the fresh food section, (b) the presence of off-cycle defrost in the fresh food compartment should not make the proposed procedure applicable to a particular product, (c) DOE should clarify that the optional third part of the test to determine typical intervals between defrosts is not required, and (d) the proposed amendment would affect measured energy use and should be considered when DOE sets its new energy conservation standards for refrigeration products. AHAM also agreed with DOE's conclusion that the defrost cycle type with the longest compressor run time between defrosts should be the basis upon which to determine whether the long-time defrost test method would be applicable, and with DOE's decision not to include this amendment in test procedures for freezers. *Id.* However, AHAM indicated that it would prefer that DOE adopt the procedure proposed by AHAM for multiple compressor systems, intending that it apply to both multiple compressor products and products with single compressors and multiple active evaporator defrosts. (AHAM, No. 16.1 at p. 7; Clarification of Written Comments Submitted by AHAM, No. 34 at p. 2) Electrolux also supported the need to capture all defrost energy use in the test procedure, but expressed concern about the near-term introduction of this amendment, arguing that it should be delayed until 2014, when the new energy conservation standards take effect. (Electrolux, No. 17.2 at p. 1, cell H89)

Based on the stakeholder comments indicating that this test procedure amendment would impact measured energy use, DOE has decided to apply this amendment to Appendix A, thus, making it mandatory for manufacturers to use during product testing once the standards that DOE promulgates for 2014 must be met. This slight delay in implementation will also provide manufacturers with time to adjust to this new requirement. Consistent with the proposal, this amendment does not apply to freezers.

In DOE's view, the current energy test procedure does not include test procedures for products with multiple defrost cycle types. For this reason, there is no basis for manufacturers' claims that the amendment would impact energy use measurements. DOE has no documentation regarding the test procedures manufacturers are using to certify these products, and has received no petitions for waivers suggesting the need for any such test procedures. Hence, DOE has no information on which to form a decision on how to adjust the new energy conservation standard to account for these amendments. Until these amendments are required in conjunction with the 2014 standards, manufacturers introducing products equipped with multiple defrost cycle types should, consistent with 10 CFR 430.27, petition for a waiver since the modified version of Appendix A1 set out in today's notice will not include a specified method for capturing this energy usage. Manufacturers who attempt to measure the energy use of such products without a waiver would be unable to certify these products.

As for AHAM's comment regarding the need to consider the different time intervals between defrosts of the fresh food and freezer compartments, DOE agrees that such a need exists. This is the reason that DOE proposed this amendment. The procedure adds the energy use of the defrost cycles in accordance with their frequencies of occurrence (i.e. their different time intervals). However, the test procedure is designed to address defrost cycle types separately rather than fresh food and freezer compartment defrosts separately, as suggested by the AHAM comment. DOE proposed this approach

because if the fresh food and freezer compartments are defrosted at the same time, it is impossible to measure the energy use associated with these defrost cycles separately. Even if the energy consumption of the two defrost heaters were separately measured, it is impossible to allocate the energy use of the single compressor separately to the two compartments. The entire defrost cycle type involving defrost of both compartments can be considered individually.

However, DOE recognizes that additional clarification must be provided for the defrost test period for defrost cycle types involving the defrosting of more than one compartment. Applying the compartment-temperature-based specifications for the start and stop times of the second part of the test as described in section III.E.1, rather than the current procedure's use of compressor start/stop times, raises the question of which compartment's temperatures serve as the basis of the specification. DOE believes that the temperature of the freezer compartment would provide a better indication of appropriate start of the second part of the test (prior to any precooling operation of the compressor), and would also provide a better indication of when steady state operation has been achieved after completion of the defrost cycle. This is because the melting temperature to which the evaporators must be heated to melt frost is a much greater deviation from normal compartment temperature for the freezer compartment than it is for the fresh food compartment. Hence, the amended procedure clarifies that the start and stop times for the second part of the test for defrost cycle types involving defrost of both fresh food and freezer compartments are determined by the freezer compartment temperatures. DOE notes that this clarification would apply even if there is only one defrost cycle type.

DOE also agrees with AHAM's comment that off-cycle defrost does not represent a defrost cycle type, and has modified the definition of defrost cycle type to make this clarification.

Regarding the optional third part of the test, DOE has eliminated this test from its test procedures, making further clarification unnecessary. (see section III.D.10).

Finally, DOE considered an additional complication associated with applying the proposed test procedure to refrigeration products. In particular, it is possible that there may be more than one interval in the compressor run time between the occurrences of a particular defrost cycle type. For instance, a product may employ a control system that initiates a defrost of both the fresh food and freezer compartment every 18 hours of compressor run time, and initiates defrost of only the fresh food compartment at intervals of 6 hours and 12 hours of compressor run time after the dual-compartment defrost. For such a product, the compressor run time interval between instances of the fresh-food-only defrost cycle type is both 6 hours and 12 hours.[10] For such instances, selection of the appropriate value for CT_i for use in the energy use equation (see proposed section 5.2.1.6 of Appendix A (75 FR 29863)) is unclear. Determining the appropriate value for CT_i should be based on the fact that the $12/CT_i$ ratio is intended to represent the frequency of occurrence of defrost cycle type "i" in a 24-hour period, subject to the assumption that compressor run time averages 50%.

DOE is unaware of any refrigeration products on the market to which this issue applies. However, in order to clarify the test procedure and to cover this possibility, DOE has inserted additional language as follows, in the section describing energy use calculation for systems with multiple defrost cycle types: "For cases in which there are more than one fixed CT value (for long-time defrost models) or more than one CT_M and/or CT_L value (for variable defrost models) for a given defrost cycle type, an average fixed CT value or average CT_M and CT_L values shall be selected for this cycle type so that 12 divided by this value or values is the frequency of occurrence of the defrost cycle type in a 24 hour period, assuming 50% compressor run time."

In summary, the interim final rule makes four changes to the proposal affecting products with multiple defrost cycle types. First, manufacturers need to comply with these amendments once the new standards for refrigeration products apply, rather than sooner. Second, it clarifies the definition for "defrost cycle type" by excluding off-cycle defrost. Third, it clarifies how to determine CT values in those products equipped with multiple defrost types if there is more than one compressor run time interval between instances of a particular defrost cycle type. And fourth, it clarifies that for defrost cycle types in which both fresh food and freezer compartments are defrosted, that the freezer compartment temperature is the basis of the start and stop times of the second part of the test.

3. Incorporating by Reference AHAM Standard HRF–1–2008 for Measuring Energy and Internal Volume of Refrigerating Appliances

DOE proposed to incorporate references to AHAM Standard HRF–1–2008 in new Appendices A and B. 75 FR 29842.

The current DOE test procedures for refrigeration products reference sections of AHAM Standard HRF–1–1979. The referenced sections specify the test facility, test sample set-up, measurement procedure, and volume calculation requirements that manufacturers must follow when testing their products. DOE proposed to adopt the most recent version of this industry procedure, HRF–1–2008, for products subject to the new energy conservation standards that DOE is currently considering for 2014. *Id.* HRF–1–2008 incorporates many changes, including new compartment temperatures and new volume calculation methods, which are discussed further in sections III.E.4 and III.E.5. Adopting the provisions in HRF–1–2008 for new compartment temperatures will alter the measured energy use of these products, as described in the NOPR. *Id.* The temperature and volume calculation method changes will change the adjusted volume (which is integral to the calculated energy use) because (1) the temperature changes affect the volume adjustment factors (adjusted volume is equal to the fresh food compartment volume plus the volume adjustment factor multiplied by the freezer compartment volume), and (2) the volume measurements themselves will change. Because the energy standards for refrigeration products express energy use as a function of adjusted volume, the temperature and volume changes necessitate a change in the energy conservation standard. DOE proposed that these amendments referencing HRF–1–2008 would take effect once any new energy conservation standards that DOE decides to adopt as part of its current standards rulemaking become required. *Id.*

Besides updating the existing test procedure references to HRF–1–2008, DOE also proposed including a reference to the definitions section of HRF–1–2008. *Id.*

In addition, DOE proposed including language explaining that in cases where the referenced sections of HRF–1–2008 and the regulatory language of 10 CFR part 430 conflict, the regulatory language takes precedence. *Id.*

[10] Let the "compressor operation time", COT of successive dual-compartment defrosts be 0 hours, 18 hours, 36 hours, etc. The COTs of the fresh-food-only defrosts are 6 hours, 12 hours, 24 hours, 30 hours, etc. The difference in COTs between successive fresh-food-only defrosts is 6 hours or 12 hours, depending on which pair of such defrosts is considered.

AHAM and Whirlpool generally agreed with this proposal, mentioning that it would incorporate the most up-to-date industry standards and practices. (AHAM, No. 16.1 at p. 4; Whirlpool, No. 12.1 at p. 2) General Electric asked whether DOE would adopt updates of HRF–1 beyond HRF–1–2008 when they are established. (General Electric, Public Meeting Transcript, No. 10 at p. 124) DOE is open to considering these updates for inclusion if and when they are finalized.

Because no concerns were raised by stakeholders regarding these proposals, the interim final rule includes the amendments as proposed. The new Appendices A and B, referencing HRF–1–2008, will be required for testing to determine compliance with energy standards when manufacturers are required to comply with the new energy conservation standards.

4. Establishing New Compartment Temperatures

DOE proposed to adopt the new compartment temperatures described in section 5.6.2 of HRF–1–2008 and their associated volume adjustment factors found in section 6.3 of HRF–1–2008 into the DOE test procedures. 75 FR 29842–29843. These amendments will improve the test procedure's consistency with the actual use of refrigeration products in the field. The amendment will also help facilitate the international harmonization of appliance test procedures with IEC 62552. Reducing the energy test compartment temperatures for refrigerators (excluding all-refrigerators) and refrigerator-freezers will result in higher measured energy use because of the higher thermal load associated with the increased temperature difference between ambient conditions and the compartments. These compartment temperature changes also led AHAM to change the volume adjustment factors, which depend on compartment temperatures. Consistent with HRF–1–2008, DOE also proposed to make similar changes to its volume adjustment factors. DOE had proposed to implement these changes by adding appropriate regulatory text into Appendices A and B, rather than simply referencing HRF–1–2008. *Id.*

DOE invited interested parties to comment on this proposed change. ACEEE, AHAM, the IOUs, and Whirlpool generally supported the proposal to adopt the new compartment temperatures. (ACEEE, No. 19.1 at p. 2; AHAM, No. 16.1 at p. 8; IOUs, No. 14.1 at p. 4–5; Whirlpool, No. 16.1 at p. 5) GE and Whirlpool added that establishing new compartment temperatures will impact the energy conservation standard. (GE, Public Meeting Transcript, No. 10 at pp. 130–131; Whirlpool, Public Meeting Transcript, No. 10 at pp. 128–129) After considering these comments and considering the potential impacts that this change would be likely to have, DOE has decided to implement these changes as part of the amended test procedure that will be required with the new standards that DOE is considering. 75 FR 59470.

Specifically, ACEEE and the IOUs also expressed concerns related to DOE's examination of the potential changes in measured energy use stemming from the proposed amendments. These commenters suggested that DOE investigate the nonlinearity of energy use for products with smaller volumes. (ACEEE, No. 19.1 at p. 2; IOUs, No. 14.1 at p. 4–5) The preliminary TSD that DOE had published previously suggested the possibility of this nonlinearity. See Preliminary TSD, section 5.4.2.3 (Engineering Analysis [11]). DOE has not, however, received sufficient data to either confirm this nonlinearity or to permit it to develop a nonlinear energy use equation for these products. Accordingly, DOE could not account for this possibility within the context of the test procedure.

Under today's interim final rule, these new compartment temperatures and their associated volume adjustment factors will be incorporated into new Appendices A and B.

5. Establishing New Volume Calculation Method

DOE proposed to add the volume calculation procedure used in HRF–1–2008 to new Appendices A and B that would apply to all compliance testing for products required to meet the new 2014 standards that DOE is currently considering. 75 FR 29843. The proposed volume calculation method is simpler than the one contained in the current procedure and removes the subjective nature of the current method that test technicians use when estimating volume.

The NOPR invited interested parties to comment on this proposed change. ACEEE, AHAM, and Whirlpool supported the DOE decision to adopt new volume calculation methods. (ACEEE, No. 19.1 at p. 3; AHAM, No. 16.1 at p. 8; Whirlpool, No. 12.1 at p. 5)

In light of this support, and the absence of any comments objecting to its adoption, DOE is adopting this new method as part of the new test procedures contained in Appendices A and B. Adopting this new method offers a critical advantage over the current method. First, the use of this new method will improve the accuracy of volume reporting. Second, because the energy use equation that serves as the basis for each standard depends on the calculated adjusted volume for each product class, a more accurate volume calculation will also improve the accuracy of the calculation of the energy standard. As a result, the amendment will help improve compliance with the standard.

Additionally, DOE noted that HRF–1–2008 does not explicitly address how to treat automatic icemakers and ice storage bins within the context of the volume calculation method. (See section 4, "Method for Computing Refrigerated Volume of Refrigerators, Refrigerator-Freezers, Wine Chillers, and Freezers" of HRF–1–2008.) To address this shortcoming, DOE proposed that these elements be considered part of the internal volume for refrigerators and refrigerator-freezers (covered in Appendix A). DOE also proposed to apply this clarification to freezers (covered in Appendix B), since freezers could also be equipped with automatic icemakers. DOE sought comment on this approach. 75 FR 29843.

AHAM supported DOE's proposed clarification for automatic icemakers and ice storage bins, including its application to freezers. (AHAM, No. 16.1 at p. 8; AHAM, Public Meeting Transcript, No. 10 at p. 133) There were no comments objecting to this proposed amendment. In light of the additional clarity that this change would provide manufacturers when testing their products and the absence of any objections, DOE is amending its procedure to cover these icemaking-related components as part of the internal volume of refrigeration products as applicable. These clarifications will appear in both Appendices A and B.

Fisher & Paykel also raised an issue regarding the proposed volume calculation method. It noted that some manufacturers have tested products that have TTD ice service with their ice delivery chutes filled or covered. By testing products in this way, manufacturers would be able to reduce that product's measured energy use. The adjusted volume measurement may also be reduced (as would the calculated

[11] *Preliminary Technical Support Document:* U.S. Department of Energy–Office of Energy Efficiency and Renewable Energy. Energy Efficiency Program For Consumer Products: Refrigerators, Refrigerator-Freezers, and Freezers. November 2009. Washington, DC. *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/ref_frz_prenopr_prelim_tsd.pdf.*

energy standard for the product), but only slightly, because the volume reduction multiplied by the energy standard equation slope is generally less than the energy use reduction, thus providing the manufacturer an advantage with respect to compliance with the energy standard. Fisher & Paykel asserted that using such an approach may constitute circumvention of the test procedures. To address this potential problem, Fisher & Paykel suggested that DOE add an additional clarification to the proposed changes to the volume calculation method by requiring that "all chutes and throats required for the delivery of ice shall be free of packing, covers or other blockages that may be fitted for shipping or when the icemaker is not in use."

After considering Fisher & Paykel's concern and its proposed solution, DOE is adopting this clarification. DOE wants to ensure that the procedure that it adopts today provides sufficient clarity without leaving potential room for circumvention. To achieve this goal, DOE is inserting this additional requirement into section 2 of new Appendices A and B, as well as amended Appendices A1 and B1, to help clarify the test preparation process. DOE also believes that, as a practical matter, consumers will remove any such packing material or temporary covers during actual use of these products since they are likely to use these features (e.g., TTD ice service) rather than opt to let them remain dormant. Consequently, removing such packing material and/or covers is more consistent with consumer use of the product than permitting this material to remain in place during testing.

As with the incorporation of new compartment temperatures, DOE will incorporate the proposed volume calculation changes as part of the procedures that manufacturers must use when certifying compliance to the new energy standards that will be required for refrigeration products to meet in 2014.

6. Control Settings for Refrigerators and Refrigerator-Freezers During Testing

Section III.D.4 above discusses two temperature control amendments that manufacturers must use prior to the promulgation of the new energy conservation standards that will apply in 2014. These amendments include (a) addressing products equipped with electronic controls for which exact median settings cannot be selected, and (b) modifying the DOE test procedure to include two standardized temperatures for products with both fresh food and freezer compartments. This latter change would help achieve some consistency with the test approach already used by manufacturers when selecting temperature settings for the second test that must be run.

The remaining amendments that will be required when determining compliance with the standards under consideration for products manufactured in 2014 are discussed in this section.

Refrigerator-Freezers and Refrigerators With Freezer Compartments

The NOPR discussed gaps present in the current procedure regarding refrigerator-freezers and refrigerators with freezer compartments. In particular, in certain cases, depending on the results of the first test, the current instructions in section 3.2 of Appendix A1 do not address: (1) Control settings for the second test and/or third test, and (2) which energy test results to use in the energy use calculations. The NOPR presented a chart illustrating the logic behind the temperature setting requirements according to the current test procedure for refrigerator-freezers and refrigerators with freezer compartments. The table is reproduced below as Table III.3.

The logic in the chart was presented to be consistent with the typical test practice of using the warm/warm setting only if both compartment temperatures are lower than the standardized temperatures in the first test. While this practice is inconsistent with the current DOE test procedure, as described above in section III.D.4, it is consistent with current manufacturer test practices. As discussed in the NOPR, the current procedure does not clearly address the temperature setting requirements for the second test, nor does it clearly indicate which test results to use when calculating total energy use, for Cases 2, 5, and 6 shown in Table III.3. DOE proposed to amend the test procedure to address this deficiency. 75 FR 29844–29845.

TABLE III.3—TEMPERATURE SETTING CHART FOR REFRIGERATORS AND REFRIGERATOR-FREEZERS

First test		Second test		Third test settings	Energy calculation based on:	Case No.
Settings	Results	Settings	Results			
Fzr Mid FF Mid	Fzr Low FF Low	Fzr Warm FF Warm	Fzr Low FF Low	None	Second Test Only	1
			Fzr Low FF High	None	Not Clear	2
			Fzr High FF Low	None	First and Second Tests.	3
			Fzr High FF High	None	First and Second Tests.	4
	Fzr Low FF High	Fzr Cold FF Cold	Fzr Low FF High	None	Not Clear	5
			Fzr Low FF Low	None	Not Clear	6
	Fzr High FF Low	Fzr Cold FF Cold	Fzr High FF Low	Fzr Warm FF Warm	Second and Third Tests.	7
			Fzr Low FF Low	None	First and Second Tests.	8
	Fzr High FF High	Fzr Cold FF Cold	Fzr Low FF Low	None	First and Second Tests.	9
			Fzr Low FF High	None	First and Second Tests.	10
			Fzr High FF Low	Fzr Warm FF Warm	Second and Third Tests.	11
			Fzr High FF High	Fzr Warm FF Warm	Second and Third Tests.	12

Notes: Fzr = Freezer Compartment, FF = Fresh Food Compartment.

In particular, DOE proposed to include a modified temperature setting logic chart in the test procedure in section 3.2 of Appendix A to clarify the temperature setting instructions. DOE pointed out that, under some scenarios, one or both of the compartments might not achieve the required standardized temperature when the temperature controls are in their coldest settings. *Id.* DOE requested comment on the proposed amendments but also asked stakeholders to consider whether disallowing an energy rating would be a more appropriate solution in those cases where a particular product's compartment temperatures cannot achieve the required standardized temperatures. In other words, what should happen to products that have compartments that are set to the coldest temperature setting but are warmer than the standardized temperatures prescribed in the test procedure?

As DOE explained in the NOPR, the inability to achieve the standardized temperatures may create a potential conflict with the product definitions. DOE offered a few examples to illustrate this situation. For example, if a refrigerator's fresh food compartment exceeds the standardized temperature for fresh food compartments during an energy test, the product might be considered not to meet the current refrigerator definition, which specifies the use of "temperatures above 32 °F and below 39 °F". (10 CFR 430.2) Thus, the questions presented to DOE are (1) whether such products can still be refrigerators, refrigerator-freezers, or freezers even if they are unable to attain the required standardized temperatures during testing and (2) whether these products should even be rated.

DOE received no specific comments on either the proposed temperature setting logic or the temperature setting instructions proposed for the currently undefined cases described above. Comments were received, however, regarding DOE's suggestion to prevent certification of products that do not reach the standardized temperatures when tested with their coldest temperature settings. ACEEE, AHAM, the IOUs, Earthjustice, Fisher & Paykel, NRDC, and Whirlpool all supported this approach. (ACEEE, No. 19.1 at p. 4–5; AHAM, No. 16.1 at p. 10; IOUs, No. 14.1 at p. 5–6; Earthjustice, No. 22.1 at p. 2; Fisher & Paykel, No. 24.2 at p. 3; Whirlpool, No. 12.1 at p. 7) In response to these comments, DOE will adopt the proposed revisions in temperature setting requirements, but with modifications to indicate that products that are incapable of meeting required test conditions (i.e., achieving the standardized temperatures when all controls are at their coldest settings) are not considered compliant with the applicable standards. These changes will be adopted in Appendices A and B.

The definitions for refrigerator, refrigerator-freezer, and freezer and the changes DOE is making to these definitions are discussed in sections III.A and III.B. Products that meet any of these definitions are considered to be covered products that are subject to DOE regulations. The new definitions all include temperature ranges for the products' compartments to help classify product types. However, as mentioned in section III.B, these temperature ranges are not strictly defined to apply solely to energy test conditions. Hence, if a refrigerator cannot maintain 39 °F compartment temperature with temperature controls in the coldest setting during an energy test, this does not mean the product is not a refrigerator and exempt from coverage. The new definitions specify that the product is designed to be capable of attaining the 39 °F temperature without specifying the ambient or other conditions. The implication is that a product designed to be a refrigerator that fails to meet 39 °F compartment temperature during energy testing cannot be certified. However, since it is a covered product, it cannot be sold as a product other than a refrigerator. Similar restrictions apply to the other products, i.e., the refrigerator-freezer and freezer.

DOE's temperature setting modifications will take effect once any new standards affecting products manufactured in 2014 become required. These amendments will appear in new Appendices A and B. The instructions will include the amendment, discussed above in section III.D.4, that modifies the test procedure for consistency with current industry practice (i.e., consideration of standardized temperatures for both compartments and use of the warm/warm setting only if both compartments are lower than their standardized temperatures in the first test). The procedure will also indicate that a product cannot be certified if it fails to achieve the required compartment standardized temperatures. Also, DOE will add to the test procedure a modified version of the test setting logic chart for basic refrigerators and refrigerator-freezers that is consistent with the new requirements. This modified table is presented as Table III.4 below.

TABLE III.4—INTERIM FINAL TEMPERATURE SETTING CHART FOR REFRIGERATORS AND REFRIGERATOR-FREEZERS

First test		Second test		Energy calculation based on:
Settings	Results	Settings	Results	
Fzr Mid	Fzr Low	Fzr Warm	Fzr Low	Second Test Only.
FF Mid	FF Low	FF Warm	FF Low	
			Fzr Low	First and Second Tests.
			FF High	
			Fzr High	First and Second Tests.
			FF Low	
			Fzr High	First and Second Tests.
			FF High	
	Fzr Low	Fzr Cold	Fzr Low	No Energy Use Rating.
	FF High	FF Cold	FF High	
			Fzr Low	First and Second Tests.
			FF Low	
	Fzr High	Fzr Cold	Fzr High	No Energy Use Rating.
	FF Low	FF Cold	FF Low	
			Fzr Low	First and Second Tests.
			FF Low	
	Fzr High	Fzr Cold	Fzr Low	First and Second Tests.
	FF High	FF Cold	FF Low	

TABLE III.4—INTERIM FINAL TEMPERATURE SETTING CHART FOR REFRIGERATORS AND REFRIGERATOR-FREEZERS—Continued

First test		Second test		Energy calculation based on:
Settings	Results	Settings	Results	
			Fzr Low FF High	No Energy Use Rating.
			Fzr High FF Low	No Energy Use Rating.
			Fzr High FF High	No Energy Use Rating.

Notes: Fzr = Freezer Compartment, FF = Fresh Food Compartment.

All-Refrigerators and Freezers

DOE also proposed that a logic chart for single-compartment products be provided for all-refrigerators and freezers. 75 FR 29846.

Based on stakeholder comments, the test instructions for these products have been modified to prevent the rating of any product that fails to achieve the standardized temperature during testing with controls set at the coldest position. The logic chart for these products has also been modified accordingly. The modified chart is shown below as Table III.5.

TABLE III.5—TEMPERATURE SETTING CHART FOR ALL-REFRIGERATORS AND FREEZERS

First test		Second test		Energy calculation based on:
Settings	Results	Settings	Results	
Mid	Low	Warm	Low	Second Test Only.
			High	First and Second Tests.
	High	Cold	Low	First and Second Tests.
			High	No Energy Use Rating.

DOE believes the test instructions listed in Table III.4 and Table III.5 should adequately address all test result possibilities for their respective products. First, for single-compartment products, the measured temperature for each test could either be higher or lower than the standardized temperature for each compartment. This scenario represents two possibilities for each of two tests, indicating a total of two multiplied by two, or four possibilities. Second, for two-compartment products, the temperature of each of the two compartments could be higher or lower than their standardized temperatures. This scenario represents four possibilities for each test. Hence, the maximum number of possible outcomes for such products is sixteen (fours tests multiplied by four possible outcomes). However, four of these possibilities are very unlikely. For example, if the freezer temperature is lower than the standardized temperature for the first test, which is conducted with the settings at the median position, and the next test is conducted with the settings in the coldest position, it is unlikely that the freezer temperature will rise above its first-test measurement during the second test to exceed the standardized temperature. Four of the sixteen possible outcomes are eliminated based on similar considerations. All of these test procedure changes will become mandatory for testing on the compliance date of any new energy conservation standards that DOE decides to adopt for products manufactured in 2014.

7. Icemakers and Icemaking

The current test procedure for refrigerators and refrigerator-freezers does not measure the energy use associated with ice production (HRF–1–1979, section 7.4.2). As stated in the NOPR, DOE estimates that the energy use associated with automatic icemaking is in the range of 64 to 73 kWh and represents 10 percent to 15 percent of the rated energy use of typical refrigeration products. 75 FR 29846–29847. Because of the potential magnitude of this energy use, DOE is considering developing a test procedure to account for the energy consumed by automatic icemaking systems. However, as the NOPR discussed, developing a robust and repeatable test procedure will take longer than the current rulemaking cycle will allow. Hence, instead of proposing to amend the test procedure to include a measurement of icemaking energy use, DOE proposed to modify the test procedure to incorporate a fixed placeholder value to represent icemaking energy use. DOE intends to continue working on the development of an icemaking test procedure with the intent of eventually integrating it into the test procedure in place of the fixed placeholder as soon as possible.

DOE selected a fixed placeholder value for icemaking energy use based on "AHAM Update to DOE on Status of Ice Maker Energy Test Procedure." (No. 5.1 at p. 11) That document specifies a daily production rate of 1.8 pounds of ice. The average energy usage measurement from this test was 128 Watt-hours per pound. Thus, the average daily energy use associated with icemaking of these preliminary measurements is 0.23 kWh and the average annual energy use is 84 kWh. DOE proposed to implement this value in the test procedure by integrating the icemaking energy use value, designated IET and measured in kWh per cycle, into the equations for energy use per cycle, which would be included in the proposed Appendices A and B in section 6.2. 75 FR 29846–29847.

Most stakeholders agreed with this approach. The Joint Comments, ACEEE, AHAM, the IOUs, NDRC, NIST, Sub-Zero and Whirlpool all accepted the

proposed approach to address icemaking and also the temporary placeholder value. (Joint Comments, No. 20.1 at p. 5; ACEEE, No. 19.1 at p. 3–4; AHAM, No. 16.1 at p. 10; IOUs, No. 14.1 at p. 1–2; NDRC, No. 21.1 at p. 5; NIST, Public Meeting Transcript, No. 10 at p. 148; Sub Zero, No. 10 at p. 150–151; Whirlpool, No. 12.1 at p. 6–7) The value of 0.23 kWh per day was of concern to Electrolux, who asserted that the value is too low and does not truly represent the icemaking energy across all refrigerators-freezers. (Electrolux, No. 17.2 at p. 1, cell H155) Electrolux provided in their comments the same data that AHAM submitted to DOE in November 2009 (Electrolux, No. 17.2 at p. 3) These same data were used by DOE in developing these placeholder values. Since no new data were provided, nor did Electrolux state specific arguments as to why the AHAM data might be flawed, DOE does not believe there is sufficient evidence or guidance to either raise or lower the proposed value.

There was interest from the IOUs, NDRC, and NIST to define the daily ice production factor in kWh/pound rather than kWh/year, to allow flexibility for variation in icemaking capacity. (IOUs, No. 14.1 at p. 3; NIST, Public Meeting Transcript, No. 10 at p. 147; NRDC, No. 21.1 at p. 5–6) A production factor in kWh/pound, when coupled with a standardized ice production rate of lbs/day, would enable a metric in units of kWh/year to be calculated. This metric could then be added to the total energy use of the product. The IOUs additionally suggested differentiating the placeholder value energy use depending on the functional differences between refrigerators and freezers with automatic icemakers. However, the available data provides an insufficient basis on which to establish such variation in the placeholder value based on product characteristics. Also, since DOE is instituting a fixed placeholder value for automatic icemaker energy use, DOE perceives no value in representing the energy use on a kWh per pound basis at this time. Hence, the placeholder value will be represented in kWh per year and added to the measured energy use to provide a single metric for refrigeration product performance.

GE suggested that adding the energy use of automatic icemakers into the energy use calculation, but not providing a similar placeholder for manual icemaking, misleads consumers because it implies that there is no energy associated with manual icemaking. (GE, Public Meeting Transcript, No. 10 at p. 156–157) Currently, DOE has data only on automatic icemaking and none on manual icemaking that would permit DOE to create a comparable placeholder value for this task. The available information, as described by the IOUs, suggests that much of the automatic icemaking energy use is associated with the electric heater used to free the ice from the mold. (IOUs, No. 14.1 at p. 2) In comparison, manual icemaking involves the additional energy use associated with opening the freezer door to insert the ice, which is likely to be small when compared to the heater impact from automatic icemaking systems.

Taking these factors into account, DOE will incorporate a single, temporary placeholder value that will apply to products that have automatic icemakers. This value would apply to products equipped either with or without TTD ice service. Because automatic icemaking is possible in both refrigerator-freezers and freezers, the modifications will be made in both Appendices A and B.

Development of a Test Method

DOE sought comment on developing a test method to determine icemaking energy use. DOE expects to work with AHAM to develop such a procedure.

Electrolux voiced concern that the proper development of a robust and reproducible icemaking test procedure will take longer than the time permitted under this rulemaking. (Electrolux, No. 17.2 at p. 1, cell H159) The Joint Comments provided a draft timeline for development of a procedure including (1) development of a test procedure by January 1, 2012, (2) a test procedure rulemaking to modify the DOE test procedure to adopt this procedure starting on January 1, 2012, and culminating in a final rule by December 31, 2012, (3) an energy conservation standard rulemaking culminating in a final rule by July 1, 2013, that would adjust the energy conservation standards to address any differences between the current placeholder value and the average automatic icemaker energy use measured using the new procedure, and (4) an effective date for the adjusted standards three years after the energy standard rulemaking final rule. (Joint Comment, No. 20.1 at p. 5–6) This schedule extends beyond the final rule of this rulemaking, as suggested by Electrolux. DOE intends to support the development of a test method for measurement of icemaking energy use, and will act to amend the test procedure and energy standard accordingly, once a test method has been developed.

Other comments addressed how the test method should report the results to the consumer. The IOUs and Electrolux believe that the kWh per year value for icemaking from the future test method should be communicated to the consumer on the product as a visible separate value from the kWh per year value. (IOUs, No. 14.1 at p. 1–2; Electrolux, No. 17.2 at p. 1, cell H157) The development of EnergyGuide requirements is under the jurisdiction of the Federal Trade Commission (FTC) rather than DOE. Hence, FTC will ultimately decide on the content of the label.

Ice in the Bin During Testing

DOE requested comment on whether the test procedure should provide instructions regarding whether ice bins should contain ice during testing. AHAM, GE, and Whirlpool asserted that no ice should be present because the amount of ice in the bin could vary from unit to unit and its presence introduces a thermal load that can affect temperature measurements. (AHAM, No. 16.1 at p. 10; GE, Public Meeting Transcript, No. 10 at p. 143–145; Whirlpool, No. 12.1 at p. 7) DOE acknowledges that adding ice during testing would affect the thermal loading—and overall measured energy consumption—of a refrigerator-freezer equipped with automatic defrost. Whirlpool also asserted that there may be significant impacts on measured energy use, manufacturer cost, facilities, testing capability, lead time, or any combination of these if this amendment is introduced prior to the compliance date for the new energy conservation standards. (Whirlpool, No. 12.1 at p. 2)

Under the current procedure (Appendix A1, section 2.3), refrigerator-freezers with automatic defrost are tested with no thermal load in their freezer compartments. Hence, the thermal load associated with a full ice bin could represent a significant additional thermal mass, which would lengthen the compressor on-cycles during testing, and may reduce the measured energy use by reducing off-cycle losses. To avoid this result, in DOE's view, refrigerator-freezers with automatic defrost should be tested with empty ice bins. To ensure consistency among test procedures of different products, DOE is requiring that all ice bins remain empty for all products during testing. To address concerns regarding potential changes in measured energy use, this change will apply to new Appendices A and B.

F. Other Issues

This section discusses comments made by stakeholders regarding items for which DOE has not made corresponding changes in the test procedure.

1. Electric Heaters

Refrigeration products use electric heaters for a variety of functions. The NOPR discussed these functions, described current approaches to heater operation during energy testing, and highlighted possible modifications to the current test requirements for heaters. Five types of heaters were discussed—anti-sweat, defrost, temperature control, automatic icemaker, and exterior heaters. The NOPR asked whether these heaters serve any other functions and whether other types of electric resistance heaters are present in refrigeration products. DOE sought to understand any additional heater applications, how they contribute to energy use in normal operating conditions and during testing under the current DOE energy test, and whether the current procedure requires any amending to more accurately reflect their actual energy usage in the field. 75 FR 29848–29849.

Whirlpool commented that they were unaware of additional uses for electric resistance heaters in refrigeration products. (Whirlpool, No. 12.1 at p. 7) NDRC commented generally, stating that better insulation in many cases could be used to ameliorate the need for resistance heating. (NDRC, No. 21.1 at p. 6) Because stakeholders identified no new functions for electric heaters, DOE has made no additional test procedure amendments to address their energy use at this time.

2. Vacuum Insulation Panel Performance

DOE did not propose any test procedure changes specifically associated with vacuum insulation panel (VIP) performance in the NOPR.

Nanopore commented that the test procedure should include a lifetime performance test to evaluate the long-term efficiency of products. Nanopore made this recommendation to address some low quality vacuum panels that can lose as much as 80 percent of their thermal resistance over the timeframe of a few months. Suggested procedures to measure long-term performance included (1) requiring a measurement 6 or 12 months after manufacture, (2) aging of vacuum insulation panels in an 80 °C environment for a period of time and then testing them, and (3) aging of the entire product and subsequently testing it. (Nanopore, No. 11.1 at p. 1).

Additionally, ThermoCor provided details of an accelerated life test (ALT) developed by Panasonic, a vacuum panel manufacturer. ThermoCor proposed that this test could be conducted for the entire refrigeration cabinet to assess long-term performance, and that a different test could be developed to assess the long-term performance of the compressor. The ALT uses cycling between 80 °C and −30 °C. A first test is conducted prior to the accelerated aging. Subsequently, the test is repeated three times after three separate periods of 9 days of temperature cycling. (ThermoCor, No. 18.1 at pp. 1–3)

Testing of the long-term efficiency of products has not yet been introduced in DOE test procedures, although it has been proposed for refrigerated walk-in enclosures. See 75 FR 55068, 55074 (September 9, 2010). DOE recognizes the importance of such a test, particularly for a component that may have a degraded lifetime performance as suggested by Nanopore. However, applying such lifetime performance tests to entire refrigeration products (i.e., rather than to individual vacuum panels) has, to DOE's knowledge, not been evaluated to confirm the accuracy of this approach. DOE further notes that this type of test could represent a significant additional test burden. In light of these concerns, the adoption of such a procedure into DOE's regulations would require additional input from the public. Consequently, DOE is not adopting a lifetime performance test at this time.

3. Metric Units

DOE did not propose in the NOPR any test procedure changes specifically addressing the use of metric units. See generally, 75 FR 29824.

Fisher & Paykel commented that all dimensions detailed in the test procedures should be expressed in rounded metric units and that Imperial (i.e., English) units should be provided in parentheses. In Fisher & Paykel's view, such a change would be justified since all other international markets other than the U.S. use the metric system. The company added that making this change would also remove potential sources of error. (Fisher & Paykel, No. 24.2 at p. 1) DOE notes that the Imperial system, using inches, feet, and Fahrenheit for some of the key measurements made for refrigeration products, is the primary system used by U.S. consumers. Since some of the measurements, such as product volumes, are used in marketing literature as well as in the test procedure and test reports, converting to metric would potentially affect consumers. Fisher & Paykel did not identify any particular instances of test procedure values being in round Imperial units that introduce errors in testing, nor did they indicate whether converting to round metric units could cause any change in measured energy use, making it difficult for DOE to fully evaluate this recommendation. Further, prior to making such a change, DOE would, ideally, obtain comments from other stakeholders involved in testing and reporting product performance to determine if this concern is widely shared. Hence, DOE is declining to adopt the change suggested by Fisher & Paykel. DOE may revisit this issue in a future rulemaking.

G. Compliance With Other EPCA Requirements

In addition, DOE examined its other obligations under EPCA in developing this final rule and interim final rule. These requirements are addressed in greater detail below.

1. Test Burden

Section 323(b)(3) of EPCA requires that "any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use * * * or estimated annual operating cost of a covered product during a representative average use cycle or period of use * * * and shall not be unduly burdensome to conduct." (42 U.S.C. 6293(b)(3)) For the reasons that follow, DOE has concluded that the amendments being adopted today satisfy this requirement.

The amendments generally incorporate minor adjustments to test sample set-up procedures, the treatment of certain product features such as convertible compartments, compartment temperatures, and volume calculation methods. Most of these amendments require no changes in the current requirements for equipment and instrumentation for testing or the time required for testing.

With respect to the test method for variable anti-sweat heaters, the procedure DOE is adopting today applies the test procedure found in the GE waiver (see discussion in section III.D.9 above) rather than the more complicated approach proposed in the NOPR that would have required the use of a humidity-controlled test chamber and the conducting of three tests to measure energy use for steady-state cycling operation of a refrigerator-freezer. By adopting this modified approach, the new procedure reduces the number of tests required for

products with anti-sweat heater switches and relies on a calculated value to represent the anti-sweat heater energy use contribution when calculating the total energy usage of a given product. This change considerably reduces the testing burden manufacturers would have faced under the proposal while providing a definitive method to account for anti-sweat heater energy use.

Regarding heated-temperature-control special compartments, the procedure in the interim final rule requires the averaging of tests conducted with the temperature control settings in the coldest and warmest positions. This approach doubles the test time for products with such special compartments. However, as described in section III.D.5, few products have such compartments. DOE estimates that these products represent less than 5% of standard-size refrigerator-freezers, based on (1) estimates that 20% of such products have special compartments (see the discussion in section III.D.5 reviewing major manufacturers' product details), and (2) the observation that of the two refrigerator-freezers examined for reverse engineering as part of the refrigeration product energy conservation standard rulemaking that had special compartments, neither utilized heating to achieve temperature control. The averaging of two tests potentially represents a smaller test burden than the proposed approach of requiring the highest energy use position. Under the proposed approach, AHAM indicated that manufacturers would have to run tests at each setting to determine which represents the highest energy use. (AHAM, No. 16.1 at p. 5) DOE notes that the averaging of such tests that is being adopted today is justified because it provides better consistency with a representative average use cycle, as required by EPCA. (42 U.S.C. 6293(b)(3))

2. Potential Amendments To Include Standby and Off Mode Energy Consumption

EPCA directs DOE to amend test procedures "to include standby mode and off mode energy consumption * * * with such energy consumption integrated into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product, unless the Secretary determines that—(i) the current test procedures for a covered product already fully account for and incorporate the standby and off mode energy consumption of the covered product * * *" 42 U.S.C. 6295(gg)(2)(A)(i).

The procedure that DOE is adopting today already satisfies these requirements. The DOE test procedures for refrigeration products involve measuring the energy use of these products during extended time periods that include periods when the compressor and other key components are cycled off. All of the energy these products use during the "off cycles" is included in the measurements. The refrigeration product could include any auxiliary features which draw power in a standby or off mode. HRF–1–1979 and HRF–1–2008 provide instructions that certain auxiliary features should be set to the lowest power position during testing. In this lowest power position, any standby or off mode energy use of such auxiliary features would be included in the energy measurement. Hence, no separate changes are needed to account for standby and off mode energy consumption, since the current procedures (and as modified in this final rule and interim final rule) address these modes.

3. Addressing Changes in Measured Energy Use

Section 323(e)(1) of EPCA requires that DOE consider whether a new test procedure alters the measured energy use of any covered product. (42 U.S.C. 6293(e)(1)) Further, section 323(e)(2) of EPCA requires DOE to amend the applicable standards if DOE determines that a new test procedure would alter the measured energy use of a covered product. The amended standard would be based on the average measurements made for a representative sample of minimally compliant products. (42 U.S.C. 6293(e)(2))

As discussed above, DOE has made a number of changes to account for the concerns raised by industry regarding the timing of certain provisions that DOE had proposed to make effective 30 days after the publication of the final rule. These changes include providing manufacturers with additional time (2014) to use certain procedures when conducting the test procedure. As a result, the interim final rule sets out the procedures manufacturers must follow starting in 2014 with respect to special compartments with heated temperature control, long-time or variable defrost in order to capture pre-cooling and partial recovery energy use, and multiple defrost cycles. The interim final rule also addresses compartment temperature changes and volume calculations.

Also as discussed above, industry and efficiency advocates negotiated a consensus agreement, dated July 30, 2010, that sets forth a series of standard levels for refrigeration products. DOE's parallel standards rulemaking proposed levels that are based on the levels submitted as part of that agreement. The industry has since raised concerns about the interplay between these proposed standards and the test procedure that DOE ultimately adopts. These concerns revolve around the following issues: (1) Modification of the set-up procedures for special compartments with heated temperature control; (2) modification of the long-time defrost test procedure to capture pre-cooling energy use; and (3) establishment of test procedures for products with multiple defrost cycle types.

DOE notes that its test procedure NOPR was published on May 27, 2010, over two months before the date of the consensus agreement. Given this fact, DOE believes that industry negotiators had an ample opportunity to consider the potential impacts of the proposed test procedure amendments prior to finalizing the consensus agreement standards. The industry has not asserted that it has had an insufficient amount of time to consider the NOPR's provisions in developing the consensus standard levels. Accordingly, DOE believes that the standards set forth in that agreement were based on a serious and thoughtful consideration of the new changes to the test procedure that DOE proposed in May 2010.

In spite of these facts, DOE is modifying its scheduled implementation of certain provisions to provide manufacturers with additional time to adjust to the new procedures. By implementing these particular changes through the interim final rule, DOE seeks to mitigate the potential burdens on industry while ensuring that the test procedure is sufficiently robust and comprehensive to capture the energy use from refrigeration products. Additionally, by following this approach, DOE invites the submission of additional input from the public regarding the procedures to address special compartments with heated temperature control, long-time or variable defrost in order to capture pre-cooling and partial recovery energy use, and multiple defrost cycles. DOE will consider these comments and, to the extent necessary, consider any needed adjustments.

IV. Procedural Requirements

A. Review Under Executive Order 12866

The Office of Management and Budget has determined that test procedure rulemakings do not constitute "significant regulatory actions" under section 3(f) of Executive Order 12866,

Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://www.gc.doe.gov*).

DOE reviewed the test procedures in today's final rule and interim final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This final rule and interim final rule prescribe test procedures that will be used to test compliance with energy conservation standards for the products that are the subject of this rulemaking.

The Small Business Administration (SBA) considers an entity to be a small business if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121, which relies on size standards and codes established by the North American Industry Classification System (NAICS). The threshold number for NAICS code 335222, which applies to Household Refrigerator and Home Freezer Manufacturing, is 1,000 employees.

DOE searched the SBA Web site (*http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm*) to identify manufacturers within this NAICS code that produce refrigerators, refrigerator-freezers, and/or freezers. Most of the manufacturers supplying these products are large multinational corporations with more than 1,000 employees. There are several small businesses involved in the sale of refrigeration products that are listed on the SBA Web site under the NAICS code for this industry. However, DOE believes that only U-Line Corporation of Milwaukee, Wisconsin is a small business that manufactures these products. U-Line primarily manufactures compact refrigerators and related compact products such as wine coolers and icemakers (these icemakers are distinguished from the automatic icemakers installed in many residential refrigeration products in that they are complete icemaking appliances using either typical residential icemaking technology or the clear icemaking technology used extensively in commercial icemakers—they are distinguished from refrigerators in that their sole purpose is production and storage of ice).

DOE had tentatively concluded that the final rule and interim final rule will not have a significant impact on small manufacturers under the provisions of the Regulatory Flexibility Act. DOE received no comments objecting to this conclusion. Accordingly, the final rule and the interim final rule amend DOE's energy test procedures for refrigeration products. These amendments do not require use of test facilities or test equipment that differ significantly from the test facilities or test equipment that manufacturers currently use to evaluate the energy efficiency of these products. Further, the amended test procedures will not be significantly more difficult or time-consuming to conduct than current DOE energy test procedures.

For these reasons, DOE concludes and certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE has transmitted the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of refrigeration products must certify to DOE that their products comply with any applicable energy conservation standard. In certifying compliance, manufacturers must test their products according to the DOE test procedure for refrigeration products, including any amendments adopted for that test procedure. DOE has proposed regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including the refrigeration products addressed by today's final rule and interim final rule. 75 FR 56796 (Sept. 16, 2010). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Subid Wagley (*see* **ADDRESSES**) and by e-mail to *Christine_J._Kymn@omb.eop.gov.*

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this notice, DOE amends its test procedure for refrigerators, refrigerator-freezers, and freezers. These amendments will improve the ability of DOE's procedures to more accurately account for the energy consumption of products that incorporate a variety of new technologies that were not contemplated when the current procedure was promulgated. The amendments also will be used to develop and implement future energy conservation standards for refrigeration products. DOE has determined that this final rule and interim final rule fall into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without changing its environmental effect, and, therefore, is covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, paragraph A5. The exclusion applies because this rule establishes revisions to existing test procedures that will not affect the amount, quality, or distribution of

energy usage, and, therefore, will not result in any environmental impacts. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. 64 FR 43255 (August 10, 1999). The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in developing such regulations. 65 FR 13735. DOE examined this final rule and interim final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's final rule and interim final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation specifies the following: (1) The preemptive effect, if any; (2) any effect on existing Federal law or regulation; (3) a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) the retroactive effect, if any; (5) definitions of key terms; and (6) other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or whether it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule and interim final rule meet the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4; 2 U.S.C. 1501 *et seq.*) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a)–(b)) UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect such governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (The policy is also available at *http://www.gc.doe.gov*). Today's final rule and interim final rule contain neither an intergovernmental mandate nor a mandate that may result in an expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's final rule and interim final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's rule under OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA a Statement of Energy Effects for any significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply,

distribution, and use. Today's regulatory action is not a significant regulatory action under Executive Order 12866. It has likewise not been designated as a significant energy action by the Administrator of OIRA. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the DOE Organization Act (Pub. L. 95–91; 42 U.S.C. 7101 *et seq.*), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977 (FEAA). (15 U.S.C. 788) Section 32 essentially provides in part that, where a proposed rule authorizes or requires use of commercial standards, the rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The proposed modifications to the test procedures addressed by this action incorporate testing methods contained in certain sections of the commercial standards, AHAM Standards HRF–1–1979 and HRF–1–2008. DOE has evaluated these two versions of this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule before its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of these final rules.

List of Subjects in 10 CFR part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on November 18, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons stated in the preamble, DOE amends part 430 of chapter II of title 10, of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.2 is amended by revising the definitions for "electric refrigerator" and "electric refrigerator-freezer" to read as follows:

§ 430.2 Definitions.

* * * * *

Electric refrigerator means a cabinet designed for the refrigerated storage of food, designed to be capable of achieving storage temperatures above 32 °F (0 °C) and below 39 °F (3.9 °C), and having a source of refrigeration requiring single phase, alternating current electric energy input only. An electric refrigerator may include a compartment for the freezing and storage of food at temperatures below 32°F (0 °C), but does not provide a separate low temperature compartment designed for the freezing and storage of food at temperatures below 8 °F (−13.3 °C).

Electric refrigerator-freezer means a cabinet which consists of two or more compartments with at least one of the compartments designed for the refrigerated storage of food and designed to be capable of achieving storage temperatures above 32 °F (0 °C) and below 39 °F (3.9 °C), and with at least one of the compartments designed for the freezing and storage of food at temperatures below 8 °F (−13.3 °C) which may be adjusted by the user to a temperature of 0 °F (−17.8 °C) or below. The source of refrigeration requires single phase, alternating current electric energy input only.

* * * * *

■ 3. Section 430.3 is amended by redesignating paragraph (g)(1) as (g)(2) and adding new paragraphs (g)(1) and (g)(3), to read as follows:

§ 430.3 Materials incorporated by reference.

(g) * * *

(1) ANSI/AHAM HRF–1–1979, (Revision of ANSI B38.1–1970), ("HRF–1–1979"), *American National Standard, Household Refrigerators, Combination Refrigerator-Freezers and Household Freezers,* approved May 17, 1979, IBR approved for Appendices A1 and B1 to Subpart B.

* * * * *

(3) AHAM Standard HRF–1–2008, ("HRF–1–2008"), Association of Home Appliance Manufacturers, Energy and Internal Volume of Refrigerating Appliances (2008), including Errata to Energy and Internal Volume of Refrigerating Appliances, Correction Sheet issued November 17, 2009, IBR approved for Appendices A and B to Subpart B.

* * * * *

■ 3. Section 430.23 is amended by

■ a. Adding an introductory paragraph before paragraph (a); and

■ b. Revising paragraphs (a) and (b).

The additions and revisions read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

When the test procedures of this section call for rounding off of test results, and the results fall equally between two values of the nearest dollar, kilowatt-hour, or other specified nearest value, the result shall be rounded up to the nearest higher value.

(a) *Refrigerators and refrigerator-freezers.* (1) The estimated annual operating cost for electric refrigerators and electric refrigerator-freezers without an anti-sweat heater switch shall be the product of the following three factors, the resulting product then being rounded off to the nearest dollar per year:

(i) The representative average-use cycle of 365 cycles per year;

(ii) The average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 6.2 (6.3.6 for externally vented units) of Appendix A1 of this subpart before Appendix A becomes mandatory and 6.2 (6.3.6 for externally vented units) of Appendix A of this subpart after Appendix A becomes mandatory (see the note at the beginning of Appendix A); and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary.

(2) The estimated annual operating cost for electric refrigerators and electric refrigerator-freezers with an anti-sweat heater switch shall be the product of the following three factors, the resulting product then being rounded off to the nearest dollar per year:

(i) The representative average-use cycle of 365 cycles per year;

(ii) Half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to 6.2 (6.3.6 for externally vented units) of Appendix A1 of this subpart before Appendix A becomes mandatory and 6.2 (6.3.6 for externally vented units) of Appendix A of this subpart after Appendix A becomes mandatory (see the note at the beginning of Appendix A); and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary.

(3) The estimated annual operating cost for any other specified cycle type for electric refrigerators and electric refrigerator-freezers shall be the product of the following three factors, the resulting product then being rounded off to the nearest dollar per year:

(i) The representative average-use cycle of 365 cycles per year;

(ii) The average per-cycle energy consumption for the specified cycle type, determined according to 6.2 (6.3.6 for externally vented units) of Appendix A1 to this subpart before Appendix A becomes mandatory and 6.2 (6.3.6 for externally vented units) of Appendix A of this subpart after Appendix A becomes mandatory (see the note at the beginning of Appendix A); and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary.

(4) The energy factor for electric refrigerators and electric refrigerator-freezers, expressed in cubic feet per kilowatt-hour per cycle, shall be:

(i) For electric refrigerators and electric refrigerator-freezers without an anti-sweat heater switch, the quotient of:

(A) The adjusted total volume in cubic feet, determined according to 6.1 of Appendix A1 of this subpart before Appendix A becomes mandatory and 6.1 of Appendix A of this subpart after Appendix A becomes mandatory (see the note at the beginning of Appendix A), divided by—

(B) The average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 6.2 (6.3.6 for externally vented units) of Appendix A1 of this subpart before Appendix A becomes mandatory and 6.2 (6.3.6 for externally vented units) of Appendix A of this subpart after Appendix A becomes mandatory (see the note at the beginning of Appendix A), the resulting quotient then being rounded off to the second decimal place; and

(ii) For electric refrigerators and electric refrigerator-freezers having an anti-sweat heater switch, the quotient of:

(A) The adjusted total volume in cubic feet, determined according to 6.1 of Appendix A1 of this subpart before Appendix A becomes mandatory and 6.1 of Appendix A of this subpart after Appendix A becomes mandatory (see the note at the beginning of Appendix A), divided by —

(B) Half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to 6.2 (6.3.6 for externally vented units) of Appendix A1 of this subpart before Appendix A becomes mandatory and 6.2 (6.3.6 for externally vented units) of Appendix A of this subpart after Appendix A becomes mandatory (see the note at the beginning of Appendix A), the resulting quotient then being rounded off to the second decimal place.

(5) The annual energy use of electric refrigerators and electric refrigerator-freezers, expressed in kilowatt-hours per year, shall be the following, rounded to the nearest kilowatt-hour per year:

(i) For electric refrigerators and electric refrigerator-freezers without an anti-sweat heater switch, the representative average use cycle of 365 cycles per year multiplied by the average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 6.2 (6.3.6 for externally vented units) of Appendix A1 of this subpart before Appendix A becomes mandatory and 6.2 (6.3.6 for externally vented units) of Appendix A of this subpart after Appendix A becomes mandatory (see the note at the beginning of Appendix A), and

(ii) For electric refrigerators and electric refrigerator-freezers having an anti-sweat heater switch, the representative average use cycle of 365 cycles per year multiplied by half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to 6.2 (6.3.6 for externally vented units) of Appendix A1 of this subpart before Appendix A becomes mandatory and 6.2 (6.3.6 for externally vented units) of Appendix A of this subpart after Appendix A becomes mandatory (see the note at the beginning of Appendix A).

(6) Other useful measures of energy consumption for electric refrigerators and electric refrigerator-freezers shall be those measures of energy consumption for electric refrigerators and electric refrigerator-freezers that the Secretary determines are likely to assist consumers in making purchasing decisions which are derived from the application of Appendix A1 of this subpart before Appendix A becomes mandatory Appendix A of this subpart after Appendix A becomes mandatory (see the note at the beginning of Appendix A).

(7) The estimated regional annual operating cost for externally vented electric refrigerators and externally vented electric refrigerator-freezers without an anti-sweat heater switch shall be the product of the following three factors, the resulting product then being rounded off to the nearest dollar per year:

(i) The representative average-use cycle of 365 cycles per year,

(ii) The regional average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 6.3.7 of Appendix A1 of this subpart before Appendix A becomes mandatory and 6.3.7 of Appendix A of this subpart after Appendix A becomes mandatory (see the note at the beginning of Appendix A); and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary.

(8) The estimated regional annual operating cost for externally vented electric refrigerators and externally vented electric refrigerator-freezers with an anti-sweat heater switch shall be the product of the following three factors, the resulting product then being rounded off to the nearest dollar per year:

(i) The representative average-use cycle of 365 cycles per year;

(ii) Half the sum of the average per-cycle energy consumption for the standard cycle and the regional average per-cycle energy consumption for a test cycle with the anti-sweat heater switch in the position set at the factory just

before shipping, each in kilowatt-hours per cycle, determined according to 6.3.7 of Appendix A1 of this subpart before Appendix A becomes mandatory and 6.3.7 of Appendix A of this subpart after Appendix A becomes mandatory (see the note at the beginning of Appendix A); and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary.

(9) The estimated regional annual operating cost for any other specified cycle for externally vented electric refrigerators and externally vented electric refrigerator-freezers shall be the product of the following three factors, the resulting product then being rounded off to the nearest dollar per year:

(i) The representative average-use cycle of 365 cycles per year;

(ii) The regional average per-cycle energy consumption for the specified cycle, in kilowatt-hours per cycle, determined according to 6.3.7 of Appendix A1 of this subpart before Appendix A becomes mandatory and 6.3.7 of Appendix A of this subpart after Appendix A becomes mandatory (see the note at the beginning of Appendix A); and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary.

(10) The following principles of interpretation should be applied to the test procedure. The intent of the energy test procedure is to simulate typical room conditions (approximately 70 °F (21 °C)) with door openings, by testing at 90 °F (32.2 °C) without door openings. Except for operating characteristics that are affected by ambient temperature (for example, compressor percent run time), the unit, when tested under this test procedure, shall operate in a manner equivalent to the unit in typical room conditions. The energy used by the unit shall be calculated when a calculation is provided by the test procedure. Energy consuming components that operate in typical room conditions (including as a result of door openings, or a function of humidity), and that are not exempted by this test procedure, shall operate in an equivalent manner during energy testing under this test procedure, or be accounted for by all calculations as provided for in the test procedure. If:

(i) A product contains energy consuming components that operate differently during the prescribed testing than they would during representative average consumer use and

(ii) Applying the prescribed test to that product would evaluate it in a manner that is unrepresentative of its true energy consumption (thereby providing materially inaccurate comparative data), a manufacturer must obtain a waiver in accordance with the relevant provisions of 10 CFR part 430. Examples:

A. Energy saving features that are designed to be activated by a lack of door openings shall not be functional during the energy test.

B. The defrost heater should not either function or turn off differently during the energy test than it would when operating in typical room conditions.

C. Electric heaters that would normally operate at typical room conditions with door openings should also operate during the energy test.

D. Energy used during adaptive defrost shall continue to be tested and adjusted per the calculation provided for in this test procedure.

(b) *Freezers.* (1) The estimated annual operating cost for freezers without an anti-sweat heater switch shall be the product of the following three factors, the resulting product then being rounded off to the nearest dollar per year:

(i) The representative average-use cycle of 365 cycles per year;

(ii) The average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 6.2 of Appendix B1 of this subpart before Appendix B becomes mandatory and 6.2 of Appendix B of this subpart after Appendix B becomes mandatory (see the note at the beginning of Appendix B); and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary.

(2) The estimated annual operating cost for freezers with an anti-sweat heater switch shall be the product of the following three factors, the resulting product then being rounded off to the nearest dollar per year:

(i) The representative average-use cycle of 365 cycles per year;

(ii) Half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to 6.2 of Appendix B1 of this subpart before Appendix B becomes mandatory and 6.2 of Appendix B of this subpart after Appendix B becomes mandatory (see the note at the beginning of Appendix B); and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary.

(3) The estimated annual operating cost for any other specified cycle type for freezers shall be the product of the following three factors, the resulting product then being rounded off to the nearest dollar per year:

(i) The representative average-use cycle of 365 cycles per year;

(ii) The average per-cycle energy consumption for the specified cycle type, determined according to 6.2 of Appendix B1 of this subpart before Appendix B becomes mandatory and 6.2 of Appendix B of this subpart after Appendix B becomes mandatory (see the note at the beginning of Appendix B); and

(iii) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Secretary.

(4) The energy factor for freezers, expressed in cubic feet per kilowatt-hour per cycle, shall be:

(i) For freezers not having an anti-sweat heater switch, the quotient of:

(A) The adjusted net refrigerated volume in cubic feet, determined according to 6.1 of Appendix B1 of this subpart before Appendix B becomes mandatory and 6.1 of Appendix B of this subpart after Appendix B becomes mandatory (see the note at the beginning of Appendix B), divided by—

(B) The average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 6.2 of Appendix B1 of this subpart before Appendix B becomes mandatory and 6.2 of Appendix B of this subpart after Appendix B becomes mandatory (see the note at the beginning of Appendix B), the resulting quotient then being rounded off to the second decimal place; and

(ii) For freezers having an anti-sweat heater switch, the quotient of:

(A) The adjusted net refrigerated volume in cubic feet, determined according to 6.1 of Appendix B1 of this subpart before Appendix B becomes mandatory and 6.1 of Appendix B of this subpart after Appendix B becomes mandatory (see the note at the beginning of Appendix B), divided by—

(B) Half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to 6.2 of

Appendix B1 of this subpart before Appendix B becomes mandatory and 6.2 of Appendix B of this subpart after Appendix B becomes mandatory (see the note at the beginning of Appendix B), the resulting quotient then being rounded off to the second decimal place.

(5) The annual energy use of all freezers, expressed in kilowatt-hours per year, shall be the following, rounded to the nearest kilowatt-hour per year:

(i) For freezers not having an anti-sweat heater switch, the representative average use cycle of 365 cycles per year multiplied by the average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 6.2 of Appendix B1 of this subpart before Appendix B becomes mandatory and 6.2 of Appendix B of this subpart after Appendix B becomes mandatory (see the note at the beginning of Appendix B), and

(ii) For freezers having an anti-sweat heater switch, the representative average use cycle of 365 cycles per year multiplied by half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just before shipping, each in kilowatt-hours per cycle, determined according to 6.2 of Appendix B1 of this subpart before Appendix B becomes mandatory and 6.2 of Appendix B of this subpart after Appendix B becomes mandatory (see the note at the beginning of Appendix B).

(6) Other useful measures of energy consumption for freezers shall be those measures the Secretary determines are likely to assist consumers in making purchasing decisions and are derived from the application of Appendix B1 of this subpart before Appendix B becomes mandatory and Appendix B of this subpart after Appendix B becomes mandatory (see the note at the beginning of Appendix B).

(7) The following principles of interpretation should be applied to the test procedure. The intent of the energy test procedure is to simulate typical room conditions (approximately 70 °F (21 °C)) with door openings, by testing at 90 °F (32.2 °C) without door openings. Except for operating characteristics that are affected by ambient temperature (for example, compressor percent run time), the unit, when tested under this test procedure, shall operate in a manner equivalent to the unit in typical room conditions. The energy used by the unit shall be calculated when a calculation is provided by the test procedure. Energy consuming components that operate in typical room conditions (including as a result of door openings, or a function of humidity), and that are not exempted by this test procedure, shall operate in an equivalent manner during energy testing under this test procedure, or be accounted for by all calculations as provided for in the test procedure. If:

(i) A product contains energy consuming components that operate differently during the prescribed testing than they would during representative average consumer use and

(ii) Applying the prescribed test to that product would evaluate it in a manner that is unrepresentative of its true energy consumption (thereby providing materially inaccurate comparative data), a manufacturer must obtain a waiver in accordance with the relevant provisions of 10 CFR part 430. Examples:

A. Energy saving features that are designed to be activated by a lack of door openings hall not be functional during the energy test.

B. The defrost heater should not either function or turn off differently during the energy test than it would when in typical room conditions.

C. Electric heaters that would normally operate at typical room conditions with door openings should also operate during the energy test.

D. Energy used during adaptive defrost shall continue to be tested and adjusted per the calculation provided for in this test procedure.

* * * * *

■ 4. Add a new Appendix A to subpart B of part 430 to read as follows:

Appendix A to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Electric Refrigerators and Electric Refrigerator-Freezers

The provisions of Appendix A shall apply to all products manufactured on or after the effective date of any amended standards promulgated by DOE pursuant to Section 325(b)(4) of the Energy Policy and Conservation Act of 1975, as amended by the Energy Independence and Security Act of 2007 (to be codified at 42 U.S.C. 6295(b)(4)).

1. Definitions

Section 3, *Definitions,* of HRF–1–2008 (incorporated by reference; see § 430.3) applies to this test procedure.

1.1 "Adjusted total volume" means the sum of:

(i) The fresh food compartment volume as defined in HRF–1–2008 (incorporated by reference; see § 430.3) in cubic feet, and

(ii) The product of an adjustment factor and the net freezer compartment volume as defined in HRF–1–2008 in cubic feet.

1.2 "All-refrigerator" means an electric refrigerator that does not include a compartment for the freezing and long time storage of food at temperatures below 32°F (0.0 °C). It may include a compartment of 0.50 cubic-foot capacity (14.2 liters) or less for the freezing and storage of ice.

1.3 "Anti-sweat heater" means a device incorporated into the design of a refrigerator or refrigerator-freezer to prevent the accumulation of moisture on the exterior or interior surfaces of the cabinet.

1.4 "Anti-sweat heater switch" means a user-controllable switch or user interface which modifies the activation or control of anti-sweat heaters.

1.5 "Automatic defrost" means a system in which the defrost cycle is automatically initiated and terminated, with resumption of normal refrigeration at the conclusion of the defrost operation. The system automatically prevents the permanent formation of frost on all refrigerated surfaces. Nominal refrigerated food temperatures are maintained during the operation of the automatic defrost system.

1.6 "Automatic icemaker" means a device, that can be supplied with water without user intervention, either from a pressurized water supply system or by transfer from a water reservoir located inside the cabinet, that automatically produces, harvests, and stores ice in a storage bin, with means to automatically interrupt the harvesting operation when the ice storage bin is filled to a pre-determined level.

1.7 "Cycle" means the period of 24 hours for which the energy use of an electric refrigerator or electric refrigerator-freezer is calculated as though the consumer activated compartment temperature controls were set to maintain the standardized temperatures (see section 3.2).

1.8 "Cycle type" means the set of test conditions having the calculated effect of operating an electric refrigerator or electric refrigerator-freezer for a period of 24 hours, with the consumer activated controls other than those that control compartment temperatures set to establish various operating characteristics.

1.9 "Defrost cycle type" means a distinct sequence of control whose function is to remove frost and/or ice from a refrigerated surface. There may be variations in the defrost control sequence such as the number of defrost heaters energized. Each such variation establishes a separate distinct defrost cycle type. However, defrost achieved regularly during the compressor off-cycles by warming of the evaporator without active heat addition is not a defrost cycle type.

1.10 "Externally vented refrigerator or refrigerator-freezer" means an electric refrigerator or electric refrigerator-freezer that has an enclosed condenser or an enclosed condenser/compressor compartment and a set of air ducts for transferring the exterior air from outside the building envelope into, through, and out of the refrigerator or refrigerator-freezer cabinet; is capable of mixing exterior air with the room air before discharging into, through, and out of the condenser or condenser/compressor compartment; may include thermostatically controlled dampers or controls that mix the exterior and room air at low outdoor

temperatures and exclude exterior air when the outdoor air temperature is above 80 °F (26.7 °C) or the room air temperature; and may have a thermostatically actuated exterior air fan.

1.11 "HRF–1–2008" means AHAM Standard HRF–1–2008, Association of Home Appliance Manufacturers, Energy and Internal Volume of Refrigerating Appliances (2008), including Errata to Energy and Internal Volume of Refrigerating Appliances, Correction Sheet issued November 17, 2009. Only sections of HRF–1–2008 (incorporated by reference; see § 430.3) specifically referenced in this test procedure are part of this test procedure. In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over HRF–1–2008.

1.12 "Long-time automatic defrost" means an automatic defrost system whose successive defrost cycles are separated by 14 hours or more of compressor operating time.

1.13 "Separate auxiliary compartment" means a freezer compartment or a fresh food compartment of a refrigerator or refrigerator-freezer having more than two compartments that is not the first freezer compartment or the first fresh food compartment. Access to a separate auxiliary compartment is through a separate exterior door or doors rather than through the door or doors of another compartment. Separate auxiliary compartments may be convertible (e.g., from fresh food to freezer). Separate auxiliary freezer compartments may not be larger than the first freezer compartment and separate auxiliary fresh food compartments may not be larger than the first fresh food compartment, but such size restrictions do not apply to separate auxiliary convertible compartments.

1.14 "Special compartment" means any compartment other than a butter conditioner, without doors directly accessible from the exterior, and with separate temperature control (such as crispers convertible to meat keepers) that is not convertible from fresh food temperature range to freezer temperature range.

1.15 "Stabilization period" means the total period of time during which steady-state conditions are being attained or evaluated.

1.16 "Standard cycle" means the cycle type in which the anti-sweat heater control, when provided, is set in the highest energy-consuming position.

1.17 "Variable anti-sweat heater control" means an anti-sweat heater control that varies the average power input of the anti-sweat heater(s) based on operating condition variable(s) and/or ambient condition variable(s).

1.18 "Variable defrost control" means an automatic defrost system in which successive defrost cycles are determined by an operating condition variable or variables other than solely compressor operating time. This includes any electrical or mechanical device performing this function. A control scheme that changes the defrost interval from a fixed length to an extended length (without any intermediate steps) is not considered a variable defrost control. A variable defrost control feature should predict the accumulation of frost on the evaporator and react accordingly. Therefore, the times between defrost should vary with different usage patterns and include a continuum of lengths of time between defrosts as inputs vary.

2. Test Conditions

2.1 Ambient Temperature. The ambient temperature shall be 90.0 ± 1 °F (32.2 ± 0.6 °C) during the stabilization period and the test period.

2.2 Operational Conditions. The electric refrigerator or electric refrigerator-freezer shall be installed and its operating conditions maintained in accordance with HRF–1–2008, (incorporated by reference; see § 430.3), section 5.3 through section 5.5.5.5 (excluding section 5.5.5.4). Exceptions and clarifications to the cited sections of HRF–1–2008 are noted in sections 2.3 through 2.8, and 5.1 of this test procedure.

2.3 Anti-Sweat Heaters. The anti-sweat heater switch is to be on during one test and off during a second test. In the case of an electric refrigerator-freezer equipped with variable anti-sweat heater control, the standard cycle energy use shall be the result of the calculation described in 6.2.3.

2.4 Conditions for Automatic Defrost Refrigerator-Freezers. For automatic defrost refrigerator-freezers, the freezer compartments shall not be loaded with any frozen food packages during testing. Cylindrical metallic masses of dimensions 1.12 ± 0.25 inches (2.9 ± 0.6 cm) in diameter and height shall be attached in good thermal contact with each temperature sensor within the refrigerated compartments. All temperature measuring sensor masses shall be supported by low-thermal-conductivity supports in such a manner to ensure that there will be at least 1 inch (2.5 cm) of air space separating the thermal mass from contact with any interior surface or hardware inside the cabinet. In case of interference with hardware at the sensor locations specified in section 5.1, the sensors shall be placed at the nearest adjacent location such that there will be a 1-inch air space separating the sensor mass from the hardware.

2.5 Conditions for All-Refrigerators. There shall be no load in the freezer compartment during the test.

2.6 The cabinet and its refrigerating mechanism shall be assembled and set up in accordance with the printed consumer instructions supplied with the cabinet. Set-up of the refrigerator or refrigerator-freezer shall not deviate from these instructions, unless explicitly required or allowed by this test procedure. Specific required or allowed deviations from such set-up include the following:

(a) Connection of water lines and installation of water filters are not required;

(b) Clearance requirements from surfaces of the product shall be as described in section 2.8 of this appendix;

(c) The electric power supply shall be as described in HRF–1–2008 (incorporated by reference; see § 430.3), section 5.5.1;

(d) Temperature control settings for testing shall be as described in section 3 below. Settings for convertible compartments and other temperature-controllable or special compartments shall be as described in section 2.7 of this appendix;

(e) The product does not need to be anchored or otherwise secured to prevent tipping during energy testing;

(f) All the product's chutes and throats required for the delivery of ice shall be free of packing, covers, or other blockages that may be fitted for shipping or when the icemaker is not in use; and

(g) Ice storage bins shall be emptied of ice.

For cases in which set-up is not clearly defined by this test procedure, manufacturers must submit a petition for a waiver (see section 7).

2.7 Compartments that are convertible (e.g., from fresh food to freezer) shall be operated in the highest energy use position. For the special case of convertible separate auxiliary compartments, this means that the compartment shall be treated as a freezer compartment or a fresh food compartment, depending on which of these represents higher energy use. Special compartments shall be tested with controls set to provide the coldest temperature. However, for special compartments in which temperature control is achieved using the addition of heat (including resistive electric heating, refrigeration system waste heat, or heat from any other source, but excluding the transfer of air from another part of the interior of the product) for any part of the controllable temperature range of that compartment, the product energy use shall be determined by averaging two sets of tests. The first set of tests shall be conducted with such special compartments at their coldest settings, and the second set of tests shall be conducted with such special compartments at their warmest settings. The requirements for the warmest or coldest temperature settings of this section do not apply to features or functions associated with temperature control (such as fast chill compartments) that are initiated manually and terminated automatically within 168 hours.

2.8 The space between the back of the cabinet and a vertical surface (the test room wall or simulated wall) shall be the minimum distance in accordance with the manufacturer's instructions. However, the clearance shall not be greater than 2 inches (51 mm) from the plane of the cabinet's back panel to the vertical surface. If permanent rear spacers extend further than this distance, the appliance shall be located with the spacers in contact with the vertical surface.

2.9 Steady-State Condition. Steady-state conditions exist if the temperature measurements in all measured

compartments taken at 4-minute intervals or less during a stabilization period are not changing at a rate greater than 0.042 °F (0.023 °C) per hour as determined by the applicable condition of A or B, described below.

A. The average of the measurements during a 2-hour period if no cycling occurs or during a number of complete repetitive compressor cycles occurring through a period of no less than 2 hours is compared to the average over an equivalent time period with 3 hours elapsing between the two measurement periods.

B. If A above cannot be used, the average of the measurements during a number of complete repetitive compressor cycles occurring through a period of no less than 2 hours and including the last complete cycle before a defrost period (or if no cycling occurs, the average of the measurements during the last 2 hours before a defrost period) are compared to the same averaging period before the following defrost period.

2.10 Exterior Air for Externally Vented Refrigerator or Refrigerator-Freezer. An exterior air source shall be provided with adjustable temperature and pressure capabilities. The exterior air temperature shall be adjustable from 30 ± 1 °F (1.7 ± 0.6 °C) to 90 ± 1 °F (32.2 ± 0.6 °C).

2.10.1 Air Duct. The exterior air shall pass from the exterior air source to the test unit through an insulated air duct.

2.10.2 Air Temperature Measurement. The air temperature entering the condenser or condenser/compressor compartment shall be maintained to ± 3 °F (1.7 °C) during the stabilization and test periods and shall be measured at the inlet point of the condenser or condenser/compressor compartment ("condenser inlet"). Temperature measurements shall be taken from at least three temperature sensors or one sensor per 4 square inches (25.8 square cm) of the air duct cross-sectional area, whichever is greater, and shall be averaged. For a unit that has a condenser air fan, a minimum of three temperature sensors at the condenser fan discharge shall be required. Temperature sensors shall be arranged to be at the centers of equally divided cross-sectional areas. The exterior air temperature, at its source, shall be measured and maintained to ± 1 °F (0.6 °C) during the test period. The temperature measuring devices shall have an error no greater than ± 0.5 °F (± 0.3 °C). Measurements of the air temperature during the test period shall be taken at regular intervals not to exceed 4 minutes.

2.10.3 Exterior Air Static Pressure. The exterior air static pressure at the inlet point of the unit shall be adjusted to maintain a negative pressure of 0.20″ ± 0.05″ water column (62 Pascals ± 12.5 Pascals) for all air flow rates supplied to the unit. The pressure sensor shall be located on a straight duct with a distance of at least 7.5 times the diameter of the duct upstream and a distance of at least 3 times the diameter of the duct downstream. There shall be four static pressure taps at 90° angles apart. The four pressures shall be averaged by interconnecting the four pressure taps. The air pressure measuring instrument shall have an error no greater than 0.01" water column (2.5 Pascals).

3. Test Control Settings

3.1 Model with no User Operable Temperature Control. A test shall be performed to measure the compartment temperatures and energy use. A second test shall be performed with the temperature control electrically short circuited to cause the compressor to run continuously.

3.2 Models with User Operable Temperature Control. Testing shall be performed in accordance with one of the following sections using the following standardized temperatures:

All-Refrigerator: 39 °F (3.9 °C) fresh food compartment temperature;

Refrigerator: 15 °F (−9.4 °C) freezer compartment temperature, 39 °F (3.9 °C) fresh food compartment temperature;

Refrigerator-Freezer: 0 °F (−17.8 °C) freezer compartment temperature, 39 °F (3.9 °C) fresh food compartment temperature.

For the purposes of comparing compartment temperatures with standardized temperatures, as described in sections 3.2.1 and 3.2.2, the freezer compartment temperature shall be as specified in section 5.1.4, and the fresh food compartment temperature shall be as specified in section 5.1.3.

3.2.1 A first test shall be performed with all compartment temperature controls set at their median position midway between their warmest and coldest settings. For mechanical control systems, knob detents shall be mechanically defeated if necessary to attain a median setting. For electronic control systems, the test shall be performed with all compartment temperature controls set at the average of the coldest and warmest settings—if there is no setting equal to this average, the setting closest to the average shall be used. If there are two such settings equally close to the average, the higher of these temperature control settings shall be used. A second test shall be performed with all controls set at their warmest setting or all controls set at their coldest setting (not electrically or mechanically bypassed). For all-refrigerators, this setting shall be the appropriate setting that attempts to achieve compartment temperatures measured during the two tests which bound (i.e., one is above and one is below) the standardized temperature for all-refrigerators. For refrigerators and refrigerator-freezers, the second test shall be conducted with all controls at their coldest setting, unless all compartment temperatures measured during the first part of the test are lower than the standardized temperatures, in which case the second test shall be conducted with all controls at their warmest setting. Refer to Table 1 for all-refrigerators or Table 2 for refrigerators with freezer compartments and refrigerator-freezers to determine which test results to use in the energy consumption calculation. If any compartment is warmer than its standardized temperature for a test with all controls at their coldest position, the tested unit fails the test and cannot be rated.

TABLE 1—TEMPERATURE SETTINGS FOR ALL-REFRIGERATORS

First test		Second test		Energy calculation based on:
Settings	Results	Settings	Results	
Mid	Low	Warm	Low	Second Test Only.
			High	First and Second Tests.
	High	Cold	Low	First and Second Tests.
			High	No Energy Use Rating.

TABLE 2—TEMPERATURE SETTINGS FOR REFRIGERATORS WITH FREEZER COMPARTMENTS AND REFRIGERATOR-FREEZERS

First test		Second test		Energy calculation based on:
Settings	Results	Settings	Results	
Fzr Mid FF Mid	Fzr Low FF Low	Fzr Warm FF Warm	Fzr Low FF Low	Second Test Only.
			Fzr Low FF High	First and Second Tests.
			Fzr High FF Low	First and Second Tests.
			Fzr High FF High	First and Second Tests.
	Fzr Low FF High	Fzr Cold FF Cold	Fzr Low FF High	No Energy Use Rating.
			Fzr Low FF Low	First and Second Tests.
	Fzr High FF Low	Fzr Cold FF Cold	Fzr High FF Low	No Energy Use Rating.
			Fzr Low FF Low	First and Second Tests.
	Fzr High FF High	Fzr Cold FF Cold	Fzr Low FF Low	First and Second Tests.
			Fzr Low FF High	No Energy Use Rating.
			Fzr High FF Low	No Energy Use Rating.
			Fzr High FF High	No Energy Use Rating.

Notes: Fzr = Freezer Compartment, FF = Fresh Food Compartment.

3.2.2 Alternatively, a first test may be performed with all temperature controls set at their warmest setting. If all compartment temperatures are below the appropriate standardized temperatures, then the result of this test alone will be used to determine energy consumption. If this condition is not met, then the unit shall be tested in accordance with 3.2.1.

3.2.3 Temperature Settings for Separate Auxiliary Convertible Compartments. For separate auxiliary convertible compartments tested as freezer compartments, the median setting shall be within 2 °F (1.1 °C) of the standardized temperature, and the warmest setting shall be above 5 °F (−15 °C). For separate auxiliary convertible compartments tested as fresh food compartments, the median setting shall be within 2 °F (1.1 °C) of the standardized temperature, and the coldest setting shall be below 34 °F (1.1 °C). For compartments where control settings are not expressed as particular temperatures, the measured temperature of the convertible compartment rather than the settings shall meet the specified criteria.

4. Test Period

Tests shall be performed by establishing the conditions set forth in section 2, and using the control settings set forth in section 3.

4.1 Nonautomatic Defrost. If the model being tested has no automatic defrost system, the test time period shall start after steady-state conditions have been achieved and be no less than 3 hours in duration. During the test period, the compressor motor shall complete two or more whole compressor cycles. (A compressor cycle is a complete "on" and a complete "off" period of the motor). If no "off" cycling will occur, as determined during the stabilization period, the test period shall be 3 hours. If incomplete cycling occurs (i.e. less than two compressor cycles during a 24-hour period), the results of the 24-hour period shall be used.

4.2 Automatic Defrost. If the model being tested has an automatic defrost system, the test time period shall start after steady-state conditions have been achieved and be from one point during a defrost period to the same point during the next defrost period. If the model being tested has a long-time automatic defrost system, the alternative provisions of 4.2.1 may be used. If the model being tested has a variable defrost control, the provisions of section 4.2.2 shall apply. If the model has a dual compressor system with automatic defrost for both systems, the provisions of 4.2.3 shall apply. If the model being tested has long-time automatic or variable defrost control involving multiple defrost cycle types, such as for a product with a single compressor and two or more evaporators in which the evaporators are defrosted at different frequencies, the provisions of section 4.2.4 shall apply. If the model being tested has multiple defrost cycle types for which compressor run time between defrosts is a fixed time of less than 14 hours for all such cycle types, and for which the compressor run time between defrosts for different defrost cycle types are equal to or multiples of each other, the test time period shall be from one point of the defrost cycle type with the longest compressor run time between defrosts to the same point during the next occurrence of this defrost cycle type. For such products not using the section 4.2.4 procedures, energy consumption shall be calculated as described in section 5.2.1.1.

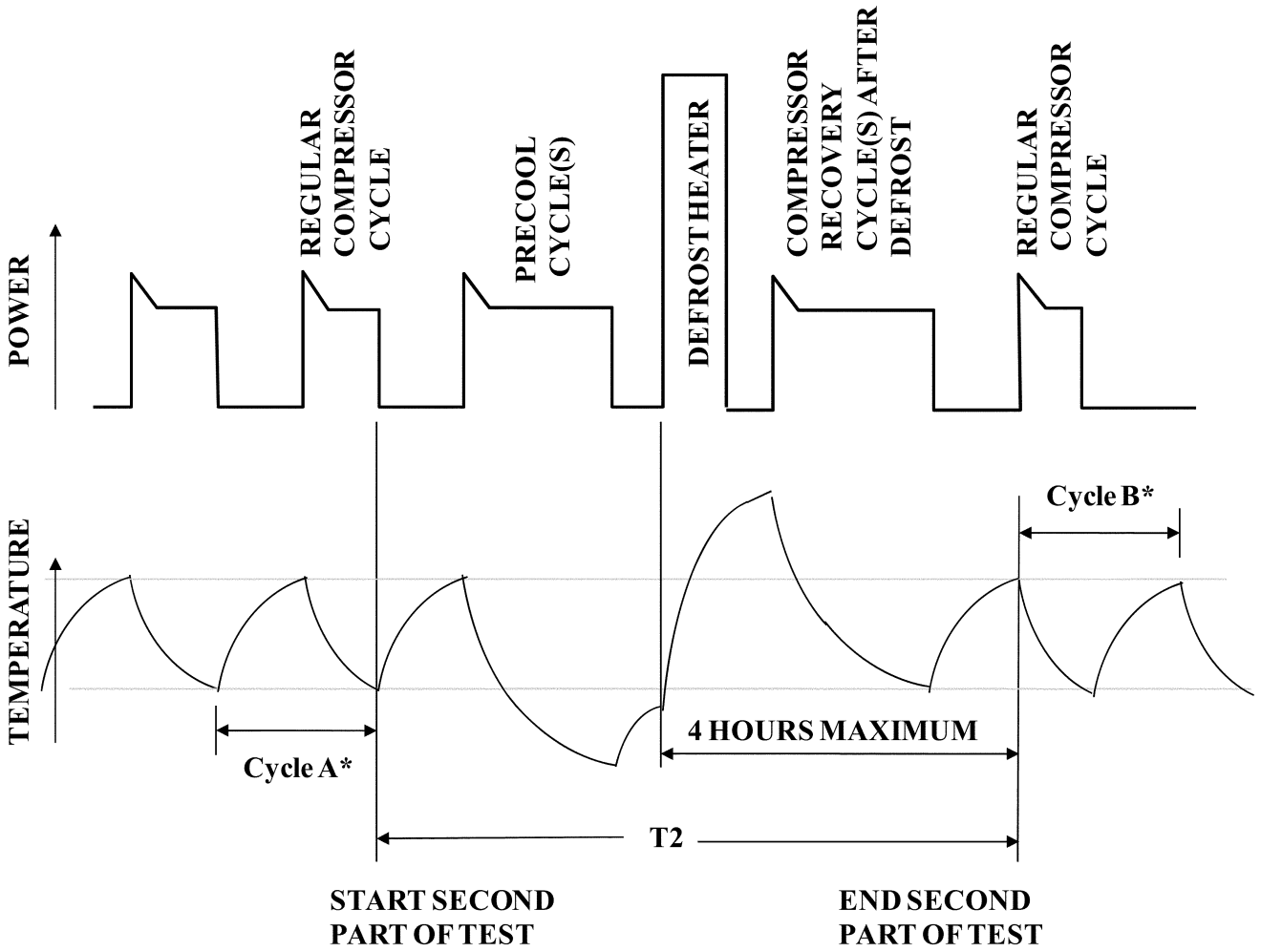
4.2.1 Long-time Automatic Defrost. If the model being tested has a long-time automatic defrost system, the two-part test described in this section may be used. The first part is a stable period of compressor operation that includes no portions of the defrost cycle, such as precooling or recovery, that is otherwise the same as the test for a unit having no defrost provisions (section 4.1). The second part is designed to capture the energy consumed during all of the events occurring with the defrost control sequence that are outside of stable operation.

4.2.1.1 Cycling Compressor System. For a system with a cycling compressor, the second part starts at the termination of the last regular compressor "on" cycle. The average temperature of the compartment measured from the termination of the previous compressor "on" cycle to the termination of the last regular compressor "on" cycle must be within 0.5 °F (0.3 °C) of the average temperature of the compartment measured for the first part of the test. If any compressor cycles occur prior to the defrost heater being energized that cause the average temperature in the compartment to deviate from the first part temperature by more than 0.5 °F (0.3 °C), these compressor cycles are not considered regular compressor cycles and must be included in the second part of the test. As an example, a "precool" cycle, which is an extended compressor cycle that lowers the compartment temperature prior to energizing the defrost heater, must be included in the second part of the test. The test period for the second part of the test ends at the initiation of the first regular compressor cycle after the compartment temperatures have fully recovered to their stable conditions. The average temperature of the compartment measured from this initiation of the first regular compressor "on" cycle until the initiation of the next regular compressor "on" cycle must be within 0.5 °F (0.3 °C) of the average temperature of the compartment measured for the first part of the test. The second part of the test

may be terminated after 4 hours if the above conditions cannot be met. See Figure 1.

Figure 1

Long-time Automatic Defrost Diagram for Cycling Compressors

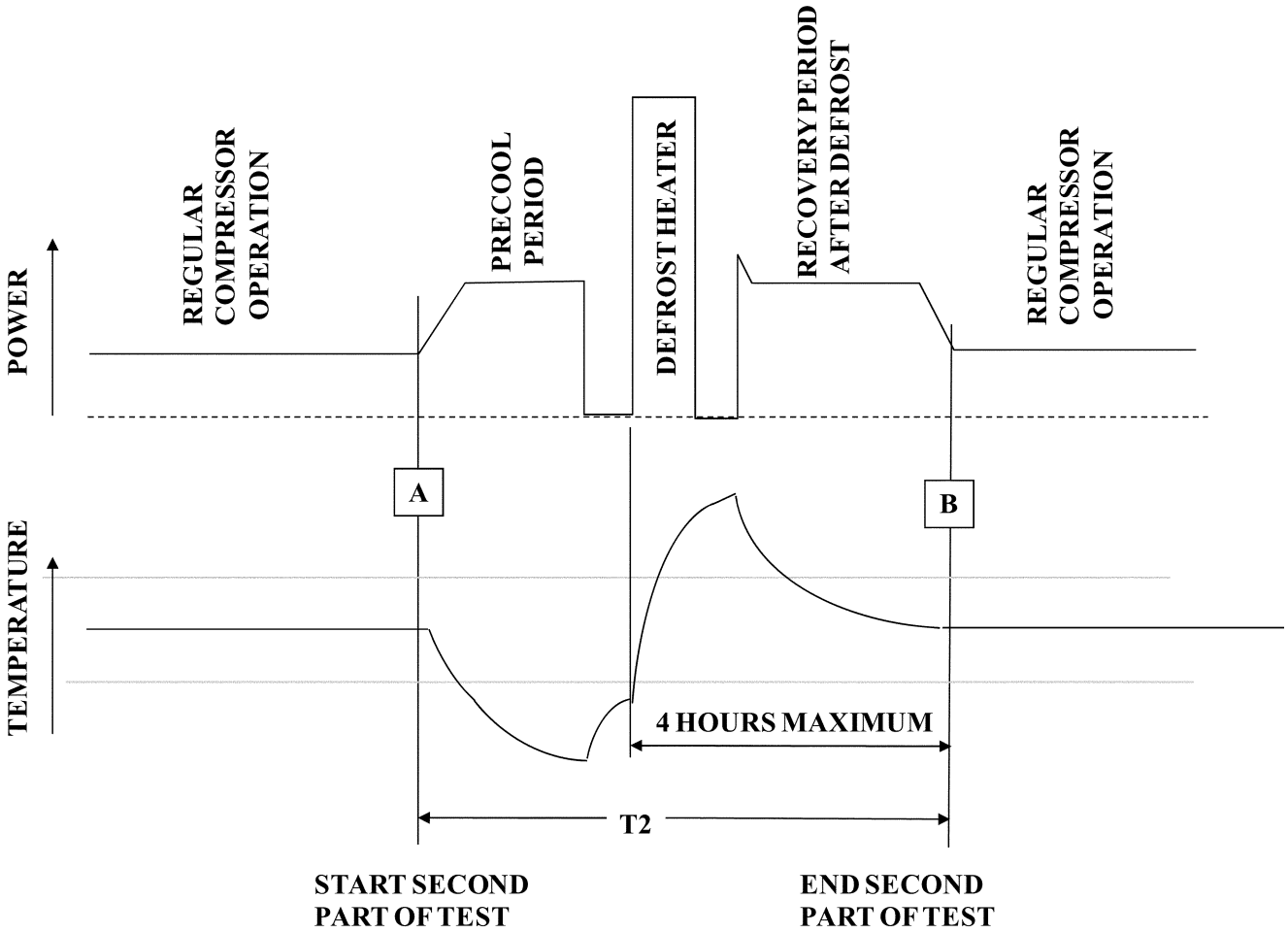


***Average compartment temperature during cycles A & B must be within 0.5 °F of the average temperature for the first part of the test. This requirement does not apply for cycle B if the 4 hour limit is reached.**

4.2.1.2 Non-cycling Compressor System. For a system with a non-cycling compressor, the second part starts at a time before defrost during stable operation when the compartment temperature is within 0.5 °F (0.3 °C) of the average temperature of the compartment measured for the first part of the test. The second part stops at a time after defrost during stable operation when the compartment temperature is within 0.5 °F (0.3 °C) of the average temperature of the compartment measured for the first part of the test. The second part of the test may be terminated after 4 hours if the above conditions cannot be met. *See* Figure 2.

Figure 2

Long-time Automatic Defrost Diagram for Non-Cycling Compressors



***Average compartment temperature at times A & B must be within 0.5 °F of the average temperature for the first part of the test. This requirement does not apply for time B if the 4 hour limit is reached.**

4.2.2 Variable Defrost Control. If the model being tested has a variable defrost control system, the test shall consist of the same two parts as the test for long-time automatic defrost (section 4.2.1).

4.2.3 Dual Compressor Systems with Automatic Defrost. If the model being tested has separate compressor systems for the refrigerator and freezer sections, each with its own automatic defrost system, then the two-part method in 4.2.1 shall be used. The second part of the method will be conducted separately for each automatic defrost system. The components (compressor, fan motors, defrost heaters, anti-sweat heaters, etc.) associated with each system will be identified and their energy consumption will be separately measured during each test.

4.2.4 Systems with Multiple Defrost Frequencies. This section applies to models with long-time automatic or variable defrost control with multiple defrost cycle types, such as models with single compressors and multiple evaporators in which the evaporators have different defrost frequencies. The two-part method in 4.2.1 shall be used. The second part of the method will be conducted separately for each distinct defrost cycle type. For defrost cycle types involving the defrosting of both fresh food and freezer compartments, the freezer compartment temperature shall be used to determine test period start and stop times.

5. Test Measurements

5.1 Temperature Measurements. Temperature measurements shall be made at the locations prescribed in Figures 5.1 and 5.2 of HRF–1–2008 (incorporated by reference; see § 430.3) and shall be accurate to within ± 0.5 °F (0.3 °C). No freezer temperature measurements need be taken in an all-refrigerator model.

If the interior arrangements of the cabinet do not conform with those shown in Figure 5.1 and 5.2 of HRF–1–2008, the product may be tested by relocating the temperature sensors from the locations specified in the figures to avoid interference with hardware or components within the cabinet, in which case the specific locations used for the temperature sensors shall be noted in the test data records maintained by the manufacturer, and the certification report shall indicate that non-standard sensor locations were used.

5.1.1 Measured Temperature. The measured temperature of a compartment is to be the average of all sensor

temperature readings taken in that compartment at a particular point in time. Measurements shall be taken at regular intervals not to exceed 4 minutes.

5.1.2 Compartment Temperature. The compartment temperature for each test period shall be an average of the measured temperatures taken in a compartment during the test period as defined in section 4. For long-time automatic defrost models, compartment temperatures shall be those measured in the first part of the test period specified in section 4.2.1. For models with variable defrost controls, compartment temperatures shall be those measured in the first part of the test period specified in section 4.2.2.

5.1.3 Fresh Food Compartment Temperature. The fresh food compartment temperature shall be calculated as:

$$TR = \frac{\sum_{i=1}^{R}(TR_i) \times (VR_i)}{\sum_{i=1}^{R}(VR_i)}$$

Where:

R is the total number of applicable fresh food compartments, which include the first fresh food compartment and any number of separate auxiliary fresh food compartments (including separate auxiliary convertible compartments tested as fresh food compartments in accordance with section 2.7);

TR_i is the compartment temperature of fresh food compartment "i" determined in accordance with section 5.1.2; and

VR_i is the volume of fresh food compartment "i".

5.1.4 Freezer Compartment Temperature. The freezer compartment temperature shall be calculated as:

$$TF = \frac{\sum_{i=1}^{F}(TF_i) \times (VF_i)}{\sum_{i=1}^{F}(VF_i)}$$

Where:

F is the total number of applicable freezer compartments, which include the first freezer compartment and any number of separate auxiliary freezer compartments (including separate auxiliary convertible compartments tested as freezer compartments in accordance with section 2.7);

TF_i is the compartment temperature of freezer compartment "i" determined in accordance with section 5.1.2; and

VF_i is the volume of freezer compartment "i".

5.2 Energy Measurements

5.2.1 Per-Day Energy Consumption. The energy consumption in kilowatt-hours per day, ET, for each test period shall be the energy expended during the test period as specified in section 4 adjusted to a 24-hour period. The adjustment shall be determined as follows.

5.2.1.1 Nonautomatic and Automatic Defrost Models. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = EP \times 1440/T$$

Where:

ET = test cycle energy expended in kilowatt-hours per day;

EP = energy expended in kilowatt-hours during the test period;

T = length of time of the test period in minutes; and

1440 = conversion factor to adjust to a 24-hour period in minutes per day.

5.2.1.2 Long-time Automatic Defrost. If the two-part test method is used, the energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times EP1/T1) + (EP2 - (EP1 \times T2/T1)) \times (12/CT)$$

Where:

ET and 1440 are defined in 5.2.1.1;

EP1 = energy expended in kilowatt-hours during the first part of the test;

EP2 = energy expended in kilowatt-hours during the second part of the test;

T1 and T2 = length of time in minutes of the first and second test parts respectively;

CT = defrost timer run time or compressor run time between defrosts in hours required to cause it to go through a complete cycle, rounded to the nearest tenth of an hour; and

12 = factor to adjust for a 50-percent run time of the compressor in hours per day.

5.2.1.3 Variable Defrost Control. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times EP1/T1) + (EP2 - (EP1 \times T2/T1)) \times (12/CT),$$

Where:

1440 is defined in 5.2.1.1 and EP1, EP2, T1, T2, and 12 are defined in 5.2.1.2;

$CT = (CT_L \times CT_M)/(F \times (CT_M - CT_L) + CT_L)$;

CT_L = least or shortest compressor run time between defrosts in hours rounded to the nearest tenth of an hour (greater than or equal to 6 but less than or equal to 12 hours);

CT_M = maximum compressor run time between defrosts in hours rounded to the nearest tenth of an hour (greater than CT_L but not more than 96 hours);

F = ratio of per day energy consumption in excess of the least energy and the maximum difference in per-day energy consumption and is equal to 0.20

For variable defrost models with no values for CT_L and CT_M in the algorithm, the default values of 12 and 84 shall be used, respectively.

5.2.1.4 Dual Compressor Systems with Dual Automatic Defrost. The two-part test method in section 4.2.4 must be used, and the energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times EP1/T1) + (EP2_F - (EP_F \times T2/T1)) \times (12/CT_F) + (EP2_R - (EP_R \times T3/T1)) \times (12/CT_R)$$

Where:

1440, EP1, T1, EP2, 12, and CT are defined in 5.2.1.2;

EP_F = freezer system energy in kilowatt-hours expended during the first part of the test;

$EP2_F$ = freezer system energy in kilowatt-hours expended during the second part of the test for the freezer system;

EP_R = refrigerator system energy in kilowatt-hours expended during the first part of the test;

$EP2_R$ = refrigerator system energy in kilowatt-hours expended during the second part of the test for the refrigerator system;

T2 and T3 = length of time in minutes of the second test part for the freezer and refrigerator systems respectively;

CT_F = compressor run time between freezer defrosts (in hours rounded to the nearest tenth of an hour); and

CT_R = compressor run time between refrigerator defrosts (in hours rounded to the nearest tenth of an hour).

5.2.1.5 Long-time or Variable Defrost Control for Systems with Multiple Defrost cycle Types. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times EP1 / T1) + \sum_{i=1}^{D} [(EP2_i - (EP1 \times T2_i / T1)) \times (12 / CT_i)]$$

Where:

1440 is defined in 5.2.1.1 and EP1, T1, and 12 are defined in 5.2.1.2;

i is a variable that can equal 1, 2, or more that identifies the distinct defrost cycle types applicable for the refrigerator or refrigerator-freezer;

$EP2_i$ = energy expended in kilowatt-hours during the second part of the test for defrost cycle type i;

$T2_i$ = length of time in minutes of the second part of the test for defrost cycle type i;

CT_i is the compressor run time between instances of defrost cycle type i, for long-time automatic defrost control equal to a fixed time in hours rounded to the nearest tenth of an hour, and for variable defrost control equal to $(CT_{Li} \times CT_{Mi})/(F \times (CT_{Mi} - CT_{Li}) + CT_{Li})$;

CT_{Li} = least or shortest compressor run time between instances of defrost cycle type i in hours rounded to the nearest tenth of an hour (CT_L for the defrost cycle type with the longest compressor run time between defrosts must be greater than or equal to 6 but less than or equal to 12 hours);

CT_{Mi} = maximum compressor run time between instances of defrost cycle type i in hours rounded to the nearest tenth of an hour (greater than CT_{Li} but not more than 96 hours);

For cases in which there are more than one fixed CT value (for long-time defrost models) or more than one CT_M and/or CT_L value (for variable defrost models) for a given defrost cycle type, an average fixed CT value or average CT_M and CT_L values shall be selected for this cycle type so that 12 divided by this value or values is the frequency of occurrence of the defrost cycle type in a 24-hour period, assuming 50% compressor run time.

F = default defrost energy consumption factor, equal to 0.20.

For variable defrost models with no values for CT_{Li} and CT_{Mi} in the algorithm, the default values of 12 and 84 shall be used, respectively.

D is the total number of distinct defrost cycle types.

5.3 Volume Measurements. The electric refrigerator or electric refrigerator-freezer total refrigerated volume, VT, shall be measured in accordance with HRF–1–2008, (incorporated by reference; see § 430.3), section 3.30 and sections 4.2 through 4.3, and be calculated equivalent to:

VT = VF + VFF

Where:

VT = total refrigerated volume in cubic feet,

VF = freezer compartment volume in cubic feet, and

VFF = fresh food compartment volume in cubic feet.

In the case of refrigerators or refrigerator-freezers with automatic icemakers, the volume occupied by the automatic icemaker, including its ice storage bin, is to be included in the volume measurement.

5.4 Externally Vented Refrigerator or Refrigerator-Freezer Units. All test measurements for the externally vented refrigerator or refrigerator-freezer shall be made in accordance with the requirements of other sections of this Appendix, except as modified in this section or other sections expressly applicable to externally vented refrigerators or refrigerator-freezers.

5.4.1 Operability of "Thermostatic" and "Mixing of Air" Controls. Before conducting energy consumption tests, the operability of thermostatic controls that permit the mixing of exterior and ambient air when exterior air temperatures are less than 60 °F (15.6 °C) must be verified. The operability of such controls shall be verified by operating the unit under ambient air temperature of 90 °F (32.2 °C) and exterior air temperature of 45 °F (7.2 °C). If the inlet air entering the condenser or condenser/compressor compartment is maintained at 60 ± 3 °F (15.6 ± 1.7 °C), energy consumption of the unit shall be measured under 5.4.2.2 and 5.4.2.3. If the inlet air entering the condenser or condenser/compressor compartment is not maintained at 60 ± 3 °F (15.6 ± 1.7 °C), energy consumption of the unit shall also be measured under 5.4.2.4.

5.4.2 Energy Consumption Tests.

5.4.2.1 Correction Factor Test. To enable calculation of a correction factor, K, two full cycle tests shall be conducted to measure energy consumption of the unit with air mixing controls disabled and the condenser inlet air temperatures set at 90 °F (32.2 °C) and 80 °F (26.7 °C). Both tests shall be conducted with all compartment temperature controls set at the position midway between their warmest and coldest settings and the anti-sweat heater switch off. Record the energy consumptions ec_{90} and ec_{80}, in kWh/day.

5.4.2.2 Energy Consumption at 90 °F. The unit shall be tested at 90 °F (32.2 °C) exterior air temperature to record the energy consumptions $(e_{90})_i$ in kWh/day. For a given setting of the anti-sweat heater, the value i corresponds to each of the two states of the compartment temperature control positions.

5.4.2.3 Energy Consumption at 60 °F. The unit shall be tested at 60 °F (26.7 °C) exterior air temperature to record the energy consumptions $(e_{60})_i$ in kWh/day. For a given setting of the anti-sweat heater, the value i corresponds to each of the two states of the compartment temperature control positions.

5.4.2.4 Energy Consumption if Mixing Controls do not Operate Properly. If the operability of temperature and mixing controls has not been verified as required under 5.4.1, the unit shall be tested at 50 °F (10.0 °C) and 30 °F (-1.1 °C) exterior air temperatures to record the energy consumptions $(e_{50})_i$ and $(e_{30})_i$. For a given setting of the anti-sweat heater, the value i corresponds to each of the two states of the compartment temperature control positions.

6. Calculation of Derived Results From Test Measurements

6.1 Adjusted Total Volume.

6.1.1 Electric Refrigerators. The adjusted total volume, VA, for electric refrigerators under test shall be defined as:

VA = (VF × CR) + VFF

Where:

VA = adjusted total volume in cubic feet;

VF and VFF are defined in 5.3; and

CR = dimensionless adjustment factor of 1.47 for refrigerators other than all-refrigerators, or 1.0 for all-refrigerators.

6.1.2 Electric Refrigerator-Freezers. The adjusted total volume, VA, for electric refrigerator-freezers under test shall be calculated as follows:

VA = (VF × CRF) + VFF

Where:

VF and VFF are defined in 5.3 and VA is defined in 6.1.1, and

CRF = dimensionless adjustment factor of 1.76.

6.2 Average Per-Cycle Energy Consumption.

6.2.1 All-Refrigerator Models. The average per-cycle energy consumption for a cycle type, E, is expressed in kilowatt-hours per cycle to the nearest one hundredth (0.01) kilowatt-hour and shall depend upon the temperature attainable in the fresh food compartment as shown below.

6.2.1.1 If the fresh food compartment temperature is always below 39.0 °F (3.9 °C), the average per-cycle energy consumption shall be equivalent to:

E = ET1

Where:

ET is defined in 5.2.1; and

The number 1 indicates the test period during which the highest fresh food compartment temperature is measured.

6.2.1.2 If one of the fresh food compartment temperatures measured for a test period is greater than 39.0 °F (3.9 °C), the average per-cycle energy consumption shall be equivalent to:

$$E = ET1 + ((ET2 - ET1) \times (39.0 - TR1)/(TR2 - TR1))$$

Where:

ET is defined in 5.2.1;
TR = fresh food compartment temperature determined according to 5.1.3 in degrees F;
The numbers 1 and 2 indicate measurements taken during the first and second test period as appropriate; and
39.0 = standardized fresh food compartment temperature in degrees F.

6.2.2 Refrigerators and Refrigerator-Freezers. The average per-cycle energy consumption for a cycle type, E, is expressed in kilowatt-hours per-cycle to the nearest one hundredth (0.01) kilowatt-hour and shall be defined in one of the following ways as applicable.

6.2.2.1 If the fresh food compartment temperature is at or below 39 °F (3.9 °C) in both tests and the freezer compartment temperature is at or below 15 °F (-9.4 °C) in both tests of a refrigerator or at or below 0 °F (-17.8 °C) in both tests of a refrigerator-freezer, the per-cycle energy consumption shall be:

$$E = ET1 + IET$$

Where:

ET is defined in 5.2.1;
IET, expressed in kilowatt-hours per cycle, equals 0.23 for a product with an automatic icemaker and otherwise equals 0 (zero); and
The number 1 indicates the test period during which the highest freezer compartment temperature was measured.

6.2.2.2 If the conditions of 6.2.2.1 do not exist, the per-cycle energy consumption shall be defined by the higher of the two values calculated by the following two formulas:

$$E = ET1 + ((ET2 - ET1) \times (39.0 - TR1)/(TR2 - TR1)) + IET$$

and

$$E = ET1 + ((ET2 - ET1) \times (k - TF1)/(TF2 - TF1)) + IET$$

Where:

E is defined in 6.2.1.1;
ET is defined in 5.2.1;
IET is defined in 6.2.2.1;
TR and the numbers 1 and 2 are defined in 6.2.1.2;
TF = freezer compartment temperature determined according to 5.1.4 in degrees F;
39.0 is a specified fresh food compartment temperature in degrees F; and
k is a constant 15.0 for refrigerators or 0.0 for refrigerator-freezers, each being standardized freezer compartment temperatures in degrees F.

6.2.3 Variable Anti-Sweat Heater Models. The standard cycle energy consumption of an electric refrigerator-freezer with a variable anti-sweat heater control (E_{std}), expressed in kilowatt-hours per day, shall be calculated equivalent to:

E_{std} = E + (Correction Factor) where E is determined by 6.2.1.1, 6.2.1.2, 6.2.2.1, or 6.2.2.2, whichever is appropriate, with the anti-sweat heater switch in the "off" position or, for a product without an anti-sweat heater switch, the anti-sweat heater in its lowest energy use state.
Correction Factor = (Anti-sweat Heater Power × System-loss Factor) × (24 hrs/1 day) × (1 kW/1000 W)

Where:

Anti-sweat Heater Power = 0.034 * (Heater Watts at 5%RH)
+ 0.211 * (Heater Watts at 15%RH)
+ 0.204 * (Heater Watts at 25%RH)
+ 0.166 * (Heater Watts at 35%RH)
+ 0.126 * (Heater Watts at 45%RH)
+ 0.119 * (Heater Watts at 55%RH)
+ 0.069 * (Heater Watts at 65%RH)
+ 0.047 * (Heater Watts at 75%RH)
+ 0.008 * (Heater Watts at 85%RH)
+ 0.015 * (Heater Watts at 95%RH)
Heater Watts at a specific relative humidity = the nominal watts used by all heaters at that specific relative humidity, 72 °F (22.2 °C) ambient, and DOE reference temperatures of fresh food (FF) average temperature of 39 °F (3.9 °C) and freezer (FZ) average temperature of 0 °F (−17.8 °C).
System-loss Factor = 1.3.

6.3 Externally vented refrigerator or refrigerator-freezers. Per-cycle energy consumption measurements for an externally vented refrigerator or refrigerator-freezer shall be calculated in accordance with the requirements of this Appendix, as modified in sections 6.3.1–6.3.7.

6.3.1 Correction Factor. The correction factor, K, shall be calculated as:

$$K = ec_{90}/ec_{80}$$

Where:

ec_{90} and ec_{80} are measured in section 5.4.2.1.

6.3.2 Combining Test Results of Different Settings of Compartment Temperature Controls. For a given setting of the anti-sweat heater, follow the calculation procedures of 6.2 to combine the test results for energy consumption of the unit at different temperature control settings for each condenser inlet air temperature tested under 5.4.2.2, 5.4.2.3, and 5.4.2.4, where applicable, $(e_{90})_i$, $(e_{60})_i$, $(e_{50})_i$, and $(e_{30})_i$. The combined values, $\boldsymbol{\varepsilon}_{90}$, $\boldsymbol{\varepsilon}_{60}$, $\boldsymbol{\varepsilon}_{50}$, and $\boldsymbol{\varepsilon}_{30}$, where applicable, are expressed in kWh/day.

6.3.3 Energy Consumption Corrections. For a given setting of the anti-sweat heater, adjust the energy consumptions $\boldsymbol{\varepsilon}_{90}$, $\boldsymbol{\varepsilon}_{60}$, $\boldsymbol{\varepsilon}_{50}$, and $\boldsymbol{\varepsilon}_{30}$ calculated in 6.3.2 by multiplying the correction factor K to obtain the corrected energy consumptions per day in kWh/day:

$E_{90} = K \times \boldsymbol{\varepsilon}_{90}$,
$E_{60} = K \times \boldsymbol{\varepsilon}_{60}$,
$E_{50} = K \times \boldsymbol{\varepsilon}_{50}$, and
$E_{30} = K \times \boldsymbol{\varepsilon}_{30}$

Where:

K is determined under section 6.3.1; and $\boldsymbol{\varepsilon}_{90}$, $\boldsymbol{\varepsilon}_{60}$, $\boldsymbol{\varepsilon}_{50}$, and $\boldsymbol{\varepsilon}_{30}$ are determined under section 6.3.2.

6.3.4 Energy Profile Equation. For a given setting of the anti-sweat heater, calculate the energy consumption E_X, in kWh/day, at a specific exterior air temperature between 80 °F (26.7 °C) and 60 °F (26.7 °C) using the following equation:

$$E_X = E_{60} + (E_{90} - E_{60}) \times (T_X - 60)/30$$

Where:

T_X is the exterior air temperature in °F;
60 is the exterior air temperature in °F for the test of section 5.4.2.3;
30 is the difference between 90 and 60;
E_{60} and E_{90} are determined in section 6.3.3.

6.3.5 Energy Consumption at 80 °F (26.7 °C), 75 °F (23.9 °C) and 65 °F (18.3 °C). For a given setting of the anti-sweat heater, calculate the energy consumptions at 80 °F (26.7 °C), 75 °F (23.9 °C) and 65 °F (18.3 °C) exterior air temperatures, E_{80}, E_{75} and E_{65}, respectively, in kWh/day, using the equation in 6.3.4.

6.3.6 National Average Per-Cycle Energy Consumption. For a given setting of the anti-sweat heater, calculate the national average energy consumption, E_N, in kWh/day, using one of the following equations:

$E_N = 0.523 \times E_{60} + 0.165 \times E_{65} + 0.181 \times E_{75} + 0.131 \times E_{80}$, for units not tested under section 5.4.2.4; and
$E_N = 0.257 \times E_{30} + 0.266 \times E_{50} + 0.165 \times E_{65} + 0.181 \times E_{75} + 0.131 \times E_{80}$, for units tested under section 5.4.2.4

Where:

E_{30}, E_{50}, and E_{60} are defined in 6.3.3;
E_{65}, E_{75}, and E_{80} are defined in 6.3.5;
and
the coefficients 0.523, 0.165, 0.181, 0.131, 0.257 and 0.266 are weather-associated weighting factors.

6.3.7 Regional Average Per-Cycle Energy Consumption. If regional average per-cycle energy consumption is required to be calculated for a given

setting of the anti-sweat heater, calculate the regional average per-cycle energy consumption, E_R, in kWh/day, for the regions in Figure 3. Use one of the following equations and the coefficients in Table A:

$E_R = a_1 \times E_{60} + c \times E_{65} + d \times E_{75} + e \times E_{80}$, for a unit that is not required to be tested under section 5.4.2.4; or

$E_R = a \times E_{30} + b \times E_{50} + c \times E_{65} + d \times E_{75} + e \times E_{80}$, for a unit tested under section 5.4.2.4

Where:

E_{30}, E_{50}, and E_{60} are defined in section 6.3.3;

E_{65}, E_{75}, and E_{80} are defined in section 6.3.5; and

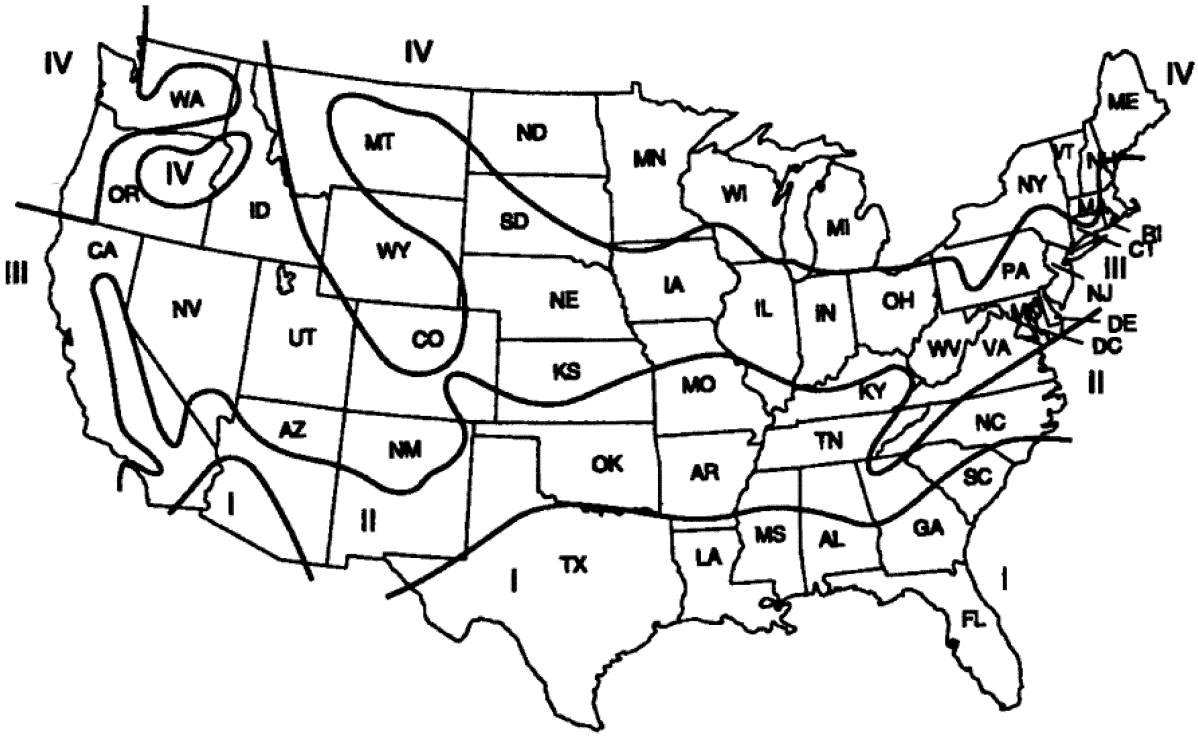
a_1, a, b, c, d, and e are weather-associated weighting factors for the regions, as specified in Table A.

TABLE A—COEFFICIENTS FOR CALCULATING REGIONAL AVERAGE PER-CYCLE ENERGY CONSUMPTION

[Weighting factors]

Regions	a1	a	b	c	d	e
I	0.282	0.039	0.244	0.194	0.326	0.198
II	0.486	0.194	0.293	0.191	0.193	0.129
III	0.584	0.302	0.282	0.178	0.159	0.079
IV	0.664	0.420	0.244	0.161	0.121	0.055

Figure 3: Weather Regions for the United States



Alaska: Region IV

Hawaii: Region I

7. Test Procedure Waivers

To the extent that the procedures contained in this appendix do not provide a means for determining the energy consumption of a refrigerator or refrigerator-freezer, a manufacturer must obtain a waiver under 10 CFR 430.27 to establish an acceptable test procedure for each such product. Such instances could, for example, include situations where the test set-up for a particular refrigerator or refrigerator-freezer basic model is not clearly defined by the provisions of section 2. For details regarding the criteria and procedures for obtaining a waiver, please refer to 10 CFR 430.27.

■ 6. Appendix A1 to subpart B of part 430 is amended by:

■ a. Adding an introductory note after the appendix heading;

■ b. Revising section 1. Definitions;

■ c. Revising section 2. Test Conditions;

■ d. In section 3. Test Control Settings, by:

■ 1. Revising sections 3.2 and 3.2.1 through 3.2.3;

■ 2. Adding new section 3.2.4;

■ 3. Removing section 3.3;

■ e. Revising section 4. Test Period;

■ f. In section 5. Test Measurements, by:

■ 1. Revising sections 5.1, 5.1.2, 5.1.2.1, 5.1.2.2, 5.1.2.3, 5.2.1, 5.2.1.1, 5.2.1.2, and 5.2.1.3;

■ 2. Adding new sections 5.1.3 and 5.1.4;
■ 2. Removing section 5.2.1.4;
■ 3. Redesignating section 5.2.1.5 as 5.2.1.4 and revising redesignated 5.2.1.4;
■ g. In section 6. Calculation of Derived Results from Test Measurements, by:
■ 1. Revising sections 6.2.1.2 and 6.2.2.2;
■ 2. Adding new section 6.2.3;
■ 3. Revise the Figure at the end of section 6;
■ h. Adding a new section 7. Test Procedure Waivers.

The additions and revisions read as follows:

Appendix A1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Electric Refrigerators and Electric Refrigerator-Freezers

The provisions of Appendix A1 shall apply to all products manufactured prior to the effective date of any amended standards promulgated by DOE pursuant to Section 325(b)(4) of the Energy Policy and Conservation Act of 1975, as amended by the Energy Independence and Security Act of 2007 (to be codified at 42 U.S.C. 6295(b)(4)).

1. Definitions

Section 3, *Definitions,* of HRF–1–1979 (incorporated by reference; see § 430.3) applies to this test procedure.

1.1 "Adjusted total volume" means the sum of (i) the fresh food compartment volume as defined in HRF–1–1979 in cubic feet, and (ii) the product of an adjustment factor and the net freezer compartment volume as defined in HRF–1–1979, in cubic feet.

1.2 "All-refrigerator" means an electric refrigerator which does not include a compartment for the freezing and long time storage of food at temperatures below 32 °F (0.0 °C). It may include a compartment of 0.50 cubic feet capacity (14.2 liters) or less for the freezing and storage of ice.

1.3 "Anti-sweat heater" means a device incorporated into the design of a refrigerator or refrigerator-freezer to prevent the accumulation of moisture on exterior or interior surfaces of the cabinet.

1.4 "Anti-sweat heater switch" means a user-controllable switch or user interface which modifies the activation or control of anti-sweat heaters.

1.5 "Automatic defrost" means a system in which the defrost cycle is automatically initiated and terminated, with resumption of normal refrigeration at the conclusion of the defrost operation. The system automatically prevents the permanent formation of frost on all refrigerated surfaces. Nominal refrigerated food temperatures are maintained during the operation of the automatic defrost system.

1.6 "Automatic icemaker" means a device that can be supplied with water without user intervention, either from a pressurized water supply system or by transfer from a water reservoir located inside the cabinet, that automatically produces, harvests, and stores ice in a storage bin, with means to automatically interrupt the harvesting operation when the ice storage bin is filled to a pre-determined level.

1.7 "Cycle" means the period of 24 hours for which the energy use of an electric refrigerator or electric refrigerator-freezer is calculated as though the consumer activated compartment temperature controls were set to maintain the standardized temperatures (see section 3.2).

1.8 "Cycle type" means the set of test conditions having the calculated effect of operating an electric refrigerator or electric refrigerator-freezer for a period of 24 hours, with the consumer activated controls other than those that control compartment temperatures set to establish various operating characteristics.

1.9 "Defrost cycle type" means a distinct sequence of control whose function is to remove frost and/or ice from a refrigerated surface. There may be variations in the defrost control sequence such as the number of defrost heaters energized. Each such variation establishes a separate distinct defrost cycle type. However, defrost achieved regularly during the compressor off-cycles by warming of the evaporator without active heat addition is not a defrost cycle type.

1.10 "Externally vented refrigerator or refrigerator-freezer" means an electric refrigerator or electric refrigerator-freezer that has an enclosed condenser or an enclosed condenser/compressor compartment and a set of air ducts for transferring the exterior air from outside the building envelope into, through, and out of the refrigerator or refrigerator-freezer cabinet; is capable of mixing exterior air with the room air before discharging into, through, and out of the condenser or condenser/compressor compartment; may include thermostatically controlled dampers or controls that mix the exterior and room air at low outdoor temperatures and exclude exterior air when the outdoor air temperature is above 80 °F (26.7 °C) or the room air temperature; and may have a thermostatically actuated exterior air fan.

1.11 "HRF–1–1979" means the Association of Home Appliance Manufacturers standard for household refrigerators, combination refrigerator-freezers, and household freezers, also approved as an American National Standard as a revision of ANSI B 38.1–1970. Only sections of HRF–1–1979 (incorporated by reference; see § 430.3) specifically referenced in this test procedure are part of this test procedure. In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over HRF–1–1979.

1.12 "Long-time Automatic Defrost" means an automatic defrost system where successive defrost cycles are separated by 14 hours or more of compressor-operating time.

1.13 "Separate auxiliary compartment" means a freezer compartment or a fresh food compartment of a refrigerator or refrigerator-freezer having more than two compartments that is not the first freezer compartment or the first fresh food compartment. Access to a separate auxiliary compartment is through a separate exterior door or doors rather than through the door or doors of another compartment. Separate auxiliary compartments may be convertible (e.g., from fresh food to freezer). Separate auxiliary freezer compartments may not be larger than the first freezer compartment and separate auxiliary fresh food compartments may not be larger than the first fresh food compartment, but such size restrictions do not apply to separate auxiliary convertible compartments.

1.14 "Special compartment" means any compartment other than a butter conditioner, without doors directly accessible from the exterior, and with separate temperature control (such as crispers convertible to meat keepers) that is not convertible from fresh food temperature range to freezer temperature range.

1.15 "Stabilization Period" means the total period of time during which steady-state conditions are being attained or evaluated.

1.16 "Standard cycle" means the cycle type in which the anti-sweat heater control, when provided, is set in the highest energy consuming position.

1.17 "Variable anti-sweat heater control" means an anti-sweat heater control that varies the average power input of the anti-sweat heater(s) based on operating condition variable(s) and/or ambient condition variable(s).

1.18 "Variable defrost control" means an automatic defrost system in which successive defrost cycles are determined by an operating condition variable or variables other than solely

compressor operating time. This includes any electrical or mechanical device performing this function. A control scheme that changes the defrost interval from a fixed length to an extended length (without any intermediate steps) is not considered a variable defrost control. A variable defrost control feature should predict the accumulation of frost on the evaporator and react accordingly. Therefore, the times between defrost should vary with different usage patterns and include a continuum of lengths of time between defrosts as inputs vary.

2. Test Conditions

2.1 Ambient Temperature. The ambient temperature shall be 90.0 ± 1 °F (32.2 ± 0.6 °C) during the stabilization period and the test period.

2.2 Operational Conditions. The electric refrigerator or electric refrigerator-freezer shall be installed and its operating conditions maintained in accordance with HRF–1–1979, (incorporated by reference; see § 430.3), section 7.2 through section 7.4.3.3, except that the vertical ambient temperature gradient at locations 10 inches (25.4 cm) out from the centers of the two sides of the unit being tested is to be maintained during the test. Unless the area is obstructed by shields or baffles, the gradient is to be maintained from 2 inches (5.1 cm) above the floor or supporting platform to a height 1 foot (30.5 cm) above the unit under test. Defrost controls are to be operative. Other exceptions and provisions to the cited sections of HRF–1–1979 are noted in sections 2.3 through 2.8, and 5.1 of this appendix.

2.3 Anti-Sweat Heaters.

The anti-sweat heater switch is to be on during one test and off during a second test. In the case of an electric refrigerator-freezer with variable anti-sweat heater control, the standard cycle energy use shall be the result of the calculation described in 6.2.3.

2.4 Conditions for Automatic Defrost Refrigerator-Freezers. For automatic defrost refrigerator-freezers, the freezer compartments shall not be loaded with any frozen food packages during testing. Cylindrical metallic masses of dimensions 1.12 ± 0.25 inches (2.9 ± 0.6 cm) in diameter and height shall be attached in good thermal contact with each temperature sensor within the refrigerated compartments. All temperature measuring sensor masses shall be supported by low-thermal-conductivity supports in such a manner to ensure that there will be at least 1 inch (2.5 cm) of air space separating the thermal mass from contact with any interior surface or hardware inside the cabinet. In case of interference with hardware at the sensor locations specified in section 5.1, the sensors shall be placed at the nearest adjacent location such that there will be a 1-inch air space separating the sensor mass from the hardware.

2.5 Conditions for all-refrigerators. There shall be no load in the freezer compartment during the test.

2.6 The cabinet and its refrigerating mechanism shall be assembled and set up in accordance with the printed consumer instructions supplied with the cabinet. Set-up of the refrigerator or refrigerator-freezer shall not deviate from these instructions, unless explicitly required or allowed by this test procedure. Specific required or allowed deviations from such set-up include the following:

(a) Connection of water lines and installation of water filters are not required;

(b) Clearance requirements from surfaces of the product shall be as described in section 2.8 below;

(c) The electric power supply shall be as described in HRF–1–1979 (incorporated by reference; see § 430.3) section 7.4.1;

(d) Temperature control settings for testing shall be as described in section 3 below. Settings for convertible compartments and other temperature-controllable or special compartments shall be as described in section 2.7 of this appendix;

(e) The product does not need to be anchored or otherwise secured to prevent tipping during energy testing; and

(f) All the product's chutes and throats required for the delivery of ice shall be free of packing, covers, or other blockages that may be fitted for shipping or when the icemaker is not in use.

For cases in which set-up is not clearly defined by this test procedure, manufacturers must submit a petition for a waiver (see section 7).

2.7 Compartments that are convertible (e.g., from fresh food to freezer) shall be operated in the highest energy use position. For the special case of convertible separate auxiliary compartments, this means that the compartment shall be treated as a freezer compartment or a fresh food compartment, depending on which of these represents higher energy use. Special compartments shall be tested with controls set to provide the coldest temperature. This requirement for the coldest temperature does not apply to features or functions associated with temperature control (such as fast chill compartments) that are initiated manually and terminated automatically within 168 hours.

2.8 The space between the back of the cabinet and a vertical surface (the test room wall or simulated wall) shall be the minimum distance in accordance with the manufacturer's instructions.

2.9 Steady State Condition. Steady state conditions exist if the temperature measurements in all measured compartments taken at four minute intervals or less during a stabilization period are not changing at a rate greater than 0.042 °F. (0.023 °C.) per hour as determined by the applicable condition of A or B.

A. The average of the measurements during a two hour period if no cycling occurs or during a number of complete repetitive compressor cycles through a period of no less than two hours is compared to the average over an equivalent time period with three hours elapsed between the two measurement periods.

B. If A above cannot be used, the average of the measurements during a number of complete repetitive compressor cycles through a period of no less than two hours and including the last complete cycle prior to a defrost period, or if no cycling occurs, the average of the measurements during the last two hours prior to a defrost period; are compared to the same averaging period prior to the following defrost period.

2.10 Exterior air for externally vented refrigerator or refrigerator-freezer. An exterior air source shall be provided with adjustable temperature and pressure capabilities. The exterior air temperature shall be adjustable from 35 ± 1 °F (1.7 ± 0.6 °C) to 90 ± 1 °F (32.2 ± 0.6 °C).

2.10.1 Air duct. The exterior air shall pass from the exterior air source to the test unit through an insulated air duct.

2.10.2 Air temperature measurement. The air temperature entering the condenser or condenser/compressor compartment shall be maintained to ± 3 °F (1.7 °C) during the stabilization and test periods and shall be measured at the inlet point of the condenser or condenser/compressor compartment ("condenser inlet"). Temperature measurements shall be taken from at least three temperature sensors or one sensor per 4 square inches of the air duct cross sectional area, whichever is greater, and shall be averaged. For a unit that has a condenser air fan, a minimum of three temperature sensors at the condenser fan discharge shall be required. Temperature sensors shall be arranged

to be at the centers of equally divided cross sectional areas. The exterior air temperature, at its source, shall be measured and maintained to ± 1 °F (0.6 °C) during the test period. The temperature measuring devices shall have an error not greater than ± 0.5 °F (± 0.3 °C). Measurements of the air temperature during the test period shall be taken at regular intervals not to exceed four minutes.

2.10.3 Exterior air static pressure. The exterior air static pressure at the inlet point of the unit shall be adjusted to maintain a negative pressure of 0.20″ ± 0.05″ water column (62 Pa ± 12.5 Pa) for all air flow rates supplied to the unit. The pressure sensor shall be located on a straight duct with a distance of at least 7.5 times the diameter of the duct upstream and a distance of at least 3 times the diameter of the duct downstream. There shall be four static pressure taps at 90°angles apart. The four pressures shall be averaged by interconnecting the four pressure taps. The air pressure measuring instrument shall have an error not greater than 0.01″ water column (2.5 Pa).

3. Test Control Settings

* * * * *

3.2 Model with User Operable Temperature Control. Testing shall be performed in accordance with one of the following sections using the standardized temperatures of:

All-Refrigerator: 38 °F (3.3 °C) fresh food compartment temperature;

Refrigerator: 15 °F (− 9.4 °C) freezer compartment temperature, 45 °F (7.2 °C) fresh food compartment temperature;

Refrigerator-Freezer: 5 °F (− 15 °C) freezer compartment temperature, 45 °F (7.2 °C) fresh food compartment temperature.

For the purposes of comparing compartment temperatures with standardized temperatures, as described in sections 3.2.1 through 3.2.3, the freezer compartment temperature shall be as specified in section 5.1.4, and the fresh food compartment temperature shall be as specified in section 5.1.3.

3.2.1 A first test shall be performed with all compartment temperature controls set at their median position midway between their warmest and coldest settings. For mechanical control systems, knob detents shall be mechanically defeated if necessary to attain a median setting. For electronic control systems, the test shall be performed with all compartment temperature controls set at the average of the coldest and warmest settings—if there is no setting equal to this average, the setting closest to the average shall be used. If there are two such settings equally close to the average, the higher of these temperature control settings shall be used. A second test shall be performed with all controls set at their warmest setting or all controls set at their coldest setting (not electrically or mechanically bypassed). For all-refrigerators, this setting shall be the appropriate setting that attempts to achieve compartment temperatures measured during the two tests which bound (i.e., one is above and one is below) the standardized temperature for all-refrigerators. For refrigerators and refrigerator-freezers, the second test shall be conducted with all controls at their coldest setting, unless all compartment temperatures measured during the first part of the test are lower than the standardized temperatures, in which case the second test shall be conducted with all controls at their warmest setting. If (a) the measured temperature of any compartment with all controls set at their coldest settings is above its standardized temperature, a third test shall be performed with all controls set at their warmest settings and the result of this test shall be used with the result of the test performed with all controls set at their coldest settings to determine energy consumption. If (b) the measured temperatures of all compartments with all controls set at their warmest settings are below their standardized temperatures then the result of this test alone will be used to determine energy consumption. If neither (a) nor (b) occur, then the results of the first two tests shall be used to determine energy consumption.

3.2.2 Alternatively, a first test may be performed with all temperature controls set at their warmest setting. If the measured temperatures of all compartments for this test are below their standardized temperatures then the result of this test alone will be used to determine energy consumption. If this condition is not met, then the unit shall be tested in accordance with 3.2.1 of this appendix.

3.2.3 Alternatively, a first test may be performed with all temperature controls set at their coldest setting. If the measured temperature of any compartment for this test is above its standardized temperature, a second test shall be performed with all controls set at their warmest settings and the result of this test shall be used with the result of the test performed with all controls set at their coldest settings to determine energy consumption. If this condition is not met, then the unit shall be tested in accordance with 3.2.1 of this appendix.

3.2.4 Temperature Settings for Separate Auxiliary Convertible Compartments. For separate auxiliary convertible compartments tested as freezer compartments, the median setting shall be within 2 °F (1.1 °C) of the standardized temperature, and the warmest setting shall be above 10 °F (− 12.2 °C). For separate auxiliary convertible compartments tested as fresh food compartments, the median setting shall be within 2 °F (1.1 °C) of the standardized temperature, and the coldest setting shall be below 40 °F (4.4 °C). For compartments where control settings are not expressed as particular temperatures, the measured temperature of the convertible compartment rather than the settings shall meet the specified criteria.

* * * * *

4. Test Period

Tests shall be performed by establishing the conditions set forth in section 2, and using the control settings set forth in section 3.

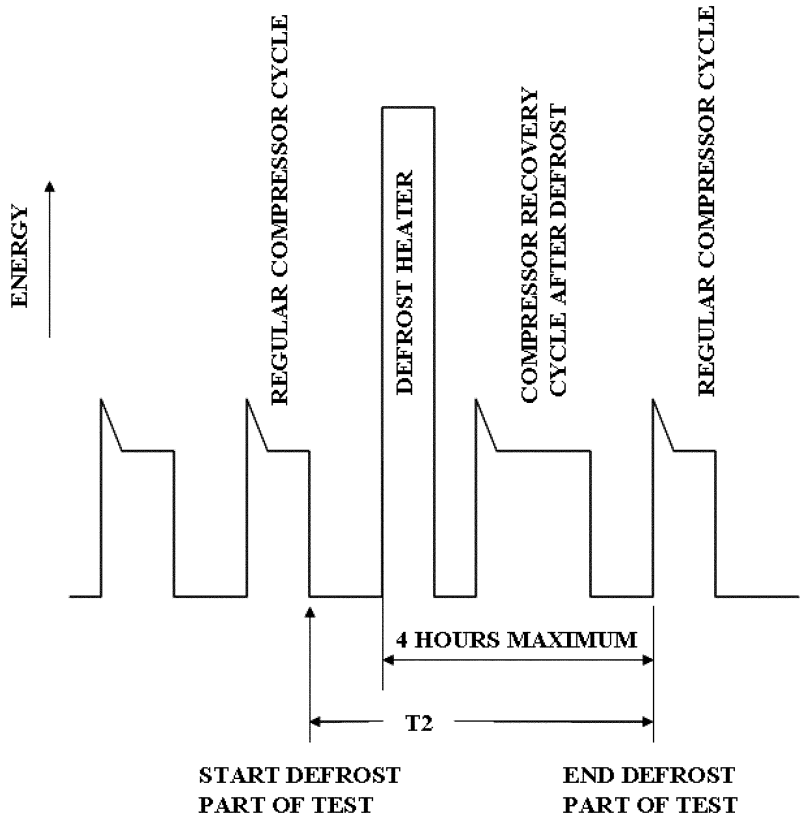
4.1 Nonautomatic Defrost. If the model being tested has no automatic defrost system, the test time period shall start after steady-state conditions have been achieved and be no less than 3 hours in duration. During the test period, the compressor motor shall complete two or more whole compressor cycles. (A compressor cycle is a complete "on" and a complete "off" period of the motor). If no "off" cycling will occur, as determined during the stabilization period, the test period shall be 3 hours. If incomplete cycling occurs (i.e. less than two compressor cycles during a 24-hour period), the results of the 24-hour period shall be used.

4.2 Automatic Defrost. If the model being tested has an automatic defrost system, the test time period shall start after steady-state conditions have been achieved and be from one point during a defrost period to the same point during the next defrost period. If the model being tested has a long-time automatic defrost system, the alternative provisions of 4.2.1 may be used. If the model being tested has a variable defrost control, the provisions of section 4.2.2 shall apply. If the model has a dual compressor system with automatic defrost for both systems, the provisions of 4.2.3 shall apply.

4.2.1 Long-time Automatic Defrost. If the model being tested has a long-time automatic defrost system, the test time period may consist of two parts. The first part would be the same as the test for a unit having no defrost provisions (section 4.1). The second part would start when a defrost cycle is initiated when the compressor "on" cycle is terminated prior to start of the defrost heater and terminates at the second turn

"on" of the compressor or 4 hours from the initiation of the defrost heater, whichever comes first. See diagram in Figure 1 to this section.

Figure 1
Long-time Automatic Defrost Diagram



4.2.2 Variable Defrost Control. If the model being tested has a variable defrost control system, the test shall consist of the same two parts as the test for long-time automatic defrost (section 4.2.1).

4.2.3 Dual Compressor Systems with Automatic Defrost. If the model being tested has separate compressor systems for the refrigerator and freezer sections, each with its own automatic defrost system, then the two-part method in 4.2.1 shall be used. The second part of the method will be conducted separately for each automatic defrost system. The components (compressor, fan motors, defrost heaters, anti-sweat heaters, etc.) associated with each system will be identified and their energy consumption will be separately measured during each test.

5. Test Measurements

5.1 Temperature Measurements. Temperature measurements shall be made at the locations prescribed in Figures 7.1 and 7.2 of HRF–1–1979 (incorporated by reference; see § 430.3) and shall be accurate to within ± 0.5 °F (0.3 °C). No freezer temperature measurements need be taken in an all-refrigerator model.

If the interior arrangements of the cabinet do not conform with those shown in Figure 7.1 and 7.2 of HRF–1–1979, the product may be tested by relocating the temperature sensors from the locations specified in the figures to avoid interference with hardware or components within the cabinet, in which case the specific locations used for the temperature sensors shall be noted in the test data records maintained by the manufacturer, and the certification report shall indicate that non-standard sensor locations were used.

* * * * *

5.1.2 Compartment Temperature. The compartment temperature for each test period shall be an average of the measured temperatures taken in a compartment during one or more complete compressor cycles. One compressor cycle is one complete motor "on" and one complete motor "off" period. For long-time automatic defrost models, compartment temperatures shall be those measured in the first part of the test period specified in section 4.2.1. For models with variable defrost controls, compartment temperatures shall be those measured in the first part of the test period specified in section 4.2.2.

5.1.2.1 The number of complete compressor cycles over which the measured temperatures in a compartment are to be averaged to determine compartment temperature shall be equal to the number of minutes between measured temperature readings, rounded up to the next whole minute or a number of complete compressor cycles over a time period exceeding 1 hour, whichever is greater. One of the compressor cycles shall be the last complete compressor cycle during the test period.

5.1.2.2 If no compressor cycling occurs, the compartment temperature shall be the average of the measured temperatures taken during the last 32 minutes of the test period.

5.1.2.3 If incomplete compressor cycling occurs, the compartment temperatures shall be the average of the measured temperatures taken during the

last three hours of the last complete compressor "on" period.

5.1.3 Fresh Food Compartment Temperature. The fresh food compartment temperature shall be calculated as:

$$TR = \frac{\sum_{i=1}^{R}(TR_i) \times (VR_i)}{\sum_{i=1}^{R}(VR_i)}$$

Where:

R is the total number of applicable fresh food compartments, which include the first fresh food compartment and any number of separate auxiliary fresh food compartments (including separate auxiliary convertible compartments tested as fresh food compartments in accordance with section 2.7);

TR_i is the compartment temperature of fresh food compartment "i" determined in accordance with section 5.1.2; and

VR_i is the volume of fresh food compartment "i".

5.1.4 Freezer Compartment Temperature. The freezer compartment temperature shall be calculated as:

$$TF = \frac{\sum_{i=1}^{F}(TF_i) \times (VF_i)}{\sum_{i=1}^{F}(VF_i)}$$

Where:

F is the total number of applicable freezer compartments, which include the first freezer compartment and any number of separate auxiliary freezer compartments (including separate auxiliary convertible compartments tested as freezer compartments in accordance with section 2.7);

TF_i is the compartment temperature of freezer compartment "i" determined in accordance with section 5.1.2; and

VF_i is the volume of freezer compartment "i".

* * * * *

5.2.1 Per-day Energy Consumption. The energy consumption in kilowatt-hours per day for each test period shall be the energy expended during the test period as specified in section 4 adjusted to a 24-hour period. The adjustment shall be determined as follows:

5.2.1.1 Nonautomatic and Automatic Defrost Models. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = EP \times 1440/T$$

Where:

ET = test cycle energy expended in kilowatt-hours per day;

EP = energy expended in kilowatt-hours during the test period;

T = length of time of the test period in minutes; and

1440 = conversion factor to adjust to a 24-hour period in minutes per day.

5.2.1.2 Long-time Automatic Defrost. If the two-part test method is used, the energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times EP1/T1) + (EP2 - (EP1 \times T2/T1)) \times (12/CT)$$

Where:

ET and 1440 are defined in 5.2.1.1;

EP1 = energy expended in kilowatt-hours during the first part of the test;

EP2 = energy expended in kilowatt-hours during the second part of the test;

T1 and T2 = length of time in minutes of the first and second test parts respectively;

CT = defrost timer run time or compressor run time between defrosts in hours required to cause it to go through a complete cycle, rounded to the nearest tenth of an hour; and

12 = factor to adjust for a 50-percent run time of the compressor in hours per day.

5.2.1.3 Variable Defrost Control. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times EP1/T1) + (EP2 - (EP1 \times T2/T1)) \times (12/CT),$$

Where:

1440 is defined in 5.2.1.1 and EP1, EP2, T1, T2, and 12 are defined in 5.2.1.2;

$CT = (CT_L \times CT_M)/(F \times (CT_M - CT_L) + CT_L)$;

CT_L = least or shortest compressor run time between defrosts in hours rounded to the nearest tenth of an hour (greater than or equal to 6 but less than or equal to 12 hours);

CT_M = maximum compressor run time between defrosts in hours rounded to the nearest tenth of an hour (greater than CT_L but not more than 96 hours);

F = ratio of per day energy consumption in excess of the least energy and the maximum difference in per-day energy consumption and is equal to 0.20;

For variable defrost models with no values for CT_L and CT_M in the algorithm, the default values of 12 and 84 shall be used, respectively.

5.2.1.4 Dual Compressor Systems with Dual Automatic Defrost. The two-part test method in section 4.1.2.4 must be used, and the energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times EP1/T1) + (EP2_F - (EP_F \times T2/T1)) \times (12/CT_F) + (EP2_R - (EP_R \times T3/T1)) \times (12/CT_R)$$

Where:

1440, EP1, T1, EP2, 12, and CT are defined in 5.2.1.2;

EP_F = freezer system energy in kilowatt-hours expended during the first part of the test;

$EP2_F$ = freezer system energy in kilowatt-hours expended during the second part of the test for the freezer system;

EP_R= refrigerator system energy in kilowatt-hours expended during the first part of the test;

$EP2_R$ = refrigerator system energy in kilowatt-hours expended during the second part of the test for the refrigerator system;

T2 and T3 = length of time in minutes of the second test part for the freezer and refrigerator systems respectively;

CT_F = compressor run time between freezer defrosts (in hours rounded to the nearest tenth of an hour); and

CT_R = compressor run time between refrigerator defrosts (in hours rounded to the nearest tenth of an hour).

* * * * *

6. Calculation of Derived Results From Test Measurements

* * * * *

6.2.1.2 If one of the fresh food compartment temperatures measured for a test period is greater than 38.0 °F (3.3 °C), the average per-cycle energy consumption shall be equivalent to:

$$E = ET1 + ((ET2 - ET1) \times (38.0 - TR1)/(TR2 - TR1))$$

Where:

E is defined in 6.2.1.1;

ET is defined in 5.2.1;

TR = Fresh food compartment temperature determined according to 5.1.3 in degrees F;

The numbers 1 and 2 indicate measurements taken during the first and second test period as appropriate; and

38.0 = Standardized fresh food compartment temperature in degrees F.

* * * * *

6.2.2.2 If the conditions of 6.2.2.1 do not exist, the per-cycle energy consumption shall be defined by the higher of the two values calculated by the following two formulas:

$$E = ET1 + ((ET2 - ET1) \times (45.0 - TR1)/(TR2 - TR1))$$

and

$$E = ET1 + ((ET2 - ET1) \times (k - TF1)/(TF2 - TF1))$$

Where:

E is defined in 6.2.1.1;

ET is defined in 5.2.1;

TR and numbers 1 and 2 are defined in 6.2.1.2;

TF = Freezer compartment temperature determined according to 5.1.4 in degrees F;

45.0 is a specified fresh food compartment temperature in degrees F; and

k is a constant 15.0 for refrigerators or 5.0 for refrigerator-freezers each being standardized freezer compartment temperature in degrees F.

* * * * *

6.2.3 Variable Anti-Sweat Heater Models. The standard cycle energy consumption of an electric refrigerator-freezer with a variable anti-sweat heater control (E_{std}), expressed in kilowatt-hours per day, shall be calculated equivalent to:

E_{std} = E + (Correction Factor) where E is determined by 6.2.1.1, 6.2.1.2, 6.2.2.1, or 6.2.2.2, whichever is appropriate, with the anti-sweat

heater switch in the "off" position or, for products without anti-sweat heater switches, the anti-sweat heater in its lowest energy use state.

Correction Factor = (Anti-sweat Heater Power × System-loss Factor) × (24 hrs/1 day) × (1 kW/1000 W)

Where:

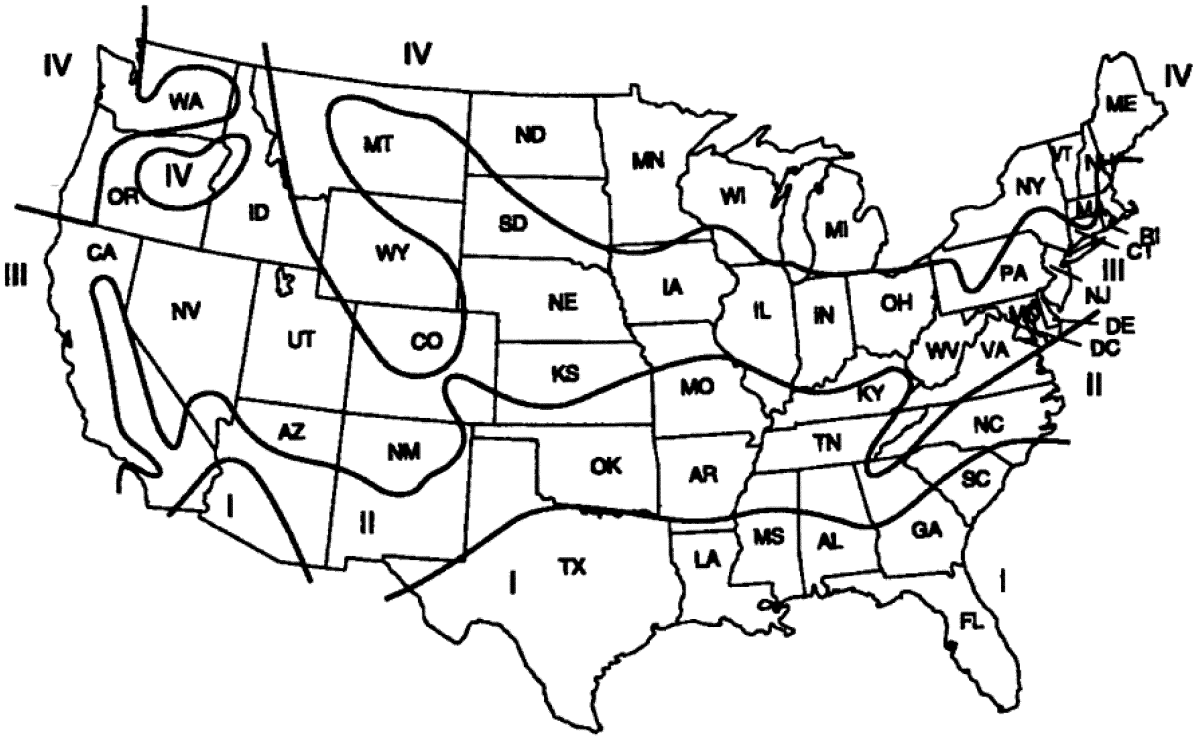
Anti-sweat Heater Power = 0.034 * (Heater Watts at 5%RH)
+ 0.211 * (Heater Watts at 15%RH)
+ 0.204 * (Heater Watts at 25%RH)
+ 0.166 * (Heater Watts at 35%RH)
+ 0.126 * (Heater Watts at 45%RH)
+ 0.119 * (Heater Watts at 55%RH)
+ 0.069 * (Heater Watts at 65%RH)
+ 0.047 * (Heater Watts at 75%RH)
+ 0.008 * (Heater Watts at 85%RH)
+ 0.015 * (Heater Watts at 95%RH)

Heater Watts at a specific relative humidity = the nominal watts used by all heaters at that specific relative humidity, 72 °F (22.2 °C) ambient, and DOE reference temperatures of fresh food (FF) average temperature of 45 °F (7.2 °C) and freezer (FZ) average temperature of 5 °F (−15 °C).

System-loss Factor = 1.3

* * * * *

Figure 2: Weather Regions for the United States



Alaska: Region IV

Hawaii: Region I

7. Test Procedure Waivers

To the extent that the procedures contained in this appendix do not provide a means for determining the energy consumption of a refrigerator or refrigerator-freezer, a manufacturer must obtain a waiver under 10 CFR 430.27 to establish an acceptable test procedure for each such product. Such instances could, for example, include situations where the test set-up for a particular refrigerator or refrigerator-freezer basic model is not clearly defined by the provisions of section 2. For details regarding the criteria and procedures for obtaining a waiver, please refer to 10 CFR 430.27.

■ 7. Add a new Appendix B to subpart B of part 430 to read as follows:

Appendix B to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Freezers

The provisions of Appendix B shall apply to all products manufactured on or after the effective date of any amended standards promulgated by DOE pursuant to Section 325(b)(4) of the Energy Policy and Conservation Act of 1975, as amended by the Energy Independence and Security Act of 2007 (to be codified at 42 U.S.C. 6295(b)(4)).

1. Definitions

Section 3, *Definitions,* of HRF–1–2008 (incorporated by reference; see § 430.3) applies to this test procedure.

1.1 "Adjusted total volume" means the product of the freezer volume as defined in HRF–1–2008 (incorporated by reference; see § 430.3) in cubic feet multiplied by an adjustment factor.

1.2 "Anti-sweat heater" means a device incorporated into the design of a freezer to prevent the accumulation of moisture on exterior or interior surfaces of the cabinet.

1.3 "Anti-sweat heater switch" means a user-controllable switch or user interface which modifies the activation or control of anti-sweat heaters.

1.4 "Automatic defrost" means a system in which the defrost cycle is automatically initiated and terminated, with resumption of normal refrigeration at the conclusion of defrost operation. The system automatically prevents the permanent formation of frost on all refrigerated surfaces. Nominal refrigerated food temperatures are maintained during the operation of the automatic defrost system.

1.5 "Automatic icemaker" means a device that can be supplied with water without user intervention, either from a pressurized water supply system or by transfer from a water reservoir, that automatically produces, harvests, and stores ice in a storage bin, with means to automatically interrupt the harvesting operation when the ice storage bin is filled to a pre-determined level.

1.6 "Cycle" means the period of 24 hours for which the energy use of a freezer is calculated as though the consumer-activated compartment temperature controls were set to maintain the standardized temperature (see section 3.2).

1.7 "Cycle type" means the set of test conditions having the calculated effect of operating a freezer for a period of 24 hours with the consumer-activated controls other than the compartment temperature control set to establish various operating characteristics.

1.8 "HRF–1–2008" means AHAM Standard HRF–1–2008, Association of Home Appliance Manufacturers, Energy and Internal Volume of Refrigerating Appliances (2008), including Errata to Energy and Internal Volume of Refrigerating Appliances, Correction Sheet issued November 17, 2009. Only sections of HRF–1–2008 (incorporated by reference; see § 430.3) specifically referenced in this test procedure are part of this test procedure. In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over HRF–1–2008.

1.9 "Long-time automatic defrost" means an automatic defrost system where successive defrost cycles are separated by 14 hours or more of compressor operating time.

1.10 "Quick freeze" means an optional feature on freezers that is initiated manually. It bypasses the thermostat control and operates continually until the feature is terminated either manually or automatically.

1.11 "Separate auxiliary compartment" means a freezer compartment other than the first freezer compartment of a freezer having more than one compartment. Access to a separate auxiliary compartment is through a separate exterior door or doors rather than through the door or doors of another compartment. Separate auxiliary freezer compartments may not be larger than the first freezer compartment.

1.12 "Special compartment" means any compartment without doors directly accessible from the exterior, and with separate temperature control that is not convertible from fresh food temperature range to freezer temperature range.

1.13 "Stabilization period" means the total period of time during which steady-state conditions are being attained or evaluated.

1.14 "Standard cycle" means the cycle type in which the anti-sweat heater switch, when provided, is set in the highest energy-consuming position.

1.15 "Variable defrost control" means an automatic defrost system in which successive defrost cycles are determined by an operating condition variable or variables other than solely compressor operating time. This includes any electrical or mechanical device performing this function. A control scheme that changes the defrost interval from a fixed length to an extended length (without any intermediate steps) is not considered a variable defrost control. A variable defrost control feature should predict the accumulation of frost on the evaporator and react accordingly. Therefore, the times between defrost should vary with different usage patterns and include a continuum of lengths of time between defrosts as inputs vary.

2. Test Conditions

2.1 Ambient Temperature. The ambient temperature shall be 90.0 ± 1.0 °F (32.2 ± 0.6 °C) during the stabilization period and the test period.

2.2 Operational Conditions. The freezer shall be installed and its operating conditions maintained in accordance with HRF–1–2008, (incorporated by reference; see § 430.3), sections 5.3 through section 5.5.5.5 (but excluding sections 5.5.5.2 and 5.5.5.4). The quick freeze option shall be switched off except as specified in section 3.1. Additional clarifications are noted in sections 2.3 through 2.6.

2.3 Anti-Sweat Heaters. The anti-sweat heater switch is to be on during one test and off during a second test. In the case of an electric freezer with variable anti-sweat heater control, the standard cycle energy use shall be the result of the calculation described in 6.2.2.

2.4 The cabinet and its refrigerating mechanism shall be assembled and set up in accordance with the printed consumer instructions supplied with the cabinet. Set-up of the freezer shall not deviate from these instructions, unless explicitly required or allowed by this test procedure. Specific required or allowed deviations from such set-up include the following:

(a) Connection of water lines and installation of water filters are not required;

(b) Clearance requirements from surfaces of the product shall be as described in section 2.6 below;

(c) The electric power supply shall be as described in HRF–1–2008 (incorporated by reference; see § 430.3) section 5.5.1;

(d) Temperature control settings for testing shall be as described in section 3 of this appendix. Settings for special compartments shall be as described in section 2.5 of this appendix;

(e) The product does not need to be anchored or otherwise secured to prevent tipping during energy testing;

(f) All the product's chutes and throats required for the delivery of ice shall be free of packing, covers, or other blockages that may be fitted for shipping or when the icemaker is not in use; and

(g) Ice storage bins shall be emptied of ice.

For cases in which set-up is not clearly defined by this test procedure, manufacturers must submit a petition for a waiver (see section 7).

2.5 Special compartments shall be tested with controls set to provide the coldest temperature. However, for special compartments in which temperature control is achieved using the addition of heat (including resistive electric heating, refrigeration system waste heat, or heat from any other source, but excluding the transfer of air from another part of the interior of the product) for any part of the controllable temperature range of that compartment, the product energy use shall be determined by averaging two sets of tests. The first set of tests shall be conducted with such special compartments at their coldest settings, and the second set of tests shall be conducted with such special compartments at their warmest settings. The requirements for the warmest or coldest temperature settings of this section do not apply to features or functions associated with temperature control (such as quick freeze) that are initiated manually and terminated automatically within 168 hours.

2.6 The space between the back of the cabinet and a vertical surface (the test room wall or simulated wall) shall be the minimum distance in accordance with the manufacturer's instructions. However, the clearance shall not be greater than 2 inches (51 mm) from the plane of the cabinet's back panel to the vertical surface. If permanent rear spacers extend further than this distance, the appliance shall be located with the spacers in contact with the vertical surface.

2.7 Steady State Condition. Steady-state conditions exist if the temperature measurements taken at 4-minute intervals or less during a stabilization period are not changing at a rate greater than 0.042 °F (0.023 °C) per hour as determined by the applicable condition of A or B described below.

A—The average of the measurements during a 2-hour period if no cycling occurs or during a number of complete repetitive compressor cycles occurring through a period of no less than 2 hours is compared to the average over an equivalent time period with 3 hours elapsing between the two measurement periods.

B—If A above cannot be used, the average of the measurements during a number of complete repetitive compressor cycles occurring through a period of no less than 2 hours and including the last complete cycle before a defrost period (or if no cycling occurs, the average of the measurements during the last 2 hours before a defrost period) are compared to the same averaging period before the following defrost period.

3. Test Control Settings

3.1 Model with No User Operable Temperature Control. A test shall be performed during which the compartment temperature and energy use shall be measured. A second test shall be performed with the temperature control electrically short circuited to cause the compressor to run continuously. If the model has the quick freeze option, this option must be used to bypass the temperature control.

3.2 Model with User Operable Temperature Control. Testing shall be performed in accordance with one of the following sections using the standardized temperature of 0.0 °F (−17.8 °C).

For the purposes of comparing compartment temperatures with standardized temperatures, as described in sections 3.2.1 and 3.2.2, the freezer compartment temperature shall be as specified in section 5.1.3.

3.2.1 A first test shall be performed with all temperature controls set at their median position midway between their warmest and coldest settings. For mechanical control systems, knob detents shall be mechanically defeated if necessary to attain a median setting. For electronic control systems, the test shall be performed with all compartment temperature controls set at the average of the coldest and warmest settings—if there is no setting equal to this average, the setting closest to the average shall be used. If there are two such settings equally close to the average, the higher of these temperature control settings shall be used. A second test shall be performed with all controls set at either their warmest or their coldest setting (not electrically or mechanically bypassed), whichever is appropriate, to attempt to achieve compartment temperatures measured during the two tests which bound (*i.e.,* one is above and one is below) the standardized temperature. If the compartment temperatures measured during these two tests bound the standardized temperature, then these test results shall be used to determine energy consumption. If the compartment temperature measured with all controls set at their coldest setting is above the standardized temperature, the tested unit fails the test and cannot be rated. If the compartment temperature measured with all controls set at their warmest setting is below the standardized temperature, then the result of this test alone will be used to determine energy consumption. Also see Table 1 below, which summarizes these requirements.

TABLE 1—TEMPERATURE SETTINGS FOR FREEZERS

First test		Second test		Energy calculation based on:
Settings	Results	Settings	Results	
Mid	Low	Warm	Low	Second Test Only.
			High	First and Second Tests.
	High	Cold	Low	First and Second Tests.
			High	No Energy Use Rating.

3.2.2 Alternatively, a first test may be performed with all temperature controls set at their warmest setting. If the compartment temperature is below the standardized temperature, then the result of this test alone will be used to determine energy consumption. If this condition is not met, then the unit shall be tested in accordance with section 3.2.1.

4. Test Period

Tests shall be performed by establishing the conditions set forth in section 2 and using the control settings as set forth in section 3 above.

4.1 Nonautomatic Defrost. If the model being tested has no automatic defrost system, the test time period shall start after steady-state conditions have been achieved and be no less than 3 hours in duration. During the test period, the compressor motor shall complete two or more whole compressor cycles. (A compressor cycle is a complete "on" and a complete "off" period of the motor.) If no "off" cycling will occur, as determined during the stabilization period, the test period shall be 3 hours. If incomplete cycling occurs (less than two compressor cycles during a 24-hour period), the results of the 24-hour period shall be used.

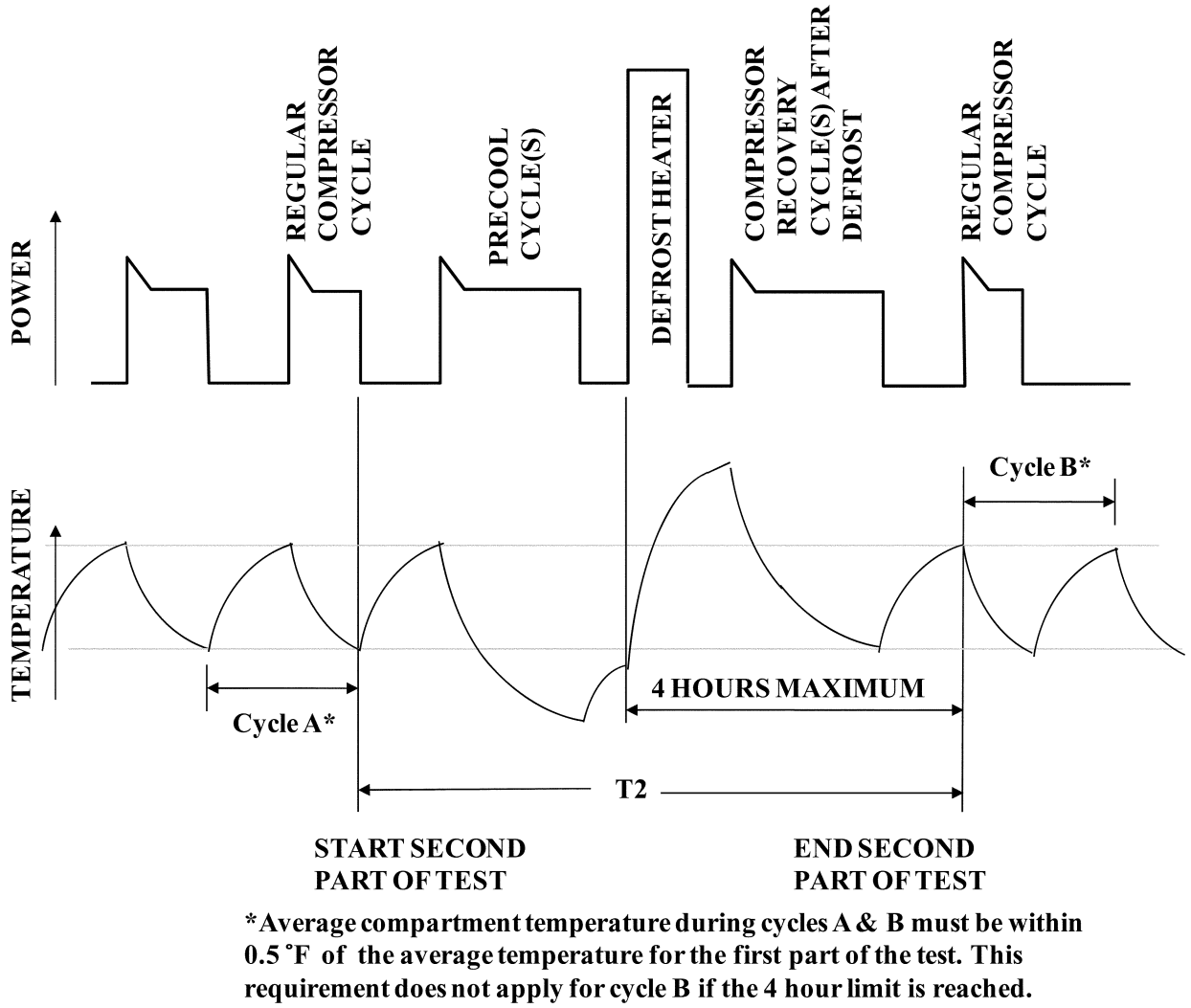
4.2 Automatic Defrost. If the model being tested has an automatic defrost system, the test time period shall start after steady-state conditions have been achieved and be from one point during a defrost period to the same point during the next defrost period. If the model being tested has a long-time automatic defrost system, the alternate provisions of 4.2.1 may be used. If the model being tested has a variable defrost control, the provisions of 4.2.2 shall apply.

4.2.1 Long-time Automatic Defrost. If the model being tested has a long-time automatic defrost system, the two-part test described in this section may be used. The first part is a stable period of compressor operation that includes no portions of the defrost cycle, such as precooling or recovery, that is otherwise the same as the test for a unit having no defrost provisions (section 4.1). The second part is designed to capture the energy consumed during all of the events occurring with the defrost control sequence that are outside of stable operation.

4.2.1.1 Cycling Compressor System. For a system with a cycling compressor, the second part starts at the termination of the last regular compressor "on" cycle. The average temperature of the compartment measured from the termination of the previous compressor "on" cycle to the termination of the last regular compressor "on" cycle must be within 0.5 °F (0.3 °C) of the average temperature of the compartment measured for the first part of the test. If any compressor cycles occur prior to the defrost heater being energized that cause the average temperature in the compartment to deviate from the first part temperature by more than 0.5 °F (0.3 °C), these compressor cycles are not considered regular compressor cycles and must be included in the second part of the test. As an example, a "precool" cycle, which is an extended compressor cycle that lowers the compartment temperature prior to energizing the defrost heater, must be included in the second part of the test. The test period for the second part of the test ends at the initiation of the first regular compressor cycle after the compartment temperatures have fully recovered to their stable conditions. The average temperature of the compartment measured from this initiation of the first regular compressor "on" cycle until the initiation of the next regular compressor "on" cycle must be within 0.5 °F (0.3 °C) of the average temperature of the compartment measured for the first part of the test. The second part of the test may be terminated after 4 hours if the above conditions cannot be met. See Figure 1.

Figure 1

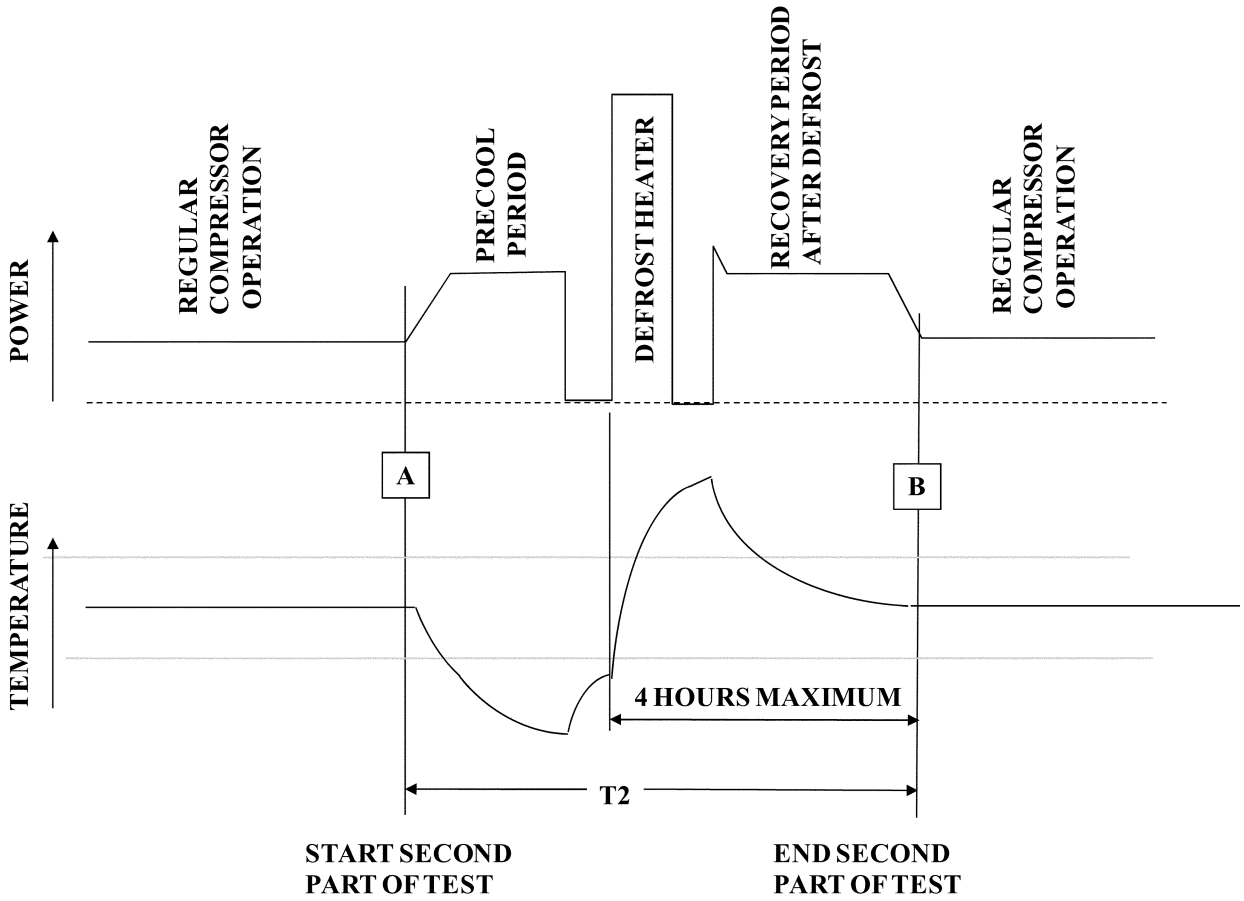
Long-time Automatic Defrost Diagram for Cycling Compressors



4.2.1.2 Non-cycling Compressor System. For a system with a non-cycling compressor, the second part starts at a time before defrost during stable operation when the compartment temperature is within 0.5 °F (0.3 °C) of the average temperature of the compartment measured for the first part of the test. The second part stops at a time after defrost during stable operation when the compartment temperature is within 0.5 °F (0.3 °C) of the average temperature of the compartment measured for the first part of the test. The second part of the test may be terminated after 4 hours if the above conditions cannot be met. See Figure 2.

Figure 2

Long-time Automatic Defrost Diagram for Non-cycling Compressors



***Average compartment temperature at times A & B must be within 0.5 °F of the average temperature for the first part of the test. This requirement does not apply for time B if the 4 hour limit is reached.**

4.2.2 Variable Defrost Control. If the model being tested has a variable defrost control system, the test shall consist of the same two parts as the test for long-time automatic defrost (section 4.2.1).

5. Test Measurements

5.1 Temperature Measurements. Temperature measurements shall be made at the locations prescribed in Figure 5–2 of HRF–1–2008 (incorporated by reference; see § 430.3) and shall be accurate to within ± 0.5 °F (0.3°C).

If the interior arrangements of the cabinet do not conform with those shown in Figure 5.2 of HRF–1–2008, the product may be tested by relocating the temperature sensors from the locations specified in the figures to avoid interference with hardware or components within the cabinet, in which case the specific locations used for the temperature sensors shall be noted in the test data records maintained by the manufacturer, and the certification report shall indicate that non-standard sensor locations were used.

5.1.1 Measured Temperature. The measured temperature is to be the average of all sensor temperature readings taken at a particular point in time. Measurements shall be taken at regular intervals not to exceed 4 minutes.

5.1.2 Compartment Temperature. The compartment temperature for each test period shall be an average of the measured temperatures taken during the test period as defined in section 4. For long-time automatic defrost models, compartment temperature shall be that measured in the first part of the test period specified in section 4.2.1. For models with variable defrost controls, compartment temperatures shall be those measured in the first part of the test period specified in section 4.2.2.

5.1.3 Freezer Compartment Temperature. The freezer compartment temperature shall be calculated as:

$$TF = \frac{\sum_{i=1}^{F}(TF_i) \times (VF_i)}{\sum_{i=1}^{F}(VF_i)}$$

Where:

F is the total number of applicable freezer compartments, which include the first freezer compartment and any number of separate auxiliary freezer compartments;

TF_i is the compartment temperature of freezer compartment "i" determined in accordance with section 5.1.2; and

VF_i is the volume of freezer compartment "i".

5.2 Energy Measurements:

5.2.1 Per-Day Energy Consumption. The energy consumption in kilowatt-hours per day for each test period shall be the energy expended during the test period as specified in section 4 adjusted to a 24-hour period. The adjustment shall be determined as follows:

5.2.1.1 Nonautomatic and Automatic Defrost Models. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (EP \times 1440 \times K)/T$$

Where:

ET = test cycle energy expended in kilowatt-hours per day;
EP = energy expended in kilowatt-hours during the test period;
T = length of time of the test period in minutes;
1440 = conversion factor to adjust to a 24-hour period in minutes per day; and
K = dimensionless correction factor of 0.7 for chest freezers and 0.85 for upright freezers to adjust for average household usage.

5.2.1.2 Long-time Automatic Defrost. If the two-part test method is used, the energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times K \times EP1/T1) + (EP2 - (EP1 \times T2/T1)) \times K \times (12/CT)$$

Where:

ET, 1440, and K are defined in section 5.2.1.1;
EP1 = energy expended in kilowatt-hours during the first part of the test;
EP2 = energy expended in kilowatt-hours during the second part of the test;
CT = defrost timer run time or compressor run time between defrosts in hours required to cause it to go through a complete cycle, rounded to the nearest tenth of an hour;
12 = conversion factor to adjust for a 50 percent run time of the compressor in hours per day; and
T1 and T2 = length of time in minutes of the first and second test parts respectively.

5.2.1.3 Variable Defrost Control. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times K \times EP1/T1) + (EP2 - (EP1 \times T2/T1)) \times K \times (12/CT),$$

Where:

ET, K, and 1440 are defined in section 5.2.1.1;
EP1, EP2, T1, T2, and 12 are defined in section 5.2.1.2;

$$CT = (CT_L \times CT_M)/(F \times (CT_M - CT_L) + CT_L)$$

Where:

CT_L = least or shortest compressor run time between defrosts in hours rounded to the nearest tenth of an hour (greater than or equal to 6 hours but less than or equal to 12 hours);
CT_M = maximum compressor run time between defrosts in hours rounded to the nearest tenth of an hour (greater than CT_L but not more than 96 hours);
F = ratio of per day energy consumption in excess of the least energy and the maximum difference in per-day energy consumption and is equal to 0.20.
For variable defrost models with no values for CT_L and CT_M in the algorithm, the default values of 12 and 84 shall be used, respectively.

5.3 Volume Measurements. The total refrigerated volume, VT, shall be measured in accordance with HRF–1–2008, (incorporated by reference; see § 430.3), section 3.30 and sections 4.2 through 4.3.

In the case of freezers with automatic icemakers, the volume occupied by the automatic icemaker, including its ice storage bin, is to be included in the volume measurement.

6. Calculation of Derived Results From Test Measurements

6.1 Adjusted Total Volume. The adjusted total volume, VA, for freezers under test shall be defined as:

$$VA = VT \times CF$$

Where:

VA = adjusted total volume in cubic feet;
VT = total refrigerated volume in cubic feet; and
CF = dimensionless correction factor of 1.76.

6.2 Average Per-Cycle Energy Consumption

6.2.1 The average per-cycle energy consumption for a cycle type is expressed in kilowatt-hours per cycle to the nearest one hundredth (0.01) kilowatt-hour and shall depend on the compartment temperature attainable as shown below.

6.2.1.1 If the compartment temperature is always below 0.0 °F (−17.8 °C), the average per-cycle energy consumption shall be equivalent to:

$$E = ET1 + IET$$

Where:

E = total per-cycle energy consumption in kilowatt-hours per day;
ET is defined in 5.2.1;
The number 1 indicates the test period during which the highest compartment temperature is measured; and
IET, expressed in kilowatt-hours per cycle, equals 0.23 for a product with an automatic icemaker and otherwise equals 0 (zero).

6.2.1.2 If one of the compartment temperatures measured for a test period is greater than 0.0 °F (17.8 °C), the average per-cycle energy consumption shall be equivalent to:

$$E = ET1 + ((ET2 - ET1) \times (0.0 - TF1)/(TF2 - TF1)) + IET$$

Where:

E and IET are defined in 6.2.1.1 and ET is defined in 5.2.1;
TF = freezer compartment temperature determined according to 5.1.3 in degrees F;
The numbers 1 and 2 indicate measurements taken during the first and second test period as appropriate; and
0.0 = standardized compartment temperature in degrees F.

6.2.2 Variable Anti-Sweat Heater Models. The standard cycle energy consumption of an electric freezer with a variable anti-sweat heater control (E_{std}), expressed in kilowatt-hours per day, shall be calculated equivalent to:

E_{std} = E + (Correction Factor) where E is determined by 6.2.1.1, or 6.2.1.2, whichever is appropriate, with the anti-sweat heater switch in the "off" position or, for a product without an anti-sweat heater switch, the anti-sweat heater in its lowest energy use state.

Correction Factor = (Anti-sweat Heater Power × System-loss Factor) × (24 hrs/1 day) × (1 kW/1000 W)

Where:

Anti-sweat Heater Power = 0.034 * (Heater Watts at 5%RH)
+ 0.211 * (Heater Watts at 15%RH)
+ 0.204 * (Heater Watts at 25%RH)
+ 0.166 * (Heater Watts at 35%RH)
+ 0.126 * (Heater Watts at 45%RH)
+ 0.119 * (Heater Watts at 55%RH)
+ 0.069 * (Heater Watts at 65%RH)
+ 0.047 * (Heater Watts at 75%RH)
+ 0.008 * (Heater Watts at 85%RH)
+ 0.015 * (Heater Watts at 95%RH)
Heater Watts at a specific relative humidity = the nominal watts used by all heaters at that specific relative humidity, 72 °F ambient (22.2 °C), and DOE reference freezer (FZ) average temperature of 0 °F (−17.8 °C).
System-loss Factor = 1.3

7. Test Procedure Waivers

To the extent that the procedures contained in this appendix do not provide a means for determining the energy consumption of a freezer, a manufacturer must obtain a waiver under 10 CFR 430.27 to establish an acceptable test procedure for each such product. Such instances could, for example, include situations where the test set-up for a particular freezer basic model is not clearly defined by the provisions of section 2. For details regarding the criteria and procedures for obtaining a waiver, please refer to 10 CFR 430.27.

■ 8. Appendix B1 to subpart B of part 430 is amended by:
■ a. Adding an introductory paragraph after the appendix heading;
■ b. Revising section 1. Definitions;
■ c. In section 2. Test Conditions, by:
■ 1. Revising sections 2.1 and 2.2;
■ 2. Redesignating section 2.3 as 2.7;
■ 3. Adding new sections 2.3 through 2.6;
■ d. In section 3. Test Control Settings, by:
■ 1. Revising sections 3.1, 3.2, and 3.2.1;
■ 2. Removing section 3.3;
■ e. Revising section 4, Test Period;
■ f. In section 5, Test Measurements, by:
■ 1. Revising sections 5.1, 5.1.2, 5.1.2.1, 5.1.2.2, 5.1.2.3, 5.2.1.2, and 5.2.1.3;
■ 2. Adding new section 5.1.3;
■ 3. Removing section 5.2.1.4;
■ g. In section 6. Calculation of Derived Results From Test Measurements, by:
■ 1. Revising section 6.2.1.2;
■ 2. Adding a new section 6.2.2
■ h. Adding new section 7, Waivers.

The additions and revisions read as follows:

Appendix B1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Freezers

The provisions of Appendix B1 shall apply to all products manufactured prior to the effective date of any amended standards promulgated by DOE pursuant to Section

325(b)(4) of the Energy Policy and Conservation Act of 1975, as amended by the Energy Independence and Security Act of 2007 (to be codified at 42 U.S.C. 6295(b)(4)).

1. Definitions

Section 3, *Definitions,* of HRF–1–1979 (incorporated by reference; see § 430.3) applies to this test procedure.

1.1 Adjusted total volume" means the product of, (1) the freezer volume as defined in HRF–1–1979 in cubic feet, times (2) an adjustment factor.

1.2 "Anti-sweat heater" means a device incorporated into the design of a freezer to prevent the accumulation of moisture on exterior or interior surfaces of the cabinet.

1.3 "Anti-sweat heater switch" means a user-controllable switch or user interface which modifies the activation or control of anti-sweat heaters.

1.4 "Automatic Defrost" means a system in which the defrost cycle is automatically initiated and terminated, with resumption of normal refrigeration at the conclusion of defrost operation. The system automatically prevents the permanent formation of frost on all refrigerated surfaces. Nominal refrigerated food temperatures are maintained during the operation of the automatic defrost system.

1.5 "Cycle" means the period of 24 hours for which the energy use of a freezer is calculated as though the consumer-activated compartment temperature controls were set to maintain the standardized temperature (see section 3.2).

1.6 "Cycle type" means the set of test conditions having the calculated effect of operating a freezer for a period of 24 hours with the consumer-activated controls other than the compartment temperature control set to establish various operating characteristics.

1.7 "HRF–1–1979" means the Association of Home Appliance Manufacturers standard for household refrigerators, combination refrigerator-freezers, and household freezers, also approved as an American National Standard as a revision of ANSI B 38.1–1970. Only sections of HRF–1–1979 (incorporated by reference; see § 430.3) specifically referenced in this test procedure are part of this test procedure. In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over HRF–1–1979.

1.8 "Long-time Automatic Defrost" means an automatic defrost system where successive defrost cycles are separated by 14 hours or more of compressor-operating time.

1.9 "Quick freeze" means an optional feature on freezers that is initiated manually. It bypasses the thermostat control and operates continually until the feature is terminated either manually or automatically.

1.10 "Separate auxiliary compartment" means a freezer compartment other than the first freezer compartment of a freezer having more than one compartment. Access to a separate auxiliary compartment is through a separate exterior door or doors rather than through the door or doors of another compartment. Separate auxiliary freezer compartments may not be larger than the first freezer compartment.

1.11 "Special compartment" means any compartment without doors directly accessible from the exterior, and with separate temperature control that is not convertible from fresh food temperature range to freezer temperature range.

1.12 "Stabilization Period" means the total period of time during which steady-state conditions are being attained or evaluated.

1.13 "Standard cycle" means the cycle type in which the anti-sweat heater switch, when provided, is set in the highest energy consuming position.

1.14 "Variable defrost control" means an automatic defrost system in which successive defrost cycles are determined by an operating condition variable or variables other than solely compressor operating time. This includes any electrical or mechanical device performing this function. A control scheme that changes the defrost interval from a fixed length to an extended length (without any intermediate steps) is not considered a variable defrost control. A variable defrost control feature should predict the accumulation of frost on the evaporator and react accordingly. Therefore, the times between defrost should vary with different usage patterns and include a continuum of lengths of time between defrosts as inputs vary.

* * * * *

2. Test Conditions

2.1 Ambient Temperature. The ambient temperature shall be 90.0 ± 1.0 °F (32.2 ± 0.6 °C) during the stabilization period and the test period.

2.2 Operational Conditions. The freezer shall be installed and its operating conditions maintained in accordance with HRF–1–1979, (incorporated by reference; see § 430.3), section 7.2 through section 7.4.3.3 (but excluding section 7.4.3.2), except that the vertical ambient gradient at locations 10 inches (25.4 cm) out from the centers of the two sides of the unit being tested is to be maintained during the test. Unless the area is obstructed by shields or baffles, the gradient is to be maintained from 2 inches (5.1 cm) above the floor or supporting platform to a height 1 foot (30.5 cm) above the unit under test. Defrost controls are to be operative. The quick freeze option shall be switched off except as specified in section 3.1. Additional clarifications are noted in sections 2.3 through 2.6.

2.3 Anti-Sweat Heaters. The anti-sweat heater switch is to be on during one test and off during a second test. In the case of an electric freezer equipped with variable anti-sweat heater control, the standard cycle energy use shall be the result of the calculation described in 6.2.2.

2.4 The cabinet and its refrigerating mechanism shall be assembled and set up in accordance with the printed consumer instructions supplied with the cabinet. Set-up of the freezer shall not deviate from these instructions, unless explicitly required or allowed by this test procedure. Specific required or allowed deviations from such set-up include the following:

(a) Connection of water lines and installation of water filters are not required;

(b) Clearance requirements from surfaces of the product shall be as specified in section 2.6 below;

(c) The electric power supply shall be as described in HRF–1–1979 (incorporated by reference; see § 430.3) section 7.4.1;

(d) Temperature control settings for testing shall be as described in section 3 of this appendix. Settings for special compartments shall be as described in section 2.5 of this appendix;

(e) The product does not need to be anchored or otherwise secured to prevent tipping during energy testing; and

(f) All the product's chutes and throats required for the delivery of ice shall be free of packing, covers, or other blockages that may be fitted for shipping or when the icemaker is not in use.

For cases in which set-up is not clearly defined by this test procedure, manufacturers must submit a petition for a waiver (see section 7).

2.5 Special compartments shall be tested with controls set to provide the coldest temperature. This requirement for the coldest temperature does not apply to features or functions (such as quick freeze) that are initiated manually and terminated automatically within 168 hours.

2.6 The space between the back of the cabinet and a vertical surface (the test room wall or simulated wall) shall be the minimum distance in accordance with the manufacturer's instructions.

* * * * *

3. Test Control Settings

3.1 Model with No User Operable Temperature Control. A test shall be performed during which the compartment temperature and energy use shall be measured. A second test shall be performed with the temperature control electrically short circuited to cause the compressor to run continuously. If the model has the quick freeze option, this option must be used to bypass the temperature control.

3.2 Model with User Operable Temperature Control. Testing shall be performed in accordance with one of the following sections using the standardized temperature of 0.0 °F (−17.8 °C).

For the purposes of comparing compartment temperatures with standardized temperatures, as described in sections 3.2.1 through 3.2.3, the freezer compartment temperature shall be as specified in section 5.1.3.

3.2.1 A first test shall be performed with all temperature controls set at their median position midway between their warmest and coldest settings. For mechanical control systems, knob detents shall be mechanically defeated if necessary to attain a median setting. For electronic control systems, the test shall be performed with all compartment temperature controls set at the average of the coldest and warmest settings—if there is no setting equal to this average, the setting closest to the average shall be used. If there are two such settings equally close to the average, the higher of these temperature control settings shall be used. If the compartment temperature measured during the first test is higher than the standardized temperature, the second test shall be conducted with the controls set at the coldest settings. If the compartment temperature

measured during the first test is lower than the standardized temperature, the second test shall be conducted with the controls set at the warmest settings. If the compartment temperatures measured during these two tests bound the standardized temperature, then these test results shall be used to determine energy consumption. If the compartment temperature measured with all controls set at their coldest settings is above the standardized temperature, a third test shall be performed with all controls set at their warmest settings and the result of this test shall be used with the result of the test performed with all controls set at their coldest settings to determine energy consumption. If the compartment temperature measured with all controls set at their warmest settings is below the standardized temperature, then the result of this test alone will be used to determine energy consumption.

* * * * *

4. Test Period

Tests shall be performed by establishing the conditions set forth in section 2 and using the control settings as set forth in section 3 of this appendix.

4.1 Nonautomatic Defrost. If the model being tested has no automatic defrost system, the test time period shall start after steady-state conditions have been achieved and be no less than 3 hours in duration. During the test period, the compressor motor shall complete two or more whole compressor cycles. A compressor cycle is a complete "on" and a complete "off" period of the motor. If no "off" cycling will occur, as determined during the stabilization period, the test period shall be 3 hours. If incomplete cycling occurs (less than two compressor cycles during a 24-hour period), the results of the 24-hour period shall be used.

4.2 Automatic Defrost. If the model being tested has an automatic defrost system, the test time period shall start after steady-state conditions have been achieved and be from one point during a defrost period to the same point during the next defrost period. If the model being tested has a long-time automatic defrost system, the alternate provisions of 4.2.1 may be used. If the model being tested has a variable defrost control, the provisions of 4.2.2 shall apply.

4.2.1 Long-time Automatic Defrost. If the model being tested has a long-time automatic defrost system, the two-part test described in this section may be used. The first part is the same as the test for a unit having no defrost provisions (section 4.1). The second part would start when a defrost is initiated when the compressor "on" cycle is terminated prior to start of the defrost heater and terminates at the second turn "on" of the compressor or 4 hours from the initiation of the defrost heater, whichever comes first.

4.2.2 Variable Defrost Control. If the model being tested has a variable defrost control system, the test shall consist of the same two parts as the test for long-time automatic defrost (section 4.2.1).

5. Test Measurements

5.1 Temperature Measurements. Temperature measurements shall be made at the locations prescribed in Figure 7.2 of HRF–1–1979 (incorporated by reference; see § 430.3) and shall be accurate to within ± 0.5 °F (0.3 °C).

If the interior arrangements of the cabinet do not conform with those shown in Figure 7.2 of HRF–1–1979, the product may be tested by relocating the temperature sensors from the locations specified in the figures to avoid interference with hardware or components within the cabinet, in which case the specific locations used for the temperature sensors shall be noted in the test data records maintained by the manufacturer, and the certification report shall indicate that non-standard sensor locations were used.

* * * * *

5.1.2 Compartment Temperature. The compartment temperature for each test period shall be an average of the measured temperatures taken during one or more complete compressor cycles. One compressor cycle is one complete motor "on" and one complete motor "off" period. For long-time automatic defrost models, compartment temperature shall be that measured in the first part of the test period specified in section 4.2.1. For models equipped with variable defrost controls, compartment temperatures shall be those measured in the first part of the test period specified in section 4.2.2.

5.1.2.1 The number of complete compressor cycles over which the measured temperatures in a compartment are to be averaged to determine compartment temperature shall be equal to the number of minutes between measured temperature readings rounded up to the next whole minute or a number of complete compressor cycles over a time period exceeding 1 hour. One of the compressor cycles shall be the last complete compressor cycle during the test period before start of the defrost control sequence for products with automatic defrost.

5.1.2.2 If no compressor cycling occurs, the compartment temperature shall be the average of the measured temperatures taken during the last 32 minutes of the test period.

5.1.2.3 If incomplete compressor cycling occurs (less than one compressor cycle), the compartment temperature shall be the average of all readings taken during the last 3 hours of the last complete compressor "on" period.

5.1.3 Freezer Compartment Temperature. The freezer compartment temperature shall be calculated as:

$$TF = \frac{\sum_{i=1}^{F}(TF_i) \times (VF_i)}{\sum_{i=1}^{F}(VF_i)}$$

Where:

F is the total number of applicable freezer compartments, which include the first freezer compartment and any number of separate auxiliary freezer compartments;

TF_i is the compartment temperature of freezer compartment "i" determined in accordance with section 5.1.2; and

VF_i is the volume of freezer compartment "i".

* * * * *

5.2.1.2 Long-time Automatic Defrost. If the two part test method is used, the energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times K \times EP1/T1) + (EP2 - EP1 \times T2/T1)) \times K \times (12/CT)$$

Where:

ET, 1440, and K are defined in section 5.2.1.1;

EP1 = energy expended in kilowatt-hours during the first part of the test;

EP2 = energy expended in kilowatt-hours during the second part of the test;

CT = defrost timer run time or compressor run time between defrosts in hours required to cause it to go through a complete cycle, rounded to the nearest tenth of an hour;

12 = conversion factor to adjust for a 50 percent run time of the compressor in hours per day; and

T1 and T2 = length of time in minutes of the first and second test parts respectively.

5.2.1.3 Variable Defrost Control. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times K \times EP1/T1) + (EP2 - (EP1 \times T2/T1)) \times K \times (12/CT),$$

Where:

ET, K, and 1440 are defined in section 5.2.1.1 and EP1, EP2, T1, T2, and 12 are defined in section 5.2.1.2.

$$CT = (CT_L \times CT_M)/(F \times (CT_M - CT_L) + CT_L)$$

Where:

CT_L = least or shortest compressor run time between defrosts in hours rounded to the nearest tenth of an hour (greater than or equal to 6 hours but less than or equal to 12 hours);

CT_M = maximum compressor run time between defrosts in hours rounded to the nearest tenth of an hour (greater than CT_L but not more than 96 hours);

F = ratio of per day energy consumption in excess of the least energy and the maximum difference in per-day energy consumption and is equal to 0.20.

For variable defrost models with no values for CT_L and CT_M in the algorithm, the default values of 12 and 84 shall be used, respectively.

* * * * *

6. Calculation of Derived Results From Test Measurements

* * * * *

6.2.1.2 If one of the compartment temperatures measured for a test period is greater than 0.0 °F (17.8 °C), the average per-cycle energy consumption shall be equivalent to:

$$E = ET1 + ((ET2 - ET1) \times (0.0 - TF1)/(TF2 - TF1))$$

Where:

E is defined in 6.2.1.1;

ET is defined in 5.2.1;

TF = freezer compartment temperature determined according to 5.1.3 in degrees F;

The numbers 1 and 2 indicate measurements taken during the first and second test period as appropriate; and

0.0 = Standardized compartment temperature in degrees F.

* * * * *

6.2.2 Variable Anti-Sweat Heater Models. The standard cycle energy consumption of an electric freezer with a variable anti-sweat heater control (E_{std}), expressed in kilowatt-hours per day, shall be calculated equivalent to:

E_{std} = E + (Correction Factor) where E is determined by 6.2.1.1, or 6.2.1.2, whichever is appropriate, with the anti-sweat heater switch in the "off" position or, for a product without an anti-sweat heater switch, the anti-sweat heater in its lowest energy use state.

Correction Factor = (Anti-sweat Heater Power × System-loss Factor) × (24 hrs/1 day) × (1 kW/1000 W)

Where:

Anti-sweat Heater Power = 0.034 * (Heater Watts at 5%RH)
+ 0.211 * (Heater Watts at 15%RH)
+ 0.204 * (Heater Watts at 25%RH)
+ 0.166 * (Heater Watts at 35%RH)
+ 0.126 * (Heater Watts at 45%RH)
+ 0.119 * (Heater Watts at 55%RH)
+ 0.069 * (Heater Watts at 65%RH)
+ 0.047 * (Heater Watts at 75%RH)
+ 0.008 * (Heater Watts at 85%RH)
+ 0.015 * (Heater Watts at 95%RH)

Heater Watts at a specific relative humidity = the nominal watts used by all heaters at that specific relative humidity, 72 °F (22.2 °C) ambient, and DOE reference freezer (FZ) average temperature of 0 °F (−17.8 °C).

System-loss Factor = 1.3.

* * * * *

7. Test Procedure Waivers

To the extent that the procedures contained in this appendix do not provide a means for determining the energy consumption of a freezer, a manufacturer must obtain a waiver under 10 CFR 430.27 to establish an acceptable test procedure for each such product. Such instances could, for example, include situations where the test set-up for a particular freezer basic model is not clearly defined by the provisions of section 2. For details regarding the criteria and procedures for obtaining a waiver, please refer to 10 CFR 430.27.

■ 9. In § 430.32, revise paragraph (a) introductory text to read as follows:

§ 430.32 Energy and water conservation standards and their effective dates.

* * *

(a) *Refrigerators/refrigerator-freezers/freezers.* These standards do not apply to refrigerators and refrigerator-freezers with total refrigerated volume exceeding 39 cubic foot (1104 liters) or freezers with total refrigerated volume exceeding 30 cubic foot (850 liters). The energy standards as determined by the equations of the following table shall be rounded off to the nearest kWh per year. If the equation calculation is halfway between the nearest two kWh per year values, the standard shall be rounded up to the higher of these values.

* * * * *

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