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U.S. GOVERNMENT
INFORMATION
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FEDERAL REGISTER

Vol. 76 Thursday

No. 13 January 20, 2011

Pages 3485–3820

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 201

RIN 0580–AB10

Required Scale Tests

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending one section of the regulations under the Packers and Stockyards Act of 1921, as amended and supplemented (P&S Act), regarding the requirement that stockyard owners, market agencies, dealers, packers, and live poultry dealers that weigh livestock, live poultry, or feed, have their scales tested at least twice each calendar year at intervals of approximately 6 months. This final rule requires that regulated entities complete the first of the two scale tests between January 1 and June 30 of the calendar year. The remaining scale test must be completed between July 1 and December 31 of the calendar year. In addition, a minimum period of 120 days will now be required between these two tests. GIPSA is also including in this final rule an exception for the testing of scales with limited seasonal use. More frequent testing, however, will still be required in cases where a scale does not maintain accuracy between tests. Finally, we are amending that same section of the regulations to add "swine contractors" to the list of regulated entities to which the section applies. GIPSA believes that this final rule will facilitate GIPSA's ability to regulate the business operations of stockyard owners, swine contractors, market agencies, dealers, packers, and live poultry dealers through the effective enforcement of the P&S Act.

DATES: This final rule becomes effective on February 22, 2011.

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

SUPPLEMENTARY INFORMATION:

Background

The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers and enforces the P&S Act (7 U.S.C. 181 *et seq.*). Under authority delegated to GIPSA by the Secretary of Agriculture in section 407(a) of the P&S Act (7 U.S.C. 228), we are authorized to issue regulations necessary to carry out the provisions of the P&S Act.

Section 201.72 of the current regulations under the P&S Act (9 CFR 201.72) requires that each stockyard owner, market agency, dealer, packer, or live poultry dealer who weighs livestock, live poultry, or feed for purposes of purchase, sale, acquisition, payment, or settlement, or who weighs livestock carcasses for the purpose of purchase on a carcass weight basis, or who furnishes scales for such purposes, have such scales tested at least twice during each calendar year at intervals of approximately 6 months. Regulated entities must then report the results of the scale tests to the GIPSA Packers and Stockyards Program (P&SP) regional office for the geographical region where the scale is located. Section 201.71 of the regulations (9 CFR 201.71) requires that scales must meet all applicable requirements of the 2009 edition of the National Institute of Standards and Technology Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices."

Under current procedures, the P&SP regional office, which has enforcement responsibility for the geographic location where a specific scale is located, notifies the regulated entity that its scale is due for testing in the event that the regulated entity has not filed a scale test report within the required 6-month timeframe. Thereafter, GIPSA sends the regulated entity a follow-up letter, or Notice of Default, if GIPSA does not receive the scale test report within 30 days from the date that the scale test report was due. Finally, if the regulated entity fails to provide GIPSA with the required test report, GIPSA issues to the regulated entity a Notice of Violation, used to inform the regulated entity that its scale test reports were not received within the required timeframe under P&S Act regulations. GIPSA also notifies the regulated entity that the scale may not be used further until the violation is corrected.

Because the regulations now state that scale tests must be performed at "approximately" 6-month intervals, GIPSA has found that it is difficult to determine when a regulated entity may be in violation of the P&S Act for failing to submit a timely scale test report. As a result, GIPSA is amending § 201.72(a) (9 CFR 201.72(a)) of the P&SA regulations to delete the term "approximately" in order to clearly state that regulated entities must submit a scale test report to GIPSA every 6 months in a calendar year between the periods January 1 and June 30, and July 1 and December 31, respectively. GIPSA will continue to require more frequent testing of specific scales in cases where the scales do not maintain accuracy between tests.

The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) (Act) amended the P&S Act to add "swine contractor" as a regulated entity. Section 10502 of the Act defined swine contractor as "* * * any person engaged in the business of obtaining swine under a swine production contract for the purpose of slaughtering the swine or selling the swine for slaughter, if (a) the swine is obtained by the person in commerce; or (b) the swine (including products from the swine) obtained by the person is sold or shipped in commerce."

Adding "swine contractor" to specific sections of the regulations will dispel any confusion among swine contractors regarding which regulations under the P&S Act are applicable to them. It will also allow GIPSA to more easily identify and enforce violations of the P&S Act.

GIPSA published a Notice of Proposed Rulemaking in the **Federal Register** on August 24, 2009, (74 FR 162) seeking public comment on the proposed changes to the regulations. The comment period on the proposed rule closed October 23, 2009.

Discussion of Comments and Final Action

GIPSA received 42 comments from livestock auction markets, livestock producers, livestock ranchers, related industry associations, State and county agencies, feed operations, a poultry grower, and the University of California's Cooperative Extension. The 42 comments received referenced our proposal to require that regulated entities have scales tested twice within each calendar year. Because no comments were received regarding our proposal to add swine contractors to the list of regulated entities, swine contractors will be added to the list of regulated entities in the final rule as proposed.

Of the 42 comments received, two commenters supported the rule. One commenter recommended that we implement the rule as written; the other suggested that scales be tested more frequently. Six commenters submitted general statements that did not specifically address the timing of scale tests presented in our proposal, but instead objected to increased government regulations. Thirty-four commenters (including 14 from State and local government entities) questioned the need for more than one scale test per year, especially for scales that are used seasonally or only when livestock is being shipped during a certain time period of the year. Many commenters objected to our proposal stating that it would double their costs of compliance with the P&S Act, would place an unjust regulatory burden on small businesses, be costly to State and local governments charged with certifying the scales, and would make it difficult for regulated entities to obtain the services of a limited number of accredited scale testers. For example, one commenter from the Oregon Department of Agriculture stated that there are nearly 54,000 scales within the State's jurisdiction, and the State lacks the money to double the workload of its nine scale testers without a sharp increase in funding. Another commenter added that States would have difficulty scheduling additional inspectors even if the cost of the inspections was paid for by the regulated entities.

Currently, the regulations require that scale tests be completed at least twice per calendar year. This is unchanged in the proposed regulations. Because we did not propose to increase the number of scale tests from the two tests required in the current regulations, GIPSA believes that there would be no increased burden on individuals or agencies responsible for scale testing as a result of this final rule.

Twenty of the 40 commenters objecting to our proposed rule, however, suggested that GIPSA consider adding an exception to the current regulations that would allow scales used seasonally to be tested once per year. While GIPSA maintains that its initial proposal to delete the term "approximately" in order to clearly state that regulated entities must be required to complete a scale test twice in a calendar year was appropriate in order to clarify the regulations, we agree with the commenters' suggestion and will include in the final rule an exception for the testing of scales with limited seasonal use. A scale used from either January 1 through June 30, or July 1 through December 31, but not during both periods, will be considered by GIPSA to be a seasonal scale. GIPSA will require that these scales be tested once during each calendar year, within 6 months prior to use.

Finally, GIPSA believes that many comments may have resulted from commenters believing that GIPSA was proposing regulations affecting everyone who owns scales, which is not the case. GIPSA's intent is that only regulated entities be affected by the proposed rule. Accordingly, GIPSA is replacing in the final rule all references to "scale owners," with references to "regulated entities" to dispel any confusion that may have arisen from our proposal.

Based on the foregoing discussion, we will therefore modify the proposed 201.72(a) (9 CFR 201.72(a)) in the final rule to (1) provide an exception to the testing requirements for limited seasonal scales if they are used only once per calendar year and tested within 6 months prior to use, and (2) delete from the second sentence the phrase "As a scale owner, * * *." since the phrase, GIPSA believes, led many of the commenters to mistakenly believe that the regulation applies to non-regulated entities.

Executive Order 12866 and Regulatory Flexibility Act

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

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), GIPSA has considered the economic impact of this final rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System Codes.[1] The affected entities and size thresholds under this final rule are defined by the SBA as small businesses as follows: NAICS code 12111, cattle producers; NAICS code 112210, hog producers and swine contractors; and NAICS codes 112320 and 112330, broiler and turkey producers if their sales are less than $750,000 per year, respectively. Live poultry dealers, NACIS code 31165; and hog and cattle slaughterers, NACIS code 311611, respectively, are considered as small businesses if they have fewer than 500 employees. Stockyards are found under NACIS code 424520, "Livestock Merchant Wholesalers," and are considered to be small businesses if they have fewer than 100 employees.

According to the 2008 Annual Report, Packers and Stockyards Program,[2] published on March 1, 2009, there were 339 bonded livestock slaughter firms, 126 live poultry dealers, 4,685 bonded dealers, 1,326 bonded market agencies, and 1,392 posted stockyards operating subject to the P&S Act. While many of these entities are considered as small businesses by the SBA, we believe that this final rule will not affect those entities significantly since all of the entities, as regulated entities, are already required to report scale tests results to GIPSA twice in a calendar year at 6-month intervals. Again, we are amending the regulations to clarify the time interval between required scale tests in order to enhance GIPSA's ability to enforce the P&S Act. Furthermore, this final rule reduces the number of tests required for scales operated on a seasonal basis by regulated entities. And while this final rule also affects swine contractors, most such entities do not meet the definition for small entities under the SBA. Accordingly, we have considered the effects of this final rule under the RFA and believe that it will not have a significant impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. These actions are not intended to have retroactive effect. This rule would not pre-empt state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be

[1] See: *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

[2] See: *http://archive.gipsa.usda.gov/pubs/2008_psp_annual_report.pdf.*

exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with the Office of Management and Budget regulations (5 CFR part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection and record keeping requirements that are covered by this final rule were approved under OMB number 0580–0015 on January 30, 2009, and expire on January 31, 2011.

E-Government Act Compliance

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

List of Subjects in 9 CFR Part 201

Reporting and recordkeeping requirements, Measurement standards, Trade practices.

For the reasons set forth in the preamble, 9 CFR part 201 is amended as follows:

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

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

Authority: 7 U.S.C. 181–229c.

■ 2. Section 201.72 is revised to read as follows:

§ 201.72 Scales; testing of.

(a) As a stockyard owner, swine contractor, market agency, dealer, packer, or live poultry dealer who weighs livestock, live poultry, or feed for purposes of purchase, sale, acquisition, payment, or settlement of livestock or live poultry, or who weighs livestock carcasses for the purpose of purchase on a carcass weight basis, or who furnishes scales for such purposes, you must have your scales tested by competent persons at least twice during each calendar year. You must complete the first of the two scale tests between January 1 and June 30 of the calendar year. The remaining scale test must be completed between July 1 and December 31 of the calendar year. You must have a minimum period of 120 days between these two tests. More frequent testing will be required in cases where the scale does not maintain accuracy between tests. *Except that* if scales are used on a limited seasonal basis (during either the 6-month period of January through June or July through December, but not both) for purposes of purchase, sale, acquisition, payment or settlement, the stockyard owner, swine contractor, market agency, dealer, live poultry dealer, or packer making use of such scales, must complete one scale test within 6-months prior to use.

(b) As a stockyard owner, swine contractor, market agency, dealer, packer, or live poultry dealer who weighs livestock, livestock carcasses, live poultry, or feed for purposes of purchase, sale, acquisition, payment, or settlement of livestock, livestock carcasses or live poultry, you must furnish reports of tests and inspections on forms approved by the Administrator. You must retain one copy of the test and inspection report for yourself, and file a second copy with the P&SP regional office for the geographical region where the scale is located.

(c) When scales used for weighing livestock, livestock carcasses, live poultry, or feed are tested and inspected by a State agency, municipality, or other governmental subdivision, the forms used by such agency for reporting such scale tests and inspections may be accepted in lieu of the forms approved for this same purpose by the Administrator if the forms contain substantially the same information.

J. Dudley Butler,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2011–1093 Filed 1–19–11; 8:45 am]

BILLING CODE 3410–KD–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 707

RIN 3133–AD72

Truth in Savings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: On July 22, 2009, NCUA published a final rule amending NCUA's Truth in Savings regulation and the accompanying official staff interpretations. The final rule addressed credit unions' disclosure practices related to overdraft services, including balances disclosed to members through automated systems. This final rule amends NCUA's Truth in Savings rule and official staff interpretations to address the application of the July 2009 final rule to retail sweep programs and the terminology for overdraft fee disclosures and to make amendments that conform to the Federal Reserve Board's (Federal Reserve) final Regulation E amendments addressing overdraft services, adopted in November 2009. This rule also makes final the minor technical corrections to sample form B–12 that were part of the interim final rule.

DATES: The effective date of September 7, 2010 and October 1, 2010 for § 707.11(a)(1)(i) is confirmed as final without change.

FOR FURTHER INFORMATION CONTACT: Justin M. Anderson, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Savings Act (TISA) requires NCUA to promulgate regulations substantially similar to those promulgated by the Federal Reserve within 90 days of the effective date of the Federal Reserve's rules. 12 U.S.C. 4311(b). In doing so, NCUA is to take into account the unique nature of credit unions and the limitations under which they pay dividends on member accounts. *Id.*

On January 29, 2009, the Federal Reserve published a final rule amending Regulation DD, its TISA rule, and the official staff commentary to address depository institutions' disclosure practices related to overdraft services, including balances disclosed to consumers through automated systems. 74 FR 5584 (January 29, 2009). NCUA issued a similar final rule on July 22, 2009. 74 FR 36102 (July 22, 2009). Both rules had an effective date of January 1, 2010.

In November 2009, the Federal Reserve adopted a final rule amending Regulation E, which implements the Electronic Fund Transfer Act. This final rule limits a financial institution's ability to assess fees for paying ATM and one-time debit card transactions pursuant to the institution's discretionary overdraft service without the consumer's affirmative consent to such payment.

Since publication of the Federal Reserve's January 2009 final rule, institutions and others have requested clarification of particular aspects of the rule and further guidance regarding compliance with the rule. In addition, the Federal Reserve believed conforming amendments to Regulation DD were necessary in light of certain provisions subsequently adopted in the Regulation E final rule. Accordingly, in

March 2010, the Federal Reserve proposed to amend Regulation DD and the official staff commentary. 75 FR 9126 (March 1, 2010). Based on comments it received, the Federal Reserve issued a final rule on June 4, 2010. 75 FR 31673 (June 4, 2010).

II. Interim Final Rule

In compliance with TISA, NCUA issued an interim final rule with request for comment on July 29, 2010, that was substantially similar to the Federal Reserve's June 2010 final rule. The interim final rule also included technical corrections to the aggregate overdraft and returned item fees sample form for formatting purposes. The Board issued the rule as an interim final rule because there is a strong public interest in having consumer-oriented rules in place that are consistent with those recently promulgated by the Federal Reserve. Additionally, as discussed above, NCUA is statutorily required to issue rules substantially similar to those of the Federal Reserve within 90 days of the effective date of the Federal Reserve's rules.

III. Summary of Comments

NCUA received three comments on the interim final rule. Two comments were from credit union trade associations and one comment was from a State credit union league. Each commenter suggested some degree of change to the final rule. As discussed below, the three areas where comments offered suggestions were use of the term "Total Overdraft Fees," use of model form B–12, and the mandatory compliance date for the amendments to § 707.11(a)(1)(i).

First, all three commenters requested the Board permit credit unions to use terms other than "Total Overdraft Fees" in a member's periodic statement. One commenter argued that the use of "Total Overdraft Fees" would actually result in more confusion as a credit union's account opening and promotional materials might use a different term than the one required by the rule on periodic statements. Another commenter suggested that the Board should allow credit unions to use the term "Total Overdraft Fees for paid items," which, the commenter argues, will further enhance the distinction between fees paid for items that are covered by the credit union and fees paid because an item is returned for insufficient funds. The third commenter requested that the Board allow credit unions to use a term that is substantially similar to "Total Overdraft Fees," which the commenter argues is in line with the Federal Reserve's regulations. The Board disagrees with these comments and reiterates its position from the interim final rule that permitting the use of terminology other than "Total Overdraft Fees" could be confusing to members and potentially undermines their ability to compare costs, particularly if the member has accounts at different credit unions that each use different terminology. Further, the Board notes that requiring credit unions to use the term "Total Overdraft Fees" is identical to the requirement in the Federal Reserve's rule and this term in conjunction with the other provisions in the current rule provide sufficient distinction between overdraft fees and fees for insufficient funds.

Two commenters provided suggestions on the technical changes to model form B–12. One commenter asked for additional guidance on the requirement that credit unions disclose the information in model form B–12 in a tabular format. Another commenter requested that credit unions be required to continue using the original form to prevent them from needing to spend money on reformatting periodic disclosure forms. With regard to both comments, the Board notes that § 707.11(a)(3) of NCUA's regulations requires credit unions to use a format that is substantially similar to model form B–12. With respect to the first comment, the Board does not believe that a non-tabular disclosure is "substantially similar" to model form B–12 and, therefore, would be impermissible under the rule. With respect to the second comment, however, the Board does believe using model form B–12 without the interim final rule's technical corrections would be considered substantially similar. The technical corrections made in the interim final rule do not change the substance or purpose of the form, but rather ensure conformity with the model form used by the Federal Reserve. Credit unions can continue to use the non-amended form until their supplies are depleted.

Finally, one commenter requested the Board extend the mandatory compliance date for the use of the term "Total Overdraft Fees" to provide credit unions with sufficient time to implement this change. Since the mandatory compliance date has already passed and credit unions are currently required to use the term "Total Overdraft Fees," this comment is moot. Further, as noted in the preamble to the interim final rule, the Board did consider the burden on credit unions and chose a date that would allow compliance in conjunction with the Federal Reserve while minimizing the inconvenience to credit unions.

IV. Regulatory Procedures

Section III of the **SUPPLEMENTARY INFORMATION** to the July 2009 final rule sets forth the Board's analyses under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121), Executive Order 13132, and the Treasury and General Government Appropriations Act (Pub. L. 105–277, 112 Stat. 2681 1998). *See* 74 FR 36102–36106. Because the final amendments are clarifications and do not alter the substance of the analyses and determinations accompanying that final rule, the Board continues to rely on those analyses and determinations for purposes of this rulemaking.

By the National Credit Union Administration Board on January 13, 2010.

Mary F. Rupp,

Secretary of the Board.

List of Subjects in 12 CFR Part 707

Advertising, Credit unions, Consumer protection, Reporting and recordkeeping requirements, Truth in savings.

Accordingly, the interim final rule amending 12 CFR Part 707, which was published at 75 FR 47173 on August 5, 2010, is adopted as a final rule without change.

[FR Doc. 2011–1091 Filed 1–19–11; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

[Docket No. FDA–2010–N–0002]

Implantation or Injectable Dosage Form New Animal Drugs; Oxytetracycline and Flunixin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Norbrook Laboratories, Ltd. The NADA provides for veterinary prescription use of a combination drug injectable solution containing oxytetracycline and flunixin meglumine in cattle.

DATES: This rule is effective January 20, 2011.

FOR FURTHER INFORMATION CONTACT: Cindy L. Burnsteel, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8341, e-mail: *cindy.burnsteel@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Norbrook Laboratories, Ltd., Station Works, Newry, BT35 6JP, Northern Ireland, filed NADA 141–312 that provides for veterinary prescription use of HEXASOL (oxytetracycline and flunixin meglumine) Injection for the treatment of bacterial pneumonia associated with *Pasteurella* spp. and for the control of associated pyrexia in beef and non-lactating dairy cattle. The application is approved as of November 29, 2010, and the regulations in part 522 (21 CFR part 522) are revised by adding 21 CFR 522.1664.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning on the date of approval.

The Agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

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

■ 2. Add § 522.1664 to read as follows:

§ 522.1664 Oxytetracycline and flunixin.

(a) *Specifications.* Each milliliter (mL) of solution contains 300 milligrams (mg) oxytetracycline base as amphoteric oxytetracycline and 20 mg flunixin base as flunixin meglumine.

(b) *Sponsor.* See No. 055529 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See §§ 556.286 and 556.500 of this chapter.

(d) *Conditions of use cattle*—(1) *Amount.* Administer once as an intramuscular or subcutaneous injection of 1 mL per 22 pounds (lb) body weight (BW) (13.6 mg oxytetracycline and 0.9 mg flunixin per lb BW) where retreatment of calves and yearlings for bacterial pneumonia is impractical due to husbandry conditions, such as cattle on range, or where their repeated restraint is inadvisable.

(2) *Indications for use.* For the treatment of bacterial pneumonia associated with *Pasteurella* spp. and for the control of associated pyrexia in beef and nonlactating dairy cattle.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian. Discontinue treatment at least 21 days prior to slaughter of cattle. Do not use in female dairy cattle 20 months of age or older. Use in this class of cattle may cause milk residues. A withdrawal period has not been established in preruminating calves. Do not use in calves to be processed for veal. Use of dosages other than those indicated may result in residue violations.

Dated: January 11, 2011.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2011–1040 Filed 1–19–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 9, and 70

[Docket No. TTB–2007–0068; T.D. TTB–90; Re: Notice Nos. 78 and 80]

RIN 1513–AB39

Revision of American Viticultural Area Regulations

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: In this Treasury decision, the Alcohol and Tobacco Tax and Trade Bureau amends the regulations concerning the establishment of American viticultural areas (AVAs). The changes provide clearer regulatory standards for the establishment of AVAs and clarify the rules for preparing, submitting, and processing viticultural area petitions.

DATES: *Effective Date:* This final rule is effective on February 22, 2011.

FOR FURTHER INFORMATION CONTACT: Rita D. Butler, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20220; *telephone:* 202–453–2101.

SUPPLEMENTARY INFORMATION:

Background

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) provides for the establishment of definitive viticultural areas and for the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) prescribes the standards for submitting a petition to establish a new American viticultural area (AVA) or to modify an existing AVA, and it contains a list with descriptions of all approved AVAs. Part

70 of the TTB regulations (27 CFR part 70) concerns procedure and administration and includes, at § 70.701 (27 CFR 70.701), provisions regarding rulemaking procedures.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been recognized and defined in part 9 of the TTB regulations. These AVA designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Current AVA Petition Process

Section 9.3 of the TTB regulations (27 CFR 9.3) sets forth the current procedure and standards for the establishment of AVAs. Paragraph (a) of that section states that TTB will use the rulemaking process based on petitions to establish AVAs received in accordance with §§ 4.25(e)(2) and 70.701(c). Paragraph (b) of § 9.3 provides that a petition for the establishment of an AVA must contain the following:

- Evidence that the name of the viticultural area is locally and/or nationally known as referring to the area specified in the application;
- Historical or current evidence that the boundaries of the viticultural area are as specified in the application;
- Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;
- The specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and
- A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Notice of Proposed Rulemaking

On November 20, 2007, TTB published a notice of proposed rulemaking, Notice No. 78, in the **Federal Register** (72 FR 65261) setting forth, among other things, a revision of subparts A and B of part 9. The original comment period closing date of January 22, 2008, was extended an additional 60 days in Notice No. 80, published in the **Federal Register** (72 FR 71290) on December 17, 2007.

In Notice No. 78, TTB and Treasury stated that a comprehensive review of the AVA program was warranted in order to maintain the integrity of the program. We considered the impact that the establishment of an AVA can have on the use of existing brand names. In this regard, we stated that we did not believe it to be appropriate for a government agency to choose between competing commercial interests, in the context of the labeling provisions of the FAA Act, where a conflict exists between a proposed AVA name and an established brand name used on a wine label approved by TTB, if such choices can be avoided.

We also noted that there has been an increase in the number of petitions for the establishment of new AVAs within already existing AVAs. Since recognizing the existence of an AVA is based on the idea that the defined area is unique for viticultural purposes with reference to what is outside it, we stated that preserving the integrity of the AVA program warrants clarifying the standards concerning the establishment of new AVAs within existing AVAs.

Finally, we believed that there was a need to explain and clarify the AVA petition submission and review process and to clearly state the existing authority to deny, and the grounds for denying, an AVA rulemaking petition.

AVA Name and Brand Name Conflict

As we stated in Notice No. 78, the designation of a new AVA can create a conflict with existing brand names. This conflict can arise because a brand name that includes an approved AVA name may not be used unless at least 85 percent of the wine is derived from grapes grown within the boundaries of the AVA. *See* 27 CFR 4.25(e)(3). Moreover, TTB prohibits the use of misleading brand names (27 CFR 4.33), and also prohibits brand names that tend to create the impression that the wine is entitled to bear a designation recognized by TTB unless the wine meets the requirements for that designation (27 CFR 4.39(a)(8)). The establishment of a new AVA could also give rise to a misleading impression regarding the provenance of a wine that carries a known brand name similar to the AVA name but that does not meet the 85 percent requirement that applies to AVA name usage, thereby not providing the consumer with adequate information as to the identity and quality of the wine and creating confusion for consumers.

TTB noted in Notice No. 78 that the effect of the current regulatory provisions is to give precedence to the establishment of an AVA over the use of a brand name on a previously approved label. This precedence is derived from the combined effect of the appellation of origin and geographic brand name requirements of 27 CFR 4.25(e) and 4.39(i)(1). If a wine is not eligible for labeling with the viticultural area name and that name appears in the brand name, then the label would not be in compliance with TTB regulations and TTB would require the bottler to obtain approval of a new label with a new brand name in order to market it. Therefore, vintners are on notice that the decision to establish a brand name having geographical significance could result in the continued use of that brand name being restricted or prohibited by the subsequent establishment of an AVA using an identical or similar name. Whenever possible, however, TTB works with petitioners to amend petitions in order to limit the adverse impact on established brand names because established brand names have value to label holders, the sudden use of a new AVA name on labels instead of a long-established brand name may be confusing to consumers, and the AVA process can be used intentionally as a method of limiting competition from pre-existing brand name holders.

AVAs Within AVAs

Notice No. 78 noted that, in recent years, TTB has received an increasing number of petitions that propose a boundary change to an existing AVA, the establishment of an AVA entirely or partially within an existing AVA, or the establishment of a new, larger AVA that would encompass all of one or more existing AVAs. Such petitions can create the appearance of a conflict or inconsistency because, with reference to the criteria set forth in § 9.3(b), the new petition might draw into question the accuracy and validity of the evidence presented in support of the establishment of the existing AVA or the legitimacy of the justification for establishing a new AVA. For example, with reference to the boundary description and the geographical features criteria, a change in an existing AVA boundary, or the adoption of a new AVA within an existing AVA, could suggest that the original boundary was improperly drawn or that there is no unity or consistency in the features of the existing AVA that give it a unique

and distinctive identity in a viticultural sense.

Further, we noted in Notice No. 78 that when a new AVA is established entirely within an existing AVA, depending on the unique facts presented in each AVA petition, an argument could be made that the smaller AVA is, by its very existence, distinct from the AVA that surrounds it, with the result that wine produced within it should not be labeled with the name of the larger AVA.

Petition Submission and Review Process

In Notice No. 78, we noted that the part 9 regulations could more completely describe the submission and review process, including the various actions that TTB may take at each stage of the AVA petitioning procedure.

Under TTB's current AVA petition process, we process all AVA petitions that are submitted to us. TTB's practice is to work with the petitioner both before and after submission of the petition to ensure that it contains all necessary information. TTB specialists spend considerable time reviewing the petition, contacting the petitioner, and requesting missing evidence from the petitioner. In some cases, deficient petitions are returned to the petitioner for revision and resubmission. Only after the petition is perfected (that is, it appears to contain all of the information required under § 9.3) do we proceed with preparation of an appropriate rulemaking document. As we noted in Notice No. 78, as a general rule, the practice of TTB has been to accept the information provided by the petitioner in a perfected petition with the assumption that the information provided is correct. TTB does not conduct a detailed, separate investigation of the validity of the petition evidence at that point. To confirm or refute the information provided by the petitioner, TTB has relied on comments provided in response to the published notice of proposed rulemaking (NPRM).

We also noted in Notice No. 78 that whereas the TTB regulations in part 9 speak in terms of what an AVA petition must contain, they do not clearly reflect the fundamental administrative principle that the authority to grant carries a concomitant authority to deny an AVA petition. We have come to realize that some believe that all that is necessary to successfully petition for the establishment of an AVA is to submit a petition with evidence under the terms of § 9.3(b).

We also noted that TTB has authority not to initiate rulemaking, or not to approve the petitioned-for AVA action after publication of a proposal, for any one of a number of reasons, such as:

- The evidence submitted with the petition does not adequately support use of the name proposed for a new AVA;
- The evidence of distinguishing features submitted with the petition does not support drawing or redrawing the AVA boundary as proposed;
- The extent of viticulture within the proposed boundary is not sufficient to constitute a grape-growing region within the intendment of the AVA program; or
- Approval of a proposed new AVA would be inconsistent with the purpose of the FAA Act, contrary to another statute or regulation, or otherwise not in the public interest.

Summary of Proposed Changes

In Notice No. 78, TTB proposed to amend three provisions within part 4 of the TTB regulations that concern AVAs, to revise subparts A and B of part 9 of the TTB regulations, to amend various sections within subpart C of part 9, and to amend one provision within part 70 of the TTB regulations.

Part 4 Amendments

To permit the establishment of an AVA and at the same time mitigate the impact on existing brand labels which contain terms that would be viticulturally significant if the proposed AVA was established, TTB proposed in Notice No. 78 to amend § 4.39(i) of the TTB regulations (27 CFR 4.39(i)) by adding a new "grandfathering" standard that would apply in the case of AVAs established after adoption of the final rule in this matter and that would be based on a specified number of years that an affected Certificate of Label Approval (COLA) had been issued and that the brand label had been in actual commercial use prior to receipt by TTB of a perfected AVA petition.

By way of background, Notice No. 78 noted that at the beginning of the AVA program, TTB's predecessor agency and Treasury adopted § 4.39(i) to permit the continued use of brand names that had been used in COLAs issued before July 7, 1986, subject to application of any one of three conditions. This original "grandfather" approach was intended to protect brand names that had existed prior to the development of the AVA program. This solution did not specifically address conflicts between AVAs and brand names in COLAs that came into existence after July 7, 1986, although it effectively put all vintners on notice that the use of a brand name with geographic significance could later be restricted by the establishment of a viticultural area.

While TTB in Notice No. 78 noted its intention to continue to work with future AVA petitioners to limit the adverse impact on established brand names, TTB also recognized that sometimes it would not be possible to amend a petition to achieve this result. To address this possibility, TTB proposed a new grandfathering standard.

In addition, we proposed in Notice No. 78 to update two provisions within § 4.25(e) and conform them to the proposed changes to part 9 described below.

Part 9 Amendments

Notice No. 78 proposed to revise subparts A and B of part 9 to clarify the operation of the AVA petition and rulemaking process by explaining how a petitioner must submit an AVA petition to TTB, by setting forth with considerably greater specificity what information a petition must contain, and by explaining how TTB would process these petitions. In addition to setting forth standards for the establishment of an AVA, the proposed amendments addressed the requirements for proposed boundary and name changes to existing AVAs to ensure that an AVA proposal published by TTB to change an existing AVA (for example, a boundary expansion) would have adequate supporting evidence. The specification of requirements for boundary changes was proposed to ensure that TTB receives petitions that conform to AVA regulatory standards rather than to considerations that are not central to the AVA concept.

The proposed regulatory language also reflected the principle that TTB may decide not to proceed with rulemaking after receipt of a petition, in which case TTB would provide an explanation of the decision to the petitioner. The proposed amendments also specifically delineated the authority of TTB to decide not to proceed with approval of the petitioned-for AVA action after publication of the NPRM. The proposed regulatory amendments attempted to make a clear distinction between the petition process and the rulemaking process, because a decision not to go forward may be made at either stage.

The proposed amendments in subpart C involved the addition of statements regarding the viticultural significance of names of previously established AVAs, or notable portions of those names, for wine labeling purposes under part 4 of the TTB regulations. TTB stated in Notice No. 78 that these amendments were consistent with the practice employed by TTB over the past several

years of including a second sentence in paragraph (a) of each section covering a new AVA, to specify what is viticulturally significant as a result of the establishment of the AVA. While in many cases only the full name of the AVA was specified in each of the subpart C amendments proposed in Notice No. 78, in some instances a portion of the name was also identified as viticulturally significant if, based on TTB's label approval practice, its use on a label could be taken to represent the full AVA name. We specifically invited comments on whether any existing labels would be at risk if the proposed amendments were adopted as a final rule.

Comments Invited on the Regulatory Proposals

In Notice No. 78, TTB invited interested parties to comment on the proposed rulemaking and regulatory texts. In addition, we invited comments on the following specific questions:

1. Whether additional or different standards should apply to the establishment of an AVA; for example, whether there should be a requirement that a specified percentage of the land mass of the proposed AVA be involved in viticultural activities.

2. Whether in some or all cases the establishment of a smaller AVA located within the boundaries of a larger AVA should result in a prohibition against the use of the larger AVA name on wine labels.

3. Whether the use of a "grandfather" provision to avoid conflicts between an established brand name and the establishment of a proposed AVA is appropriate.

4. Whether the terms of the proposed "grandfather " provision are appropriate and, if so, what time periods should apply to establish commercial use of the brand name involved in a conflict.

5. Whether it would be more appropriate to adopt an alternative to the "grandfather" provision proposed that would apply to brand names that have longstanding commercial use under one or more existing certificates of label approval without specifying a time period.

6. What type of dispelling information would prevent consumers from being misled as to the origin of the wine when a "grandfather" provision applies. Other comments for a requirement on dispelling information were encouraged.

Comments Received and TTB Analyses/ Responses

TTB received 191 comments in response to Notice No. 78. The table below summarizes who submitted comments and the number of comments submitted.

Who submitted comments	Number of comments
Federal Government	2
State Government	2
Local Government	6
Wine Industry Members	88
Interest Groups/Trade Organizations	31
Concerned Citizens	48
Other	14
Total	191

In the category of Interest Groups/ Trade Organizations, there were no consumer groups that submitted comments. With regard to Concerned Citizens, it cannot be determined in what capacity the commenters have submitted their comments (*e.g.,* as consumers, or as owners of an alcohol beverage business).

Twenty-four of the comments received were either requests for extension of the Notice No. 78 comment period or requests that TTB end the suspension of AVA petition processing then in place. The latter comments were submitted in support of the then-proposed Lehigh Valley AVA, which was established on March 11, 2008, by T.D. TTB–66 (73 FR 12870). Since the Notice No. 78 comment period was extended as requested, the establishment of the Lehigh Valley AVA was approved, and the suspension was ended, these issues have been resolved as the commenters had requested and are now moot.

Comments From Government Officials

We received a comment from one U.S. Senator, a joint comment from two U.S. Congressional Representatives, and comments from one California State Senator and several other California State and local government officials concerning Notice No. 78. All of the commenters expressed general opposition to Notice No. 78, and a number of the commenters expressed opposition to specific portions of the proposed regulations. All of the commenters also opposed TTB Notice No. 77, published in the **Federal Register** on November 20, 2007 (72 FR 65256), which proposed the establishment of a "Calistoga" AVA.

One U.S. Senator's comment was in the form of a letter to the Secretary of the Treasury to "express my opposition to the Notices * * * as the actions in these rules will have a detrimental affect on the way wine is identified, branded and labeled in the United States." The Senator's comment further noted that "California's wine industry contributes over $125 billion annually to the Nation's economy."

Two Members of the U.S. House of Representatives wrote a joint letter to the Secretary of the Treasury and the TTB Administrator to "express our grave concern over two Notices * * * which would significantly and detrimentally alter the American Viticultural Area (AVA) system." They further stated, "Even after the successful establishment of 189 viticultural areas by rulemaking, TTB now proposes major changes in Notices No. 77 and 78 that would have substantial, complicated and irreparable consequences for the future of America's growing wine industry, which now contributes over $100 billion a year to our economy." In addition, they stated, "We strongly believe that the existing AVA regulations have successfully served their purpose for over twenty years, and in fact, work very well. These NPRMs are not needed and are not supported by the wine industry." Fifty-nine other Members of Congress also signed the letter.

A California State Senator submitted the contents of California Senate Joint Resolution 22, which she stated was passed unanimously in the State Senate and the State Assembly, "as a statement of the California Legislature's concern and opposition to" Notice Nos. 77 and 78. She further stated that the "Senate and the Assembly of the State of California, jointly request the Tobacco Tax and Trade Bureau to protect and preserve the ability of California wineries, as well as all American wineries, to contribute to the economy of California and the nation by withdrawing the Notices."

The Secretary of the California Department of Food and Agriculture had concerns with our regulatory proposals, stating, "The revised regulations provide certain wine brands the right to market and sell their products with deceptive labels, leading consumers to believe their wines are from grapes grown in certain appellations or winemaking regions, when they are not." This commenter also believes that these proposals "are far-reaching and could have substantial and severe consequences for all U.S. wine regions and wine brands."

The city manager of Calistoga, California, opposed changes (in Notice Nos. 77 and 78) that would "eliminate the common and internationally understood practice of nesting wine appellations within larger wine appellations. Napa Valley is a highly recognized and respected wine growing region throughout the world."

The mayor of Paso Robles, California, opposed the proposed changes in Notice Nos. 77 and 78, stating that "the TTB proposed revisions to the regulations * * * will undermine decades of work on the part of the wine industry." He stated further, "The effects of these proposals are far-reaching and will have substantial and severe consequences to all U.S. wine regions and wine brands and to the truth in labeling rights of consumers." In specific regard to Notice No. 78, he wrote that it "threatens to eliminate the common and internationally understood practice of 'nesting' wine appellations within larger wine appellations." He also stated that "this proposal [Notice No. 78] looks to create 'Rolling Grandfather' clauses that will allow new brands that would undermine the basic tenets of established law by allowing the use of misdescriptive geographic brands on an ongoing basis and creates loopholes for a select few." He also stated, "These regulations will have a substantial negative impact on consumer confidence and compromise the integrity of the American wine industry."

The chair of the Napa County Board of Supervisors opposed our proposals in Notice No. 78, stating, "The Board also opposes Notice 78, which would end the common and internationally understood practice of 'nesting' wine appellations * * *. Nesting transmits crucial information to consumers." He also provided a copy of a Resolution passed by the board in regard to this opposition.

The Napa County agricultural commissioner also opposed our proposals in Notice No. 78, stating, "I also oppose Notice 78, which would end the common and internationally understood practice of 'nesting' wine appellations * * *. Nesting transmits crucial information to consumers."

The president of the Napa County Farm Bureau opposed our proposals in Notice No. 78, stating that the Bureau, "[o]pposes the comprehensive and sweeping AVA regulatory changes proposed in Notice 78. We do not support the rolling grandfather date which supplements [27 CFR] 4.39(i), or the elimination of the common and internationally understood practice of 'nesting' wine appellations."

TTB Response

TTB appreciates the concerns and reservations these officials have expressed over our proposed changes to the AVA regulations. We recognize that viticulture and wine making are industries important to the American economy and are especially important to the economy of the State of California. However, we disagree with those commenters who suggested that the regulatory proposals we made in Notice No. 78 would result in a severe economic impact or have other substantial consequences on the wine industry, and we note in this regard that no specific data were provided to support these general statements.

As we stated in Notice No. 78, the proposals we made were intended to strengthen the AVA program. As one commenter pointed out, the regulations for the establishment of AVAs are over 20 years old. Although these regulations may have been initially successful in getting the AVA program "off the ground," the regulations have not been updated to address a number of procedural and substantive issues or the problems with AVA petitions that have arisen over the years. At the time of publication of Notice No. 78, some of the AVA issues or petition problems encountered by TTB were as follows:

- Petitions to create an AVA were incomplete for numerous reasons.
- Petitions to expand an existing AVA where the acreage to be added to the existing AVA has no viticulture and where no significant viticulture is planned in the near future.
- Petitions to expand an existing AVA for the purpose of including adjacent viticultural acreage, with no evidence that the expansion area has any geographical features in common with the existing AVA.
- Petitions to expand an existing AVA for the purpose of including adjacent viticultural acreage where the evidence submitted clearly shows that the geographical features of the adjacent acreage are incompatible with those of the existing AVA.
- Petitions from separate petitioners to create an AVA within an existing AVA where their respective requests are inconsistent with each other because they provide conflicting geographical features evidence for the same area.
- Petitions where the proposed AVA name conflicted with the brand names on existing labels.

Based on the issues and problems outlined above, we believe that the AVA program has not operated as well as some of these commenters suggest, and that the current part 9 regulations do not provide sufficient clarity and transparency regarding the AVA petition and approval process and regarding the manner in which TTB exercises its authority in that process. The part 9 proposals set forth in Notice No. 78 were not a radical departure from the current regulatory standards but rather were a necessary elaboration on those standards in order to clarify existing petition requirements and existing TTB authority regarding the processing of AVA petitions. Since the comment period closed on this proposal on March 20, 2008, TTB has continued to process AVA petitions and to publish proposed and final regulatory actions with respect to petitions submitted. However, TTB continues to encounter the issues and problems described above and therefore, TTB believes that the need for the proposed regulations remains.

With regard to the comments opposing the proposed Calistoga viticultural area, which was the subject of Notice No. 77, these comments are outside the scope of this rulemaking and were addressed in a separate final rulemaking action specific to Notice No. 77 (*see* T.D. TTB–83, 74 FR 64602, December 8, 2009). With regard to the comments concerning the specific topics of "nesting" and the proposed "grandfather provision," we received a number of other comments concerning these proposals. We discuss these additional comments and provide a response to all the comments received on these specific issues below.

Other Comments in General Opposition

Fifteen other commenters generally opposed the proposed revisions, without detailing that opposition to any specific provision or issue. For example, the Wine Institute commented, "TTB already has the ability to deal with complex issues and unanticipated controversies fairly * * * TTB can issue policy statements, guidance documents, and manuals on AVA establishment with interpretive and procedural guidelines * * * Wine Institute believes that these alternatives are preferable than the proposed regulatory changes, which could lead to unintended consequences." This commenter added that TTB has a 27-year record of successful AVA rulemaking, is acting under what appears to be "an artificial sense of urgency," and should continue to use the existing regulations. Other commenters asserted that the proposed provisions "have far reaching consequences" or are "inconsistent with fair and sound practices," that "consumers will not be protected under the proposed regulations," or that "the current regulations do a good job."

TTB Response

As explained in detail in Notice No. 78, TTB and Treasury believed that there were valid reasons for proposing the regulatory changes. The specific regulatory proposals were crafted after much deliberation within TTB and

Treasury regarding: (1) Our duty to protect the consumer under the FAA Act; (2) our desire to be fair to, and to protect the economic interests of, all stakeholders; and (3) the long-term viability and credibility of the AVA program. We disagree with the suggestion that these regulations were developed in haste without substantial consideration as to their overall impact on the AVA program. Moreover, these general statements in opposition were not accompanied by any supporting data. Finally, as regards the use of other alternatives such as policy statements, guidance, or manuals, these alternatives are not binding on either the public or TTB and therefore are inadequate substitutes for regulatory action.

Comments on Specific Issues

The remaining 144 comments addressed one or more of the following issues:

- Whether a minimum percentage of landmass should be involved in viticultural activities for proposed AVAs;
- Whether the establishment of a smaller AVA within a larger AVA should prevent the use of the larger AVA name;
- Whether the establishment of a smaller AVA within a larger AVA ("nesting") should be eliminated;
- Whether the proposed new part 4 grandfather provision, or an alternative grandfather approach, should be adopted, and if so, what type of dispelling information is appropriate;
- Whether the procedural provisions proposed for part 9 should be adopted; and
- Whether the statements of viticultural significance proposed for part 9 are appropriate.

Below are comment summaries and TTB responses by issue.

Comments on Minimum Percentage of Landmass

Proposed § 9.12(a)(1), which concerns name evidence, stated that the name identified for the proposed AVA "must be currently and directly associated with an area in which viticulture exists." Also, proposed § 9.14(b)(2)(i) stated as one of the reasons for withdrawing a proposal, the fact that the extent of viticulture within the proposed boundary "is not sufficient to constitute a grape-growing region as specified in § 9.11(a)." However, in the proposed regulatory texts we did not specify a minimum requirement for viticultural activities.

As noted above, in the "comments invited" section of Notice No. 78, TTB asked whether there should be a requirement that a specified percentage of the landmass of the proposed AVA be involved in viticultural activities. Eight comments specifically addressed this question—two in favor and six in opposition.

One commenter in favor of such a standard wrote:

> The need for more reflective AVAs grows exponentially as the U.S. wine market expands into the global market. * * * TTB has invited comments concerning standards for establishment of an AVA. As to percentage of land involved in viticultural activities I would offer the following: "viticultural activities" must be defined. Only grape growing is space sensitive and thus in connection with AVAs only vineyards should be considered viticultural activity. It is inappropriate for TTB to grant AVA status to large areas of land not used in viticulture.

This commenter further noted that we did not define "viticultural activities" in such a context within Notice No. 78. Determining that a region be "known for grape-growing" should be sufficient to establish the fact that there are existing viticultural activities occurring in the area.

The Paso Robles AVA Committee (PRAVAC), which is comprised of 35 wineries and 25 grape growers, favored such a standard and wrote, "TTB may reasonably require that petitioners demonstrate some minimum amount of viticulture in the proposed new area." The PRAVAC requested that "any such threshold be fixed as a minimum acreage planted to vineyard," and added:

> Unless some critical mass of viticulture exists in an area, it is difficult to identify which unique features actually do affect the grapes grown in that region. A minimum acreage provides an easily ascertainable standard that also effectively fixes a minimum size for AVAs, thereby preventing additional subdivision into miniscule, vineyard-sized AVAs. Unlike potentially cultivated land, the existence of which is subject to individual interpretation, vineyard acreage is readily visible and easy to measure.

The remaining commenters who addressed this topic opposed a standard that would require a specific percentage of landmass of a proposed AVA to be involved in viticultural activities. In this regard, one of these commenters stated that "the purpose of an AVA designation is to identify a place of special character," and asked, "What does percentage of acreage have to do with this?"

Another commenter wrote that "this rule change should be considered to be in restraint of trade and could only be considered to benefit the established areas to the detriment of developing areas. The Government should not be penalizing the establishment of new vineyards."

One commenter argued that the objective of the AVA program is to allow vintners and consumers to attribute a given quality, reputation, or other characteristic of wine made from grapes grown in an area to its geographic origin. This person further stated that the "percentage of landmass is not compatible with the objective, nor does it in any way help the smaller wine producing areas at all."

A commenter on behalf of Triassic Legacy Vineyards wrote:

> The promise of an appellation to entice wine enthusiasts to purchase the wines is a major factor in encouraging landowners to make the huge investment of time energy and money to become growers and vintners. I respectfully request that the concept of requiring that an AVA have some percentage of total area under viticulture be abandoned.

Finally, a commenter on behalf of Tablas Creek Vineyard stated:

> While density of a plantation is a factor in determining the importance of an AVA, that density should be measured against the available planting acres in the appellation and not the simple total geographic area. The economic importance of grape/wine production to the area should also be noted.

TTB Response

TTB believes that the proposed regulatory language concerning this issue should be adopted without change. As stated in Notice No. 78, one of the key reasons for proposing changes to these regulations is to maintain the integrity of the AVA program, and requiring a sufficient amount of viticulture within a proposed AVA is necessary in order to ensure that designation of the AVA has meaning. For example, we do not believe that if a grape grower plants five acres of grapes in an area encompassing 10,000 square miles, that amount of viticulture is sufficient to justify the designation of an AVA.

On the other hand, for several reasons TTB does not believe it is appropriate to establish a specific percentage of landmass as a requirement for establishing an AVA. First, TTB recognizes that often the reason that petitioners seek AVA designations is to assist in the marketing of their wines, and we are concerned that a minimum percentage of landmass requirement might overly favor established areas. Second, although establishing by regulation a precise minimum percentage standard would provide an easy, mechanical method for TTB to decide whether sufficient viticulture exists in the proposed AVA, we believe that such an across-the-board,

mechanical rule could operate to the detriment of the AVA program by discounting the possibility of future expansion of viticulture within the area. We believe that where it might appear that the amount of acreage devoted to viticulture is too small in comparison to the size of the proposed AVA, other relevant factors could exist (such as the number of vineyards established and how they are dispersed within the proposed AVA), which could lead to the conclusion that the extent of viticulture within the proposed AVA is sufficient. TTB recognizes that the lack of dispersed viticulture in a proposed AVA could warrant a closer review of the sufficiency of the distinguishing geographical features and name evidence provided in the petition, but these issues should be reviewed on a case-by-case basis.

TTB also recognizes that the regulations require the boundaries to be delineated based upon certain distinguishing features, such as climate, geology, soils, physical features, and elevation, in addition to the name of the area. For example, a watershed or ridge-line may provide the best marker to delimit the area. Sometimes those features that are common to the area may far exceed the actual grape-growing then occurring. Therefore, grape-growing areas and boundaries based on geographic features are unlikely to be exactly alike. The proposed regulatory texts were intended to underscore the fundamental principle behind every AVA petition, that is, that viticulture already exists within the boundary proposed for the new AVA, and we believe that the texts achieve that result.

Finally, we do not agree with the suggestion that we also consider the economic importance of grape/wine production to the area as part of the analysis of the sufficiency of viticulture in the proposed AVA. An area may be known to consumers as a grape-growing region whether or not grape/wine production is important to the overall economy of the area, and, accordingly, we do not believe adding this consideration would be appropriate.

Comments on Whether Approval of a Smaller AVA Should Prevent Use of a Larger Surrounding AVA Name and Whether Nesting of AVAs Should Be Eliminated

In proposed § 9.12(b), which concerns AVAs within AVAs, we stated:

> If the petition proposes the establishment of a new AVA entirely within, or overlapping, an existing AVA, the evidence submitted under paragraph (a) of this section must include information that both identifies the attributes of the proposed AVA that are consistent with the existing AVA and explains how the proposed AVA is sufficiently distinct from the existing AVA and therefore appropriate for separate recognition. If the petition proposes the establishment of a new AVA that is larger than, and encompasses, all of one or more existing AVAs, the evidence submitted under paragraph (a) of this section must include information addressing whether, and to what extent, the attributes of the proposed AVA are consistent with those of the existing AVA(s). In any case in which an AVA would be created entirely within another AVA, whether by the establishment of a new, larger AVA or by the establishment of a new AVA within an existing AVA, the petition must dispel any apparent inconsistency or explain why it is acceptable. When a smaller AVA has name recognition and features that so clearly distinguish it from a larger AVA that surrounds it, TTB may determine in the course of the rulemaking that it is not part of the larger AVA and that wine produced from grapes grown within the smaller AVA would not be entitled to use the name of the larger AVA as an appellation of origin or in a brand name.

As noted above, in the "comments invited" section of Notice No. 78, TTB asked whether in some or all cases the establishment of a smaller AVA located within the boundaries of a larger AVA should result in a prohibition against the use of the larger AVA name on wine labels. Twenty-four commenters specifically address this question—two in favor of such a prohibition and 22 opposed to it.

One of the two commenters in favor asserted that more than one AVA on one wine label is inherently contradictory to the regulations in proposed § 9.12(b). This commenter further stated that nesting "weakens consumer understanding of AVAs." Though opposed to the concept of nesting, this commenter stated that it is unfair to change the regulations by not allowing wine producers to put both the sub-AVA and larger AVA on its wine labels. This commenter suggested that TTB allow wine producers to use sub-AVAs in conjunction with "political appellations."

The other commenter in favor of such a prohibition expressed concern that some small AVAs within larger AVAs "are not based on oenological, environmental, topographical or historical differences but are intended for an egotistical or economical basis, only." For this reason, this commenter supported the proposed changes regarding the establishment of an AVA within another AVA.

Of the 22 comments in opposition to the proposed regulatory text, many of them argued, in essence, that an AVA within a larger AVA makes sense, helps to better identify and define the wine, is already part of the existing AVA program (many businesses established and built themselves up based on this concept), and coincides with other countries' practices. For example, one commenter stated that "more than three-fourths of all existing AVAs are located inside another AVA * * * AVAs within AVAs help consumers both better understand viticultural distinctions that may exist within a larger AVA and gain information about the origin and thus value of a particular wine."

Commenters who opposed this proposal also asserted that it is always better for the consumer to have more information about where a wine comes from. Some pointed out that the use of the larger, and therefore probably more well-known, AVA name aids the consumer in determining where the sub-AVA is located.

A commenter on behalf of Premier Pacific Vineyards stated that the proposals in Notice No. 78 "will have tangible negative effects on wine consumers and the industry." This commenter further stated, "Not allowing producers to list all the information on the wine's origin by limiting the description to a small AVA without providing the often more familiar larger AVA, removes useful information from the consumer. Changing the rules in a way that makes the origin of wine and labeling more confusing or less descriptive represents a disservice to the consumer."

The president of Appellation St. Helena, which represents 60 wineries and 7 vineyards, stated that this provision is "a huge step backward" and that it "flies in the face of all of the other great wine growing regions worldwide that go to great lengths to encourage detailed naming of specific places."

A commenter affiliated with the University of California, Davis, wrote that the "concept of hierarchical classification, or nesting finer-scale places within courser-scale places, is both global and almost ubiquitous." Further, as an analogy to different levels for specifying AVAs, several commenters discussed the classification system of dogs. These commenters wrote that a Yorkie is a Terrier which is a dog. They further stipulated that no one will refute the fact that though a Yorkie is not the same as all terriers and a Terrier is not the same as all dogs, they are all in fact dogs and therefore share similar characteristics.

With regard to the companion issue of whether the nesting of AVAs should be eliminated, TTB received 36 comments, all in opposition. Many of these commenters share the belief that nesting

is a common worldwide practice that consumers understand.

One of these commenters stated:

> An AVA contained within a larger AVA is and should remain part of the larger AVA * * * Informed consumers already understand that viticultural distinctiveness is measured at multiple levels. Most major wine producing countries recognize this fact and formally incorporate varying levels of viticultural distinctiveness into their regulations. For example, Australia's regulations describe zones, regions, and sub-regions, all of which are geographical indications of the source of grapes, which, like AVAs, contain no quality controls or quality connotations, but which require a showing of varying levels of viticultural distinctiveness; Chile has regions and sub-regions; and in France, the Burgundy and Bordeaux appellations are divided into districts, communes and even smaller appellation areas. Formal regulatory recognition of multiple levels of viticultural distinctiveness exists throughout the world because such recognition leads to logical, organized and understandable appellations of origin and, ultimately, well-informed consumers. In none of these countries are smaller AVAs carved out from surrounding, larger AVAs.

A commenter on behalf of the PRAVAC argued that "every appellation system in the world utilizes geographic nesting to specify the origin of wines, and consumers worldwide are already familiar with this concept." This commenter further stated that "nesting itself is fundamental to the existence of a meaningful appellation system * * * TTB must not enact rules that threaten this structure."

A commenter on behalf of Premier Vineyards wrote that "nested or telescoping AVAs are consistent with the TTB's goal of identifying and defining geographic areas (AVAs) that have unique geographic features that result in distinctive grapes and wine." However, another commenter on behalf of Sonoma County Vintners stated that "this does not mean that TTB should not limit overlaps that do not meet the tests for creating an AVA."

TTB Response

TTB believes there is merit in the comments received asserting that nesting should not be prohibited, and that recognition of a smaller AVA should not by definition prohibit the use of the viticultural name of the larger AVA in which it lies. TTB agrees that consumer interests are served by greater specificity within a hierarchy, where a true hierarchy exists.

However, TTB notes that a determination that a hierarchy of grape-growing regions based on similar yet distinguishable geographical features exists, rather than a situation in which an entirely different grape-growing region lies within another grape-growing region, must be based on the facts related to the geographical features presented in the AVA petition under consideration. The comments received in response to Notice No. 78 do not convince us that the mere fact that a proposed AVA would be located within an existing AVA is sufficient to allow the use of either the existing AVA name or the proposed AVA name, at the sole discretion of the vintner.

For example, if an existing AVA is defined as being a large valley and its distinguishing geographical features are those that are found on the valley floor, it may be appropriate to approve a proposed AVA described as being situated in whole or in part on the same valley floor within the existing AVA if the proposed AVA shares some of the geographical features with the existing AVA but at the same time has other geographical features that are sufficiently distinctive as to warrant its own AVA designation. On the other hand, if within that large valley AVA there is a mountain on which a petitioner proposes to establish a new AVA above the 500-foot elevation line, the evidence provided in the petition might demonstrate that the distinguishing features of the proposed AVA bear no relationship to those of the valley floor. In the latter case, the new petition has demonstrated that this is not a hierarchical situation involving some sharing of common features but rather is a proposal to establish an entirely distinctive AVA. In such a case, TTB believes it may be inappropriate to take a regulatory action that could cause consumers mistakenly to conclude that wine produced from grapes grown within the petitioned-for AVA has the same characteristics as wine produced from grapes grown in the existing AVA.

Based on our experience in reviewing petitions for the establishment of AVAs, we have found that in the vast majority of cases petitioners who propose the establishment of an AVA within an existing AVA, and who provide evidence that there are sufficiently distinguishable geographical features in the proposed AVA to warrant its recognition, can also establish through the evidence submitted that the proposed AVA has some geographical features that are sufficiently similar to those of the existing AVA so as to allow it still to be considered a part of the existing AVA. In those very rare instances in which no notable common geographical features between the two AVAs can be found, we believe that permitting the use of both AVA names for wine sourced from the grapes grown within the proposed AVA could be misleading to the consumer, and it would not be appropriate for TTB to take regulatory action which would produce that result.

After careful consideration of the comments submitted, TTB has determined that it would be inappropriate to adopt regulatory language that prohibits future approvals of AVAs that entirely surround or lie entirely within, or that overlap, existing AVAs, provided such approvals are adequately justified through petition evidence and rulemaking procedures. TTB also believes that the decision as to whether or not a proposed AVA that entirely surrounds, lies entirely within, or overlaps, an existing AVA should prohibit label holders from using the existing AVA name on the wine labels as well should be made on a case-by-case basis considering the evidence submitted by the proposing AVA petitioner. The regulatory language as proposed in Notice No. 78 is consistent with these principles and will afford sufficient flexibility under the case-by-case approach. TTB notes the intent of the provisions dealing with AVAs within AVAs is to apply it prospectively to newly established areas only. AVAs already established within AVAs will not be affected by these provisions.

Comments on the New Part 4 Grandfather Provision

The text proposed in Notice No. 78 for new § 4.39(i)(3) stated:

> (3) Brand names that do not meet the requirements of paragraph (i)(2) of this section and that contain the name of a viticultural area or other term of viticultural significance established under part 9 of this chapter on or after [INSERT EFFECTIVE DATE OF FINAL RULE] may be used in conjunction with information which the appropriate TTB officer finds to be sufficient to dispel the impression that the geographic area suggested by the brand name is indicative of the origin of the wine, provided that the brand name:
>
> (i) Was used in an existing certificate of label approval issued prior to the 5-year period immediately preceding receipt of the perfected petition for establishment of the viticultural area; and
>
> (ii) Was in actual commercial use on labels for at least 3 years during that 5-year period.

As noted above, in the "comments invited" section of Notice No. 78, TTB asked whether the use of a grandfather provision to avoid conflicts between an established brand name and the establishment of a proposed AVA is appropriate. Of the 191 comments received, 107 comments specifically addressed this issue—2 in favor of using such a grandfather provision and 105 opposed to its use.

A commenter on behalf of Compliance Service of America, whose services include the preparation and filing of AVA petitions, stated in favor of the grandfather provision, "It is understandable the TTB sees this problem and its effect more completely than many industry members, because TTB has been forced to find the solutions for the competing interests of the parties." This commenter further stated, "The problem of conflicts between new AVAs and existing brands continues to exist and is becoming even more prevalent as more * * * AVAs are created. With the growth of the US wine industry and the proliferation of AVAs, conflicts will only become more frequent, and will continue to be devastating to wineries that have literally put the viticultural area on the map." This commenter cited the petitioned-for Eola Hills AVA as an example, pointing out that Eola Hills Winery developed the region as a grape-growing region and essentially created the viticultural significance of the name Eola Hills. The commenter asserted that the establishment of the AVA would have had an adverse impact on the use of the winery's brand name and noted that the problem was narrowly avoided by adding a modifier to the AVA name so that the AVA name established is Eola-Amity Hills.

A commenter representing Calistoga Partners, L.P., also in favor of the grandfather provision, wrote:

> We believe that TTB's proposed rulemaking in Notice No. 78 is fundamentally a fair resolution of the potential conflicts between the rights of brand owners who had brand names in actual commercial use based on existing certificates of label approval and the rights of those who wish to establish a new AVA, and represents a reasonable compromise that we would strongly support.

Most of the 105 commenters who opposed the grandfather provision wrote that they believe the proposed provision would allow misleading, confusing, and/or deceptive wine labels in the marketplace and thereby harm consumers. Many of these commenters further asserted that the grandfather provision will have far reaching consequences that will degrade the integrity of the AVA system. A number of these commenters specifically referred to the issues discussed in Notice No. 77, regarding the proposed establishment of a Calistoga viticultural area, as an example of problems that a grandfather provision can create.

The president of the Washington Wine Institute wrote that the grandfather proposals put forth in Notice No. 78 "are not sufficient to protect against deceptive labeling and consumer misunderstanding; in fact, they are a step backwards from both industry and governmental efforts to provide consumers with accurate and comprehensible information about the wine in the bottle."

The commenter on behalf of the PRAVAC wrote:

> Current law applies two different sets of labeling rules for the industry: One set of rules applies to geographic brands used in COLAs issued prior to July 7, 1986, and a different set—the labeling rules set forth in the current regulations—governs every other geographic brand in the U.S. marketplace. While not a perfect solution, at least these two groups are easily identifiable and not subject to change. The number of grandfathered brands with misdescriptive names is finite, thus limiting the chances for consumer deception.

This commenter further stated that the proposed changes to the regulations would create three sets of labeling rules: (1) For brands on COLAs issued prior to July 7, 1986; (2) for geographic brands used on COLAs issued at least 5 years prior to the date on which a petition for a conflicting AVA is "perfected" that also have been used in commerce for at least 3 of those 5 years; and (3) for brands on COLAs that do not fall into either of the preceding categories. This commenter added that "this solution is inadvisable." This commenter also provided an example of a name conflict involving a petitioned-for AVA within the Paso Robles AVA, the proposed El Pomar District AVA, which was resolved with the owners of the potentially conflicting COLAs by their consenting to the use of the proposed AVA name prior to submission of the petition.

The president of the industry trade association Wine America, wrote:

> The grandfathering clause would allow already existing geographic brand names that contain a reference to a new AVA to continue to be used as long as they were on a COLA approved at least five years before filing of an AVA petition and have been in actual commercial use for at least three years of those five years. This change in regulation is driven by concern that petitioners may propose AVAs to limit competition to the detriment of established businesses.

This commenter added that this proposal "creates consumer confusion, it undermines the value of the appellation for wineries properly using the appellation, and we believe the TTB has sufficient authority to resolve such conflicts through other means."

The president of the board of directors for the Napa Valley Vintners trade association raised concern on the issue, stating:

> This proposed rule requiring five years of ownership of COLA and three years of use in commerce * * * is contrary to TTB's consumer protection mandate set under the FAA Act. It has no basis in, and is contrary to, recognized trademark and unfair competition law and does not comport with the provisions of Article 23 of the Agreement on Trade-Related Aspects of Intellectual Property Rights * * *. As mandated by the FAA Act, TTB's primary function in the regulation of wine labeling is to protect consumers by ensuring that they are not misled. The proposed grandfather rule in Notice No. 78 is contrary to this Congressional mandate.

Many of the commenters indicated that they believe the current regulations in existence for more than 20 years are fair to all concerned and do not believe it is fair to change this provision now because industry members have been playing by these rules for 20 plus years. Several commenters pointed to TTB's regulations, which prohibit the use of misleading and deceptive labeling. Other commenters pointed out that TTB has the responsibility to protect the public from misleading labels.

One commenter further asserted that the grandfather provisions are not in line with the FAA Act. This commenter pointed to the TTB regulations that outline the label revocation procedure set forth in 27 CFR part 13, subpart D. In discussing the establishment of this procedure, this commenter stated that TTB made the following observation, "Paragraph 1 of Form 5100.31 [Application for and Certification/ Exemption of Label/Bottle Approval] does not constitute trademark protection."

A commenter on behalf of the International Trademark Association wrote:

> [The] proposal advocated by TTB fails to properly consider the principle of "first in time, first in right" priority and the fact that U.S. trademark and unfair competition laws recognize the establishment of rights in trademarks and geographical indications based on use and consumer recognition without the necessity of any type of registration. Accordingly, the grandfather proposal advocated in NPRM No. 78, and effectively applied in NPRM No. 77, does not ensure that the valid rights of either trademark owners or the users of geographical indications or the interest of consumers, will be protected.

As noted above, in the "comments invited" section of Notice No. 78, TTB asked whether it would be more appropriate to adopt an alternative to the grandfather provision that would apply to brand names that have longstanding commercial use under one or more existing certificates of label approval without specifying a time period. Four commenters specifically

responded to this question—all in opposition to the use of such an alternative.

Also as noted above, in the "comments invited" section of Notice No. 78, TTB asked for comments on what type of dispelling information would prevent consumers from being misled as to the origin of the wine when a grandfather provision applies as well as for other comments for a requirement on dispelling information. Twenty-two commenters specifically responded to this comment solicitation, all in opposition to using dispelling information to avoid misleading consumers.

Several of these commenters stated that disclaimers will not be effective in avoiding the misleading of consumers when consumers are purchasing wine from a wine list in a restaurant or online. For example, the Napa Chamber of Commerce believes that "disclaimers hidden on back labels do not help consumers make informed choices when choosing from a wine list." In addition, the president of Duckhorn Wine Company stated that "additional wording on the label to help clarify the origin of wines * * * will not dispel confusion as most consumers will not see the label before they order wine in a restaurant or purchase wine online." Another commenter wrote, "Consumers purchasing wine via mail-order or the Internet * * * purchase wine with brand names that include wine region names with the belief that the wine is from the region identified in the brand name."

Some commenters provided references to studies that indicate that dispelling information is not effective in avoiding consumer deception or confusion. One commenter stated that "more frequently courts have found disclaimers to be ineffective," and that "[t]his judicial skepticism over disclaimers is supported by the scholarly literature" such as the article by Jacob Jacoby and George Szybillo entitled "Why Disclaimers Fail." The commenter noted that "disclaimers generally are not likely to be effective because the information provided does not automatically translate into the desired effect, i.e., comprehension." This commenter also added that "using a disclaimer or other dispelling label information to suggest that wine with a misleading geographic brand name is not from the place identified * * * will be ineffective because consumers will neither read nor absorb the disclaimer information in the retail purchase environment."

Finally, as noted above, in Notice No. 78 TTB proposed a 5-year/3-year standard for applying the proposed new grandfather provision in § 4.39(i) when it is not possible otherwise to limit the adverse impact on established brand names when a new AVA is approved. In order for the grandfather provision to apply to a brand name, the COLA for the label carrying that brand name must have been issued at least 5 years prior to the receipt of the perfected petition for establishment of the new AVA. Additionally, the label in question must have been in actual commercial use for at least 3 years during that 5-year period.

A few commenters specifically opposed this provision. The commenter on behalf of the International Trademark Association wrote, "This 5-year COLA/3-year in use rule is arbitrary and capricious and does not reflect any recognized standard for the acquisition of trademark rights and does not protect the rights of trademark owners."

TTB Response

The comments in opposition to the addition of a new grandfather provision to § 4.39(i), in part, have caused us to reassess our proposal. In response to the two comments favoring the grandfather provision, as noted below, in almost all cases in which a potential conflict has arisen between a proposed new AVA name and a brand name used on a label, our predecessor agency and we have been able to find a mutually satisfactory solution that would permit the establishment of the AVA with the least negative impact on current label holders while also protecting consumers. We believe that we will continue to be able to resolve future conflicts this way without need for a new grandfather provision. We recognize that there may be the rare case in which a mutually satisfactory solution cannot be found. In such cases we believe that a case-by-case resolution is a better approach than to create a new grandfather provision as a default resolution. Moreover, we believe that adoption of the new grandfather provision as proposed could lead to over-reliance on it, thus unnecessarily increasing the use of labels that must carry dispelling information, and could increase the risk of consumer confusion. Accordingly, we have determined not to adopt the new grandfather provision proposed in Notice No. 78. We reserve reconsideration of this issue in the future should circumstances warrant.

In the past, when a conflict has arisen between an existing approved label and a proposed AVA name, TTB or its predecessor agency, the viticultural area petitioners, and/or the affected label holders usually have been able to satisfactorily resolve the conflict. For example, we have approved a modified name for the AVA, as in the case of the "Oak Knoll District of Napa Valley" viticultural area (T.D. TTB–9, 69 FR 8562) and the "Diamond Mountain District" viticultural area (T.D. ATF–456, 66 FR 29698), or we have approved an entirely different name, as in the case of the "Chalone" viticultural area (T.D. ATF–107, 47 FR 25519). In these and similar cases, TTB or its predecessor agency found that name evidence supported the use of the modified or different name, that the modified or different name was associated with the proposed viticultural area boundaries, and that use of the approved name reduced potential consumer confusion with long-standing existing labels. The commenter on behalf of Compliance Service of America described a similar circumstance involving the proposed "Eola Hills" name in a comment cited above.

We have also in some cases designated new AVAs that limit the use of existing labels when the affected label holders have indicated that they understood the restrictive effect and did not object to the designation (*e.g.,* "Lake Chelan" AVA, T.D. TTB–76, published in the **Federal Register** at 74 FR 19409 on April 29, 2009). In another case we withdrew the proposal to establish the AVA for insufficient name evidence while acknowledging the principle that an established brand name could be a factor in deciding not to establish a proposed AVA because it would create consumer confusion (see Notice No. 84, published in the **Federal Register** at 73 FR 34902 on June 19, 2008, withdrawing the "Tulocay" AVA proposal). And in the recent "Calistoga" AVA case, we resolved the issue by providing a three-year transitional period to afford the affected brand name holders time to adjust their business models to the new AVA rule (*see* T.D. TTB–83, published in the **Federal Register** at 74 FR 64602 on December 8, 2009). In all of these cases, TTB and its predecessor agency, most often with the cooperation of the affected parties, have been able to resolve the issue without the need for a new grandfather provision under § 4.39(i).

We believe it is preferable for all the parties who would be affected by AVA rulemaking to resolve any conflicts through solutions that protect the interests of, and are acceptable to, all concerned parties, including consumers, rather than to rely on TTB to resolve the issue through rulemaking. We continue to believe that most conflicts can be resolved in such a manner. As such,

TTB will continue to seek resolution of these conflicts on a case-by-case basis.

As to the comments regarding dispelling information that would have been required as part of a grandfathering standard under the proposed rule, we continue to believe that dispelling information is appropriate and effective in certain situations, but because we are not adopting a grandfathering standard with a dispelling information requirement in this final rule, we do not need to respond further to these comments.

Regarding the comment that our regulatory proposal would be in conflict with international agreements and trademark rights, the decision not to include a grandfather provision in this final rule makes it unnecessary to address the comment in this rulemaking.

Finally, we have decided not to adopt any of the other proposed editorial-type changes to § 4.39(i) because any change may result in unintended debate and confusion as to its interpretation.

Comments on Whether the Part 9 Procedural Provisions Should Be Adopted

In Notice No. 78, TTB proposed amendments to the part 9 texts to clarify the rules for preparing, submitting, and processing AVA petitions. A few commenters specifically addressed these changes, stating that while they are not opposed to the proposed procedural changes, they do not see them as necessary. Other commenters stated that the current regulations work well for the industry and consumers, and one commenter specifically mentioned the "Draft AVA Manual" developed by TTB as a useful document in preparing an AVA petition.

TTB Response

TTB has determined that the proposed regulatory provisions in question should be adopted without change. TTB proposed these regulatory changes based on what we have learned over the years in reviewing and acting on AVA petitions. We will strengthen the process through providing more effective guidance to the public by including details in our regulations on how to petition for the establishment or modification of an AVA and on what evidence is necessary to support a petition, and by clearly stating the actions we might take in response to petitions or comments received. The regulatory changes in question do not impose new standards but rather represent a codification of longstanding administrative authority and practice and address a need for greater transparency regarding the AVA regulatory process. Finally, with regard to the "Draft AVA Manual," we do not believe that such a publication is an appropriate substitute for clear, detailed, regulatory texts.

Comments on Statements of Viticultural Significance

In Notice No. 78, TTB proposed to amend existing sections within subpart C of part 9 by adding statements regarding the viticultural significance for wine labeling purposes of viticultural area names or key portions of those names. One commenter stated that "TTB should [not] promulgate terms of viticultural significance without explaining the criteria for the selection so that the industry can provide meaningful comments."

TTB Response

At this time, TTB is reserving the addition of regulatory text delineating which terms TTB would consider to have viticultural significance for possible future rulemaking. Such future rulemaking would provide TTB with the opportunity to gather additional information concerning the impact of such changes on existing brand names. In the interim, TTB's existing authority to determine terms of viticultural significance is unaffected (*see* 27 CFR 4.39(i)(3)).

Conclusion

Accordingly, we are adopting the proposed regulatory amendments with the changes as discussed above. We have also made several non-substantive, editorial changes to the regulatory texts to enhance their readability and precision.

Regulatory Analysis and Notices

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Regulatory Flexibility Act

We certify that these regulations, if adopted, would not have a significant economic impact on a substantial number of small entities. These regulations more specifically state the type of explanations a petitioner must submit in order to support the establishment of a new viticultural area or modify an existing area, but these regulations would not impose additional associated costs because the specific data that petitioners would rely on to develop these explanations under these revised regulations are already a part of the data set required of petitioners under existing rules. As noted in Notice No. 78 and in this final rule document, the regulatory amendments do not impose new standards but rather represent a codification of longstanding administrative authority and practice. Therefore, no regulatory flexibility analysis is required.

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1513–0127. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this regulation is in 27 CFR 9.11 and 9.12. This information is required to petition TTB to establish a new AVA or to change an existing AVA. This information will be used to verify evidence sources and to determine whether the information is sufficient to begin the rulemaking process (that is, proceed to a notice of proposed rulemaking). The collection of information is required to obtain a benefit. The likely respondents are non-profit institutions and small businesses or organizations.

Drafting Information

Rita D. Butler of the Regulations and Rulings Division drafted this document.

List of Subjects

27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, and Wine.

27 CFR Part 9

Wine.

27 CFR Part 70

Administrative practice and procedure, Claims, Excise taxes, Freedom of information, Law enforcement, Penalties, Reporting and recordkeeping requirements, and Surety bonds.

Amendments to the Regulations

For the reasons discussed in the preamble, TTB amends 27 CFR, chapter I, parts 4, 9, and 70, as follows:

PART 4—LABELING AND ADVERTISING OF WINE

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

Authority: 27 U.S.C. 205, unless otherwise noted.

■ 2. In § 4.25, paragraphs (e)(1)(i) and (e)(2) are revised to read as follows:

§ 4.25 Appellations of origin.

* * * * *

(e) *Viticultural area*—(1) *Definition*—(i) *American wine.* A delimited grape-growing region having distinguishing features as described in part 9 of this chapter and a name and a delineated boundary as established in part 9 of this chapter.

* * * * *

(2) *Establishment of American viticultural areas.* A petition for the establishment of an American viticultural area may be made to the Administrator by any interested party, pursuant to part 9 and § 70.701(c) of this chapter. The petition must be made in written form and must contain the information specified in § 9.12 of this chapter.

* * * * *

PART 9—AMERICAN VITICULTURAL AREAS

■ 3. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

■ 4. A new § 9.0 is added before subpart A to read as follows:

§ 9.0 Scope.

The regulations in this part relate to American viticultural areas created under the authority of the Federal Alcohol Administration Act and referred to in § 4.25(e) of this chapter.

■ 5. Subpart A is revised to read as follows:

Subpart A—General Provisions

Sec.
9.1 Definitions.
9.2 Territorial extent.
9.3 Delegations of the Administrator.

Subpart A—General Provisions

§ 9.1 Definitions.

(a) *General.* For purposes of this part, and unless the specific context otherwise requires, the following terms shall have the meanings indicated:

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

American viticultural area. A viticultural area as defined in § 4.25(e)(1)(i) of this chapter.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.9, Delegation of the Administrator's Authorities in 27 CFR Part 9, American Viticultural Areas.

Approved map. The U.S.G.S. map(s) used to define the boundary of an approved AVA.

AVA. An American viticultural area.

Perfected petition. A petition containing all of the evidence meeting the requirements of § 9.12 and containing sufficient supporting information for TTB to decide whether or not to proceed with rulemaking to establish a new AVA or to change an existing AVA.

Person. An individual, partnership, association, corporation, or other entity.

Petition. A written request to establish a new AVA or to change an existing AVA, signed by the petitioner or an authorized agent of the petitioner, and submitted in accordance with this part and § 70.701(c) of this chapter.

Petitioner. An individual or entity that submits a petition to TTB.

Term of viticultural significance. A name recognized under § 4.39(i)(3) of this chapter.

TTB. The Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

U.S.G.S. The United States Geological Survey.

(b) *Use of other terms.* Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the same meaning assigned to it by that Act.

§ 9.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia, and Puerto Rico.

§ 9.3 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. Those TTB officers are specified in TTB Order 1135.9, Delegation of the Administrator's Authorities in 27 CFR Part 9, American Viticultural Areas. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 6. Subpart B is revised to read as follows:

Subpart B—AVA Petitions

Sec.
9.11 Submission of AVA petitions.
9.12 AVA petition requirements.
9.13 Initial processing of AVA petitions.
9.14 AVA rulemaking process.

Subpart B—AVA Petitions

§ 9.11 Submission of AVA petitions.

(a) *Procedure for petitioner.* Any person may submit an AVA petition to TTB to establish a grape-growing region as a new AVA, to change the boundary of an existing AVA, or to change the name of an existing AVA. The petitioner is responsible for including with the petition all of the information specified in § 9.12. The person submitting the petition is also responsible for providing timely and complete responses to TTB requests for additional information to support the petition.

(b) *How and where to submit an AVA petition.* The AVA petition may be sent to TTB using the U.S. Postal Service or a private delivery service. A petition sent through the U.S. Postal Service should be addressed to: Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20220. A petition sent via a private delivery service should be directed to: Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, Suite 200E, 1310 G Street, NW., Washington, DC 20005.

(c) *Purpose and effect of submission of AVA petitions.* The submission of a petition under this subpart is intended to provide TTB with sufficient documentation to propose the establishment of a new AVA or to propose changing the name or boundary of an existing AVA. After considering the petition evidence and any other relevant information, TTB shall decide what action to take in response to a petition and shall so advise the petitioner. Nothing in this chapter shall, or shall be interpreted to, compel any Department of the Treasury official to proceed to rulemaking in response to a submitted petition.

§ 9.12 AVA petition requirements.

(a) *Establishment of an AVA in general.* A petition for the establishment of a new AVA must include all of the evidentiary materials and other information specified in this section. The petition must contain sufficient information, data, and evidence such that no independent verification or research is required by TTB.

(1) *Name evidence.* The name identified for the proposed AVA must

be currently and directly associated with an area in which viticulture exists. All of the area within the proposed AVA boundary must be nationally or locally known by the name specified in the petition, although the use of that name may extend beyond the proposed AVA boundary. The name evidence must conform to the following rules:

(i) *Name usage.* The petition must completely explain, in narrative form, the manner in which the name is used for the area covered by the proposed AVA.

(ii) *Source of name and name evidence.* The name and the evidence in support of it must come from sources independent of the petitioner. Appropriate name evidence sources include, but are not limited to, historical and modern government or commercial maps, books, newspapers, magazines, tourist and other promotional materials, local business or school names, and road names. Whenever practicable, the petitioner must include with the petition copies of the name evidence materials, appropriately cross-referenced in the petition narrative. Although anecdotal information by itself is not sufficient, statements taken from local residents with knowledge of the name and its use may also be included to support other name evidence.

(2) *Boundary evidence.* The petition must explain in detail the basis for defining the boundary of the proposed AVA as set forth in the petition. This explanation must have reference to the name evidence and other distinguishing features information required under this section. In support of the proposed boundary, the petition must outline the commonalities or similarities within that boundary and must explain with specificity how those elements are different in the adjacent areas outside that boundary.

(3) *Distinguishing features.* The petition must provide, in narrative form, a description of the common or similar features of the proposed AVA affecting viticulture that make it distinctive. The petition must also explain with specificity in what way these features affect viticulture and how they are distinguished viticulturally from features associated with adjacent areas outside the proposed AVA boundary. For purposes of this section, information relating to distinguishing features affecting viticulture includes the following:

(i) *Climate.* Temperature, precipitation, wind, fog, solar orientation and radiation, and other climate information;

(ii) *Geology.* Underlying formations, landforms, and such geophysical events as earthquakes, eruptions, and major floods;

(iii) *Soils.* Soil series or phases of a soil series, denoting parent material, texture, slope, permeability, soil reaction, drainage, and fertility;

(iv) *Physical features.* Flat, hilly, or mountainous topography, geographical formations, bodies of water, watersheds, irrigation resources, and other physical features; and

(v) *Elevation.* Minimum and maximum elevations.

(4) *Maps and boundary description.* (i) *Maps.* The petitioner must submit with the petition, in an appropriate scale, the U.S.G.S. map(s) showing the location of the proposed AVA. The exact boundary of the AVA must be prominently and clearly drawn on the maps without obscuring the underlying features that define the boundary line. U.S.G.S. maps may be obtained from the U.S. Geological Survey, Branch of Distribution. If the map name is not known, the petitioner may request a map index by State.

(ii) *Boundary description.* The petition must include a detailed narrative description of the proposed AVA boundary based on U.S.G.S. map markings. This description must have a specific beginning point, must proceed unbroken from that point in a clockwise direction, and must return to that beginning point to complete the boundary description. The boundary description must refer to easily discernable reference points on the U.S.G.S. maps. The proposed AVA boundary description may rely on any of the following map features:

(A) State, county, township, forest, and other political entity lines;

(B) Highways, roads (including unimproved roads), and trails;

(C) Contour or elevation lines;

(D) Natural geographical features, including rivers, streams, creeks, ridges, and marked elevation points (such as summits or benchmarks);

(E) Human-made features (such as bridges, buildings, windmills, or water tanks); and

(F) Straight lines between marked intersections, human-made features, or other map points.

(b) *AVAs within AVAs.* If the petition proposes the establishment of a new AVA entirely within, or overlapping, an existing AVA, the evidence submitted under paragraph (a) of this section must include information that both identifies the attributes of the proposed AVA that are consistent with the existing AVA and explains how the proposed AVA is sufficiently distinct from the existing AVA and therefore appropriate for separate recognition. If the petition proposes the establishment of a new AVA that is larger than, and encompasses, all of one or more existing AVAs, the evidence submitted under paragraph (a) of this section must include information addressing whether, and to what extent, the attributes of the proposed AVA are consistent with those of the existing AVA(s). In any case in which an AVA would be created entirely within another AVA, whether by the establishment of a new, larger AVA or by the establishment of a new AVA within an existing one, the petition must explain why establishment of the AVA is acceptable. When a smaller AVA has name recognition and features that so clearly distinguish it from a larger AVA that surrounds it, TTB may determine in the course of the rulemaking that it is not part of the larger AVA and that wine produced from grapes grown within the smaller AVA would not be entitled to use the name of the larger AVA as an appellation of origin or in a brand name.

(c) *Modification of an existing AVA.*

(1) *Boundary change.* If a petition seeks to change the boundary of an existing AVA, the petitioner must include with the petition all relevant evidence and other information specified for a new AVA petition in paragraphs (a) and (b) of this section. This evidence or information must include, at a minimum, the following:

(i) *Name evidence.* If the proposed change involves an expansion of the existing boundary, the petition must show how the name of the existing AVA also applies to the expansion area. If the proposed change would result in a decrease in the size of an existing AVA, the petition must explain, if so, the extent to which the AVA name does not apply to the excluded area.

(ii) *Distinguishing features.* The petition must demonstrate that the area covered by the proposed change has, or does not have, distinguishing features affecting viticulture that are essentially the same as those of the existing AVA. If the proposed change involves an expansion of the existing AVA, the petition must demonstrate that the area covered by the expansion has the same distinguishing features as those of the existing AVA and has different features from those of the area outside the proposed, new boundary. If the proposed change would result in a decrease in the size of an existing AVA, the petition must explain how the distinguishing features of the excluded area are different from those within the boundary of the smaller AVA. In all

cases the distinguishing features must affect viticulture.

(iii) *Boundary evidence and description.* The petition must explain how the boundary of the existing AVA was incorrectly or incompletely defined or is no longer accurate due to new evidence or changed circumstances, with reference to the name evidence and distinguishing features of the existing AVA and of the area affected by the proposed boundary change. The petition must include the appropriate U.S.G.S. maps with the proposed boundary change drawn on them and must provide a detailed narrative description of the changed boundary.

(2) *Name change.* If a petition seeks to change the name of an existing AVA, the petition must establish the suitability of that name change by providing the name evidence specified in paragraph (a)(1) of this section.

§ 9.13 Initial processing of AVA petitions.

(a) *TTB notification to petitioner of petition receipt.* The appropriate TTB officer will acknowledge receipt of a submitted petition. This notification will be in a letter sent to the petitioner within 30 days of receipt of the petition.

(b) *Acceptance of a perfected petition or return of a deficient petition to the petitioner.* The appropriate TTB officer will perform an initial review of the petition to determine whether it is a perfected petition. If the petition is not perfected, the appropriate TTB officer will return it to the petitioner without prejudice to resubmission in perfected form. If the petition is perfected, TTB will decide whether to proceed with rulemaking under § 9.14 and will advise the petitioner in writing of that decision. If TTB decides to proceed with rulemaking, TTB will advise the petitioner of the date of receipt of the perfected petition. If TTB decides not to proceed with rulemaking, TTB will advise the petitioner of the reasons for that decision.

(c) *Notice of pending petition.* When a perfected petition is accepted for rulemaking, TTB will place a notice to that effect on the TTB Web site.

§ 9.14 AVA rulemaking process.

(a) *Notice of proposed rulemaking.* If TTB determines that rulemaking in response to a petition is appropriate, TTB will prepare and publish a notice of proposed rulemaking (NPRM) in the **Federal Register** to solicit public comments on the petitioned-for AVA action.

(b) *Final action.* Following the close of the NPRM comment period, TTB will review any submitted comments and any other available relevant information and will take one of the following actions:

(1) Prepare a final rule for publication in the **Federal Register** adopting the proposed AVA action, with or without changes;

(2) Prepare a notice for publication in the **Federal Register** withdrawing the proposal and setting forth the reasons for the withdrawal. Reasons for withdrawal of a proposal must include at least one of the following:

(i) The extent of viticulture within the proposed boundary is not sufficient to constitute a grape-growing region as specified in § 9.11(a); or

(ii) The name, boundary, or distinguishing features evidence does not meet the standards for such evidence set forth in § 9.12; or

(iii) The petitioned-for action would be inconsistent with one of the purposes of the Federal Alcohol Administration Act or any other Federal statute or regulation or would be otherwise contrary to the public interest;

(3) Prepare a new NPRM for publication in the **Federal Register** setting forth a modified AVA action for public comment; or

(4) Take any other action deemed appropriate by TTB as authorized by law.

PART 70—PROCEDURE AND ADMINISTRATION

■ 7. The authority citation for part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656–6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

■ 8. Section 70.701 is amended by adding a sentence at the end of paragraph (c) to read as follows: "A petition to establish a new American viticultural area or to modify an existing American viticultural area is subject to the rules in part 9 of this chapter."

Signed: October 1, 2010.

John J. Manfreda,

Administrator.

Approved: October 1, 2010.

Timothy E. Skud,

Deputy Assistant Secretary, (Tax, Trade, and Tariff Policy).

[FR Doc. 2011–1138 Filed 1–19–11; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 19, 24, 25, 26, 40, 41, and 70

[Docket No. TTB–2011–0001; T.D. TTB–89; Re: Notice No. 115; T.D. ATF–365; T.D. TTB–41; ATF Notice No. 813 and TTB Notice No. 56]

RIN 1513–AB43

Time for Payment of Certain Excise Taxes, and Quarterly Excise Tax Payments for Small Alcohol Excise Taxpayers

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Temporary rule; Treasury decision.

SUMMARY: This temporary rule updates and reissues Alcohol and Tobacco Tax and Trade Bureau regulations pertaining to the semimonthly payments of excise tax on distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes, and also reissues temporary regulations regarding quarterly payment of excise tax for small alcohol excise taxpayers. The temporary regulations adopted in this document replace temporary regulations issued under T.D. ATF–365 and T.D. TTB–41, which were originally published in 1995 and 2006, respectively. TTB is soliciting comments from all interested parties on these regulatory provisions through a notice of proposed rulemaking, published elsewhere in this issue of the **Federal Register**.

DATES: *Effective Dates:* This temporary rule is effective on February 22, 2011, through February 24, 2014.

FOR FURTHER INFORMATION CONTACT: For questions concerning tax payment procedures and quarterly filing procedures, contact Jackie Feinauer, National Revenue Center, Alcohol and Tobacco Tax and Trade Bureau (513–684–3442); for questions concerning this document, contact Kara Fontaine, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau (202–453–2103 or *Kara.Fontaine@ttb.gov*).

SUPPLEMENTARY INFORMATION:

Background

TTB Authority

The Alcohol and Tobacco Tax and Trade Bureau (TTB) is responsible for the administration and enforcement of chapters 51 and 52 of the Internal Revenue Code of 1986 (IRC). These

provisions of the IRC concern the taxation of distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes. TTB's responsibilities include promulgating regulations to implement the statutory provisions pertaining to the time and method for payment of the applicable excise taxes. *See* 26 U.S.C. 5061 pertaining to distilled spirits, wine, and beer and 26 U.S.C. 5703 pertaining to tobacco products and cigarette papers and tubes. Prior to January 24, 2003, our predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF) administered these statutory provisions and the regulations thereunder. The regulations implementing the times and methods for payment of these Federal excise taxes are now found in the TTB regulations at 27 CFR parts 19, 24, 25, 26, 40, 41, and 70.

Semimonthly Reporting and Payment of Tax

Generally, the Federal excise taxes on distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes are paid on the basis of a semimonthly return. The semimonthly periods covered by the tax return are from the 1st day to the 15th day of each month and from the 16th day to the last day of that month. The return must be filed and the taxpayment must be made no later than the 14th day after the last day of each semimonthly period.

Accelerated Payment Requirements for the Second Semimonthly Period in September

Uruguay Round Agreements Act

Section 712 of the Uruguay Round Agreements Act (the URAA), Pub. L. 103–465, 108 Stat. 4809, enacted on December 8, 1994, amended sections 5061(d) and 5703(b)(2) of the IRC to accelerate the time for payment of taxes for most of the second semimonthly period of September. These amendments were adopted in order to ensure receipt of these taxes during the fiscal year to which they relate.

The amendments made by the URAA divided the second semimonthly period in September into two payment periods for distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes. The first of these payment periods runs from September 16 through September 26, and the second of these payment periods runs from September 27 through September 30. The tax return and payment for the period September 16 through September 26 are due on or before September 29 except that, for taxpayers who are not required to pay taxes through electronic funds transfer (EFT), this first payment period ends on September 25 and taxes are due on or before September 28. The statutory amendments did not include an accelerated payment deadline for the second payment period (September 27 through 30) and therefore payment for it is due according to the general semimonthly payment rule (that is, on October 14).

The amendments made by the URAA also included a "safe harbor" rule covering the first (accelerated) payment period for taxes due for distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes, which permits the taxpayer to meet his or her obligation to pay tax for that payment period based on payment of a proportion (11/15ths) of the tax liability incurred for the period September 1 through September 15. In addition to the above, the amendments made by the URAA added a special due date rule (that is, the following day) when the due date for the new first (accelerated) payment in September falls on a Sunday.

Temporary Rule T.D. ATF–365

On June 28, 1995, ATF published a temporary rule (T.D. ATF–365) in the **Federal Register** at 60 FR 33665, to implement the changes to sections 5061 and 5703 of the IRC made by section 712 of the URAA. Specifically, T.D. ATF–365 amended 27 CFR parts 19, 24, 25, 250 (now part 26), 270 (now part 40), 285 (now part 40), 275 (now part 41), and 70, primarily by adding various provisions to those parts relating to reporting and tax payment for alcohol products, tobacco products, and cigarette papers and tubes.

In addition, T.D. ATF–365 made extensive amendments to the firearms and ammunition excise tax regulations in 27 CFR part 53. Subsequent legislation has substantially changed these provisions. For clarity, TTB will address the amendments to part 53 in a separate rulemaking document.

Subsequent Regulatory Changes

The following subsequent regulatory amendments adopted by ATF and TTB affected some of the sections of the regulations that were amended by T.D. ATF–365:

- T.D. ATF–384, published in the **Federal Register** (61 FR 54084), on October 17, 1996, recodified part 285 into part 270. As part of this recodification, § 285.25 was redesignated as § 270.355.
- T.D. ATF–444, published in the **Federal Register** (66 FR 13849) on March 8, 2001, amended §§ 275.114 (b)(1) and (b)(2) by changing the referenced form number from 5000.24 to 5000.25.
- T.D. ATF–459, published in the **Federal Register** (66 FR 38547) on July 25, 2001, recodified part 250 as part 26.
- T.D. ATF–460, published in the **Federal Register** (66 FR 39091) on July 27, 2001, recodified part 270 as part 40.
- T.D. TTB–16, published in the **Federal Register** (69 FR 52421) on August 26, 2004, recodified part 275 as part 41.

Quarterly Excise Tax Filing for Small Alcohol Excise Taxpayers

Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users

Section 11127 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (the SAFETEA), Public Law 109–59, 119 Stat. 1144, enacted on August 10, 2005, amended IRC section 5061(d) (26 U.S.C. 5061(d)) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and adding a new paragraph (4), which allows certain Federal alcohol excise taxpayers to pay taxes quarterly rather than on a semimonthly basis as provided in section 5061(d) before the amendment. Application of this new provision commenced with quarterly tax payment periods beginning on and after January 1, 2006.

Paragraph (4) of section 5061(d) specifically references taxes imposed under subparts A, C, and D of part I of subchapter A of chapter 51 of the IRC and section 7652 of the IRC (26 U.S.C. 7652). The taxes imposed under subparts A, C, and D involve gallonage taxes on distilled spirits (26 U.S.C. 5001), wines (26 U.S.C. 5041), and beer (26 U.S.C. 5051). These taxes apply to spirits, wines, and beer produced in or imported into the United States. TTB collects these taxes from proprietors of domestic bonded premises pursuant to regulations contained in 27 CFR parts 19, 24, and 25; United States Customs and Border Protection (CBP) collects these taxes from importers of these products pursuant to regulations contained in title 19 of the CFR. Section 7652 of the IRC (26 U.S.C. 7652) imposes a tax on spirits, wines, and beer coming to the United States from Puerto Rico and the U.S. Virgin Islands. TTB collects these taxes from regulated premises in Puerto Rico under regulations in 27 CFR part 26, and CBP collects these taxes pursuant to title 19 of the CFR when the products in question come to the United States from the U.S. Virgin Islands.

The quarterly tax payment provisions of paragraph (4) of section 5061(d) apply to "any taxpayer who reasonably expects to be liable for not more than $50,000 in taxes * * * for the calendar year and who was liable for not more than $50,000 in such taxes in the preceding calendar year." In such a case the taxpayer must pay the tax no later than the 14th day after the last day of the calendar quarter during which the action giving rise to the tax (that is, withdrawal, removal, entry, and bringing in from Puerto Rico) occurs. The statute defines a "calendar quarter" as the three-month period ending on March 31, June 30, September 30, or December 31.

Paragraph (4) also provides that the quarterly tax payment procedure does not apply to a taxpayer for any remaining portion of the calendar year following the date on which the aggregate amount of tax due from the taxpayer exceeds $50,000. If at any point during the year the taxpayer's liability exceeds $50,000, any tax that has not been paid on that date becomes due on the 14th day after the last day of the semimonthly period in which that date falls. Thus, in effect, a taxpayer whose tax liability exceeds the $50,000 limit during the calendar year is required to revert to the semimonthly payment procedure for the remainder of the year.

Temporary Rule T.D. TTB–41

On February 2, 2006, TTB published in the **Federal Register** (71 FR 5598) a temporary rule, T.D. TTB–41, that amended 27 CFR parts 19, 24, 25, 26, and 70 to implement the new quarterly tax payment procedures of section 5061(d)(4) of the IRC. This Treasury Decision revised or otherwise amended regulatory texts concerning return or payment periods that had been adopted in T.D. ATF–365. The affected provisions were: Paragraph (a) of § 19.522, paragraph (a) of § 19.523, paragraph (b) and the heading of paragraph (c) of § 24.271, paragraphs (c) and (d) of § 25.164, the section heading and paragraph (a)(1) of § 25.164a, and paragraphs (b) and (d) of § 250.112 (now § 26.112). Tax payments in connection with transactions that are subject to regulations administered by CBP were not dealt with in T.D. TTB–41. In the Supplementary Information section of the T.D. TTB–41 preamble, TTB included the above summary of the changes brought about by section 11127 of the SAFETEA and also included discussions of the following: (1) Basic interpretive considerations; (2) effect on bond amounts; (3) effect on reporting requirements; and (4) other considerations.

Basic Interpretive Considerations

The following basic interpretive considerations were discussed in the preamble, and incorporated in the regulatory texts, of T.D. TTB–41.

1. We noted in T.D. TTB–41 that the longer deferral period allowed under section 5061(d)(4) would result in a larger unpaid tax liability, with a consequent impact on bonds. While we recognized that the intent of the statutory change was to ease the regulatory burden on small taxpayers, we also acknowledged the need to protect the revenue by ensuring that unpaid taxes are covered by appropriate bond amounts. If a taxpayer otherwise eligible for the new quarterly payment procedure does not wish to adjust the penal sum of its bond, that taxpayer should be allowed to continue to make payments and file returns on a semimonthly basis.

Accordingly, we decided to treat the quarterly payment procedure as optional rather than mandatory in the implementing regulations in order to provide flexibility to those taxpayers. Looking at section 5061 as a whole, and noting the placement of the semimonthly payment procedure in subsection (d)(1) as a provision of general applicability, we continue to believe that this interpretation is permissible because it makes the semimonthly procedure available to any taxpayer eligible for deferred payment of taxes, even if the taxpayer is also eligible for the quarterly payment procedure. The Conference Report of the Committee of Conference on H.R. 3, Report 109–203 at page 1133, describes the statutory change as follows: "[D]omestic producers and importers of distilled spirits, wine, and beer with excise tax liability of $50,000 or less attributable to such articles in the preceding calendar year may file returns and pay taxes within 14 days after the end of the calendar quarter instead of semi-monthly." The use of the word "may" indicates Congress viewed the continued use of the semimonthly procedure as an option.

2. Based on the wording of new paragraph (4) and of redesignated paragraph (5) of section 5061(d), we took the position that the "special rule for taxes due in September" properly applies only to semimonthly return periods and therefore does not apply to quarterly payments under new paragraph (4). Further, the Conference Report of the Committee of Conference on H.R. 3, Report 109–203 at page 1134, states "special rules accelerating payments for taxes allocable to the second half of September do not apply to quarterly filers under the Senate amendment". Accordingly, we changed the regulations referring to this payment to restrict its application to taxpayers who file semimonthly returns.

3. In T.D. TTB–41 we expressed our understanding that a "taxpayer" means an entity (including an individual, partnership or corporation) with a single taxpayer identification number, because the IRC controlled group rules generally do not apply to quarterly payment scenarios as explained below. For this reason we included in the regulatory texts an appropriate definition of this term.

4. With regard to the reference in the statute to a taxpayer who reasonably expects to be liable for not more than $50,000 in a tax year, we concluded that it would be appropriate to define "reasonably expects" in the implementing regulations to mean both that the taxpayer was not liable for more than $50,000 in taxes the previous year and that there are no other existing or anticipated circumstances (such as an increase in production capacity) that would cause the tax liability to increase beyond $50,000.

In addition, several other interpretative considerations were discussed in the preamble of T.D. TTB–41 and have been applied by TTB for purposes of administering section 5061(d)(4); however, they were not explicitly incorporated in the T.D. TTB–41 regulatory texts. The interpretative considerations in question were as follows:

- We noted that a single taxpayer could have multiple locations, and in such a case the combined liability for all locations for the same taxable commodity must be considered in determining eligibility for quarterly payments.
- Since the taxes imposed by 26 U.S.C. 5001, 5041, and 5051 apply to commodities produced in or imported into the United States, a taxpayer who has both domestic operations and import transactions must combine the tax liability on the domestic operations and the imports to determine eligibility for the quarterly procedure.
- We noted that new paragraph (4) makes no mention of controlled groups. Accordingly, we concluded that it is appropriate to take into account only the taxpayer's own liability in determining eligibility for quarterly payments, even if the taxpayer is considered to be a member of a controlled group for other purposes under the IRC. We also noted that there may be some individual taxpayers who

are eligible for the quarterly payment procedure but who are required to pay taxes by EFT because they are part of a controlled group that owes more than $5 million in distilled spirits, wine, or beer excise taxes per year. *See* 26 U.S.C. 5061(e). These individual taxpayers must transmit the quarterly payments via EFT.

• We noted that new taxpayers will be eligible to file quarterly returns in their first year of business simply if they reasonably expect to be liable for not more than $50,000 in taxes during that calendar year.

• Finally, we pointed out in T.D. TTB–41 that if a taxpayer filing quarterly exceeds $50,000 in tax liability during a taxable year and therefore must revert to the semimonthly return procedure, that taxpayer may resume quarterly payments only after a full calendar year has passed during which the taxpayer's liability did not exceed $50,000. This flows from the statutory provision, 26 U.S.C. 5061(d)(4)(A), which states the eligibility requirement that a taxpayer's liability must not have exceeded $50,000 in the preceding calendar year.

Effect on Bond Amounts

The bond regulations that apply to domestic producers of distilled spirits and wine at 27 CFR 19.245 and 24.148, and the regulations covering deferral bonds for proprietors bringing distilled spirits, wine, and beer to the United States from Puerto Rico at 27 CFR 26.66 (for distilled spirits), 26.67 (for wine), and 26.68 (for beer), require proprietors to calculate the penal sum of their deferral bonds to cover the unpaid tax that is chargeable against the bond at any one time. We stated in T.D. TTB–41 that we do not believe section 5061(d)(4) requires any changes to these regulatory provisions, the terms of which will clearly apply to taxpayers who use the quarterly payment procedure. However, we noted that it would be prudent for a taxpayer who uses the quarterly payment procedure to review the current deferral bond coverage, which in all likelihood is based on anticipated semimonthly taxes plus a 14-day deferral period. Such taxpayers may need to increase the deferral coverage for anticipated quarterly taxes because of the longer three-month plus 14-day deferral period.

We noted in T.D. TTB–41 that the penal sum amount set by regulation at 27 CFR 25.93 for a brewer's bond is 10 percent of the maximum amount of annual tax liability, with a minimum amount of $1,000. This 10 percent/minimum amount provides adequate bond coverage for small brewers who incur less than $50,000 of annual taxable liability each year and who file on a semimonthly basis. However, we also noted that the average maximum tax liability per return period for small brewers who pay quarterly will be approximately 29 percent of their annual liability. Our calculation indicated that the average maximum liability for a quarter of the year, plus the additional liability incurred during the 14 day period provided for payment, equals between 2.5 and 3.0 times the amount of the bond coverage presently required. Thus we concluded that the required bond coverage under § 25.93 is inadequate for small brewers who pay taxes quarterly. As a result, T.D. TTB–41 increased the required bond coverage for small brewers who pay excise taxes quarterly to 29 percent of the maximum amount of annual tax liability. We note that such increased bonding liability applies only to small brewers who pay excise taxes quarterly and not to other small brewers who continue to pay semimonthly.

Effect on Reporting Requirements

We noted in T.D. TTB–41 that, in general, proprietors of distilled spirits plants, bonded wine cellars, and breweries must file monthly reports of operations. Since proprietors who are small taxpayers may be filing quarterly tax returns, in T.D. TTB–41 we discussed whether these proprietors should file quarterly reports of operations as well.

When T.D. TTB–41 was published, the beer regulations at 27 CFR 25.297(b) already allowed brewers to file quarterly reports if they produce less than 10,000 barrels of beer during a calendar year. This level of activity represents a tax liability of $70,000 per year at the reduced rate of tax for small brewers, so brewers eligible to file quarterly returns under section 5061(d)(4) were already eligible to file quarterly reports under the existing rule. Therefore, T.D. TTB–41 did not make any change to the regulations regarding the brewers' report of operations.

Prior to publication of T.D. TTB–41, the wine regulations at 27 CFR 24.300(g)(2) allowed small proprietors to file an annual, rather than a monthly, report of operations if they are eligible to pay taxes on an annual basis and their total wine to be accounted for in a calendar month does not exceed 20,000 gallons. We continue to believe, as stated in T.D. TTB–41, that it is appropriate to allow wine premises proprietors to file quarterly reports of operations if they are eligible to make quarterly tax payments. Accordingly, T.D. TTB–41 revised paragraph (g) of § 24.300 to give quarterly taxpayers the option of filing quarterly reports of operations, and we set a maximum activity level of 60,000 gallons of wine to be accounted for in a calendar quarter in order to ensure that proprietors with very large production or storage capacity who pay little or no tax will continue to file monthly reports of operations. T.D. TTB–41 also made a corresponding conforming change to 27 CFR 24.313, Inventory records.

In the case of distilled spirits plant proprietors, we noted in T.D. TTB–41 that there are four operational report forms and that there is no provision in the TTB regulations specifying a reporting interval less frequent than monthly. We determined that T.D. TTB–41 was not the appropriate vehicle for making a change in the timing for reports of operations.

Other Considerations

The TTB regulations include provisions that allow TTB to require prepayment of taxes or to make a jeopardy assessment of taxes if we believe such action is necessary to protect the revenue. We reviewed those prepayment and jeopardy assessment provisions prior to the publication of T.D. TTB–41 and determined that no changes to the prepayment and jeopardy assessment provisions were needed in order for them to apply to taxpayers who pay on a quarterly basis. We remain of the view that such changes are not necessary.

In T.D. TTB–41 we stated that we had considered whether to require the filing of a notice of intent by a taxpayer who chooses to make quarterly tax payments before the taxpayer begins the procedure. Since we can determine from records we already have that a taxpayer appears to be eligible for the quarterly payment procedure (in particular, that the taxpayer's liability for the previous calendar year did not exceed $50,000), and because advance notice would serve no other useful purpose, we decided not to require advance notice. We remain of the view that advance notice is not necessary.

Reissuance of T.D. ATF–365 and T.D. TTB–41 as a New Temporary Rule

When T.D. ATF–365 was published, a notice of proposed rulemaking was published in the same issue of the **Federal Register** inviting public comments on that temporary rule; TTB has no record of comments received by ATF in response to this comment solicitation, and no action was taken by ATF to adopt the T.D. ATF–365 temporary regulations as a final rule. As

noted above, a number of subsequent changes to the ATF/TTB regulations were made that affected the texts adopted in T.D. ATF–365, the most substantively significant of which were the changes to the alcohol excise tax payment provisions made by T.D. TTB–41, which included some revisions of the provisions implementing the URAA section 712 special September rule to accommodate the SAFETEA section 11127 quarterly payment procedure. When T.D. TTB–41 was published, a notice of proposed rulemaking was published in the same issue of the **Federal Register** inviting public comments on that temporary rule; only one comment was received in response to that comment solicitation, and that commenter expressed support for the rulemaking. TTB has not taken final action on the temporary regulations contained in T.D. TTB–41.

In view of the fact that the regulatory amendments adopted in T.D. TTB–41 in part involved a revision of, and thus depended on, amendments previously made by T.D. ATF–365, it would not be practical to take final action on the T.D. TTB–41 regulations without first finalizing those earlier regulatory amendments. However, we note both that a significant period of time has elapsed since T.D. ATF–365 was published and that the earlier rulemaking record is incomplete in that there is no record of comments received in response to the notice of proposed rulemaking published in connection with T.D. ATF–365. Given these circumstances, we believe that the best approach at this juncture would be to publish one new temporary rule that, in effect, reissues the regulatory texts adopted in T.D. ATF–365 and in T.D. TTB–41, with necessary changes to the T.D. ATF–365 texts to conform them to the later amendments noted above. The regulatory text amendments contained in this document are discussed in more detail below. In addition, in order to ensure a complete rulemaking record consistent with the requirements of 26 U.S.C. 7805(e)(1), we are publishing in the Proposed Rules section of this issue of the **Federal Register** a notice of proposed rulemaking inviting comments from the public on this new temporary rule.

Provisions of T.D. ATF–365 Reflected in This New Temporary Rule

In addition to the provisions covering the basic URAA "September rule," this temporary rule includes the following regulatory provisions (with appropriate section number changes to reflect the recodification of some parts of the regulations as mentioned above) regarding distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes that were published in T.D. ATF–365:

1. *Safe harbor rule.* The IRC as amended by the URAA specifically provides that, in the case of taxes on distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes, the accelerated payment requirement will be met if the taxpayer pays not later than September 29 an amount equal to 11/15th (73.3 percent) of the taxpayer's liability for the first semimonthly period in September. This "safe harbor" provision is reflected in this temporary rule in 27 CFR 19.523(c)(2), 24.271(c)(2), 25.164a(b), 26.112(d)(2), 40.164(b), 40.355(g)(2), and 41.114(b)(2).

2. *Special rule for taxpayers not required to remit taxes by EFT.* The URAA amendment provided special rules for taxpayers who are not required to remit taxes by EFT for the calendar year. For those taxpayers, payment of taxes for the period September 16 to September 25 is due on or before September 28. The regulations relating to this requirement provide that the requirement to pay tax for this period is satisfied if the taxpayer pays an amount equal to ⅔ (66.7 percent) of the taxpayer's liability for the first semimonthly period in September. These provisions are reflected in this temporary rule in 27 CFR 19.523(c)(1)(ii), 19.523(c)(2)(ii), 24.271(c)(1)(ii), 24.271(c)(2)(ii), 25.164a(a)(2), 25.164a(b)(2), 26.112(d)(1)(ii), 26.112(d)(2)(ii), 40.164(a)(2), 40.164(b)(2), 40.355(g)(1)(ii), 40.355(g)(2)(ii), 41.114(b)(1)(ii) and 41.114(b)(2)(ii).

3. *Last day for making payment.* The URAA amendments revised, in part, the special rules for due dates falling on Saturday, Sunday, or legal holidays as defined in 26 U.S.C. 7503. The amendment relating to due dates falling on Sunday applies only to the accelerated return period in September. If the required due date for the accelerated payment period falls on a legal holiday or Saturday, taxpayment is due on the immediately preceding day, and if the required due date for the accelerated payment period falls on a Sunday, taxpayment is due on the following Monday. These provisions are reflected in this temporary rule in §§ 19.523(c)(3), 24.271(c)(3), 25.164a(c), 26.112(d)(3), 40.164(c), 40.355(g)(3), and 41.114(b)(3).

Finally, as a result of our review of the regulatory texts published in T.D. ATF–365, we have made a number of nonsubstantive, editorial, or conforming changes to those texts to improve their clarity and readability. These include minor organizational and wording changes, inclusion of paragraph headings where appropriate to assist the reader in following the texts and inclusion of a revision of paragraph (b) of § 40.355 to ensure consistency of paragraph heading usage within the section.

Provisions of T.D. TTB–41 Reflected in This New Temporary Rule

The following regulatory amendments issued in T.D. TTB–41 implementing 26 U.S.C. 5061(d)(4), some of which incorporate and therefore take the place of September rule amendments adopted in T.D. ATF–365, are being reissued in this temporary rule:

- *27 CFR Part 19.* The regulations at 27 CFR 19.11, 19.522, 19.523, 19.565, and 19.703 were amended to accommodate the quarterly return procedure. The amendment of § 19.565 includes a reorganization of the text for editorial purposes, as well as the removal of the word "semimonthly."
- *27 CFR Part 24.* To accommodate the quarterly procedure, § 24.10, § 24.271 (which prescribes the return periods available for proprietors who have deferral bonds), and § 24.300(g) were amended in T.D. TTB–41.

Prior to the publication of T.D. TTB–41, part 24 included § 24.273, which allowed certain wine premises proprietors to file annual tax returns and pay taxes annually. Because the wine bond's coverage is split between operations coverage and deferral coverage, when drafting T.D. TTB–41 we were not limited by the existing language of section 5061 of the IRC, which specified semimonthly return periods for removals under a bond for deferred payment of taxes. Thus, we were able administratively to allow an annual return period for small proprietors who had no bond for deferred payment of taxes and who owed less than $1,000 per calendar year in taxes. Section 5061(d)(4) of the IRC does not affect the right of eligible proprietors to continue to pay taxes on an annual basis. T.D. TTB–41 revised § 24.273 to show that it is an exception to both semimonthly and quarterly return filing and also reorganized the section for clarity.

- *27 CFR Part 25.* The regulations at 27 CFR 25.93 were amended by T.D. TTB–41 to change the bond penal sum for quarterly taxpayers. Provisions at §§ 25.164 and 25.164a, which cover the tax return filing rules for brewers, were also amended to reflect the adoption of the quarterly return procedure.
- *27 CFR Part 26.* The regulations at 27 CFR 26.11 and 26.112, which

concern taxes imposed under section 7652 of the IRC, were amended by T.D. TTB–41 to incorporate references to the quarterly taxpayment procedure.

• *27 CFR Part 70.* Paragraph (a) of 27 CFR 70.412, which summarizes alcohol tax return filing procedural rules, was amended by T.D. TTB–41 to include a reference to quarterly returns.

This document also includes the following changes to the regulatory texts discussed above that were adopted in T.D. TTB–41:

• The definitions of "taxpayer" and "reasonably expects" are no longer included as such in §§ 19.522, 24.271, 25.164, and 26.112 but rather are included within each section as rules that apply to the quarterly return period procedure. These changes do not affect the substance of the regulatory texts but rather are intended to lend more precision to the texts and to avoid textual redundancy. In addition, each paragraph that sets forth the basic quarterly rule has been modified for purposes of clarity but without substantive change.

• The interpretative considerations discussed above that had not been included in the T.D. TTB–41 regulatory texts have been incorporated into the texts set forth in this document. We have reviewed this matter and have concluded that inclusion of those considerations in the regulations as rules that apply to the quarterly procedure will provide enhanced regulatory transparency.

• Finally, we have made some nonsubstantive, editorial-type changes to the regulatory texts, including minor wording changes and insertion of paragraph headings where appropriate, to improve the clarity and readability of the texts.

Public Participation

To submit comments on these regulations, please refer to the notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6), we certify that these regulations will not have a significant economic impact on a substantial number of small entities. Any revenue effects of this rulemaking on small businesses flow directly from the underlying statutes. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statutes. Accordingly, a regulatory flexibility analysis is not required. Pursuant to 26 U.S.C. 7805(f), the temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Executive Order 12866

This is not a significant regulatory action as defined in E.O. 12866. Therefore, it requires no regulatory assessment.

Paperwork Reduction Act

The collections of information in the regulations contained in this reissued temporary rule have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and assigned control numbers 1513–0009, 1513–0053, 1513–0083, 1513–0090, and 1513–0104. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. There is no new collection of information imposed by this temporary rule.

Comments concerning suggestions for reducing the burden of the collections of information should be directed to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

• P.O. Box 14412, Washington, DC 20044–4412;
• 202–927–8525 (facsimile); or
• *formcomments@ttb.gov* (e-mail).

Inapplicability of Prior Notice and Comment

Because this document implements provisions of law that were effective on January 1, 1995, and January 1, 2006, and because this temporary rule updates and reissues previously issued temporary rules implementing these provisions of law, TTB believes it is unnecessary and contrary to the public interest to issue this temporary decision with prior notice and public comment, and therefore, consistent with 5 U.S.C. 553(b), good cause exists to take this action. That is, TTB has determined that good cause exists to provide the industry with this updated temporary rule because it reflects the statutory requirements that are already in effect and for which the industry continues to need immediate guidance. TTB is soliciting public comment on the regulatory provisions contained in this temporary rule in a concurrently issued notice of proposed rulemaking.

Drafting Information

Kara T. Fontaine of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

List of Subjects

27 CFR Part 19

Caribbean Basin Initiative, Claims, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Surety bonds, Vinegar, Virgin Islands, Warehouses.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Vinegar, Warehouses, Wine.

27 CFR Part 25

Beer, Claims, Electronic funds transfers, Excise taxes, Exports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds.

27 CFR Part 26

Alcohol and alcoholic beverages, Caribbean Basin Initiative, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 40

Cigars and cigarettes, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Tobacco.

27 CFR Part 41

Cigars and cigarettes, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Virgin Islands, Warehouses.

27 CFR Part 70

Administrative practice and procedure, Claims, Excise taxes, Freedom of Information, Law enforcement, Penalties, Surety bonds.

Amendments to the Regulations

Accordingly, for the reasons set forth in the preamble, 27 CFR parts 19, 24, 25,

26, 40, 41, and 70 are amended as set forth below.

PART 19—DISTILLED SPIRITS PLANTS

■ 1. The authority citation for part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5101, 5121, 5122–5124, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 2. Section 19.11 is amended by revising the definition of "calendar quarter and quarterly" to read as follows:

§ 19.11 Meaning of terms.

* * * * *

Calendar quarter and quarterly. These terms refer to the three-month periods ending on March 31, June 30, September 30, or December 31.

* * * * *

■ 3. Section 19.522 is amended by revising paragraph (a) to read as follows:

§ 19.522 Taxes to be collected by returns.

(a)(1) *Deferred payment of taxes.* The tax on spirits to be withdrawn from bond for deferred payment of tax shall be paid pursuant to a return on TTB F 5000.24, Excise Tax Return. The return shall be executed and filed for each return period notwithstanding that no tax is due for payment for such period. The proprietor of each bonded premises shall include, for payment, on his return on TTB F 5000.24, the full amount of distilled spirits tax determined in respect of all spirits released for withdrawal from the bonded premises on determination of tax during the period covered by the return (except spirits on which tax has been prepaid).

(2) *Return periods.* (i) *Semimonthly return period.* Except in the case of a taxpayer who qualifies for, and chooses to use, quarterly return periods as provided in paragraph (a)(2)(ii) of this section, all taxpayers shall use semimonthly return periods for deferred payment of tax. The semimonthly return periods run from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month, except as otherwise provided in § 19.523(c).

(ii) *Quarterly return period.* A taxpayer may choose to use a quarterly return period if the taxpayer was not liable for more than $50,000 in taxes with respect to distilled spirits imposed by 26 U.S.C. 5001 and 7652 in the preceding calendar year and if that taxpayer reasonably expects to be liable for not more than $50,000 in such taxes during the current calendar year. In such a case the last day for paying the tax and filing the return shall be the 14th day after the last day of the calendar quarter. However, the taxpayer may not use the quarterly return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds $50,000, and any tax that has not been paid on that date shall be due on the 14th day after the last day of the semimonthly period in which that date occurs. The following additional rules apply to the quarterly return period procedure under this section:

(A) A "taxpayer" is an individual, corporation, partnership, or other entity that is assigned a single Employer Identification Number as defined in 26 CFR 301.7701–12;

(B) "Reasonably expects" means that there is no existing or anticipated circumstance known to the taxpayer (such as an increase in production capacity) that would cause the taxpayer's tax liability to exceed the prescribed limit;

(C) A taxpayer with multiple locations must combine the distilled spirits tax liability for all locations to determine eligibility for the quarterly return procedure;

(D) A taxpayer who has both domestic operations and import transactions must combine the distilled spirits tax liability on the domestic operations and the imports to determine eligibility for the quarterly return procedure;

(E) The controlled group rules of 26 U.S.C. 5061(e), which concern treatment of controlled groups as one taxpayer, do not apply for purposes of determining eligibility for the quarterly return procedure. However, a taxpayer who is eligible for the quarterly return procedure, and who is a member of a controlled group that owes $5 million or more in distilled spirits excise taxes per year, is required to pay taxes by electronic fund transfer (EFT). Quarterly payments via EFT shall be transmitted in accordance with section 5061(e);

(F) A new taxpayer is eligible to file quarterly returns in the first year of business simply if the taxpayer reasonably expects to be liable for not more than $50,000 in distilled spirits taxes during that calendar year; and

(G) If a taxpayer filing quarterly exceeds $50,000 in tax liability during a taxable year and therefore must revert to the semimonthly return procedure, that taxpayer may resume quarterly payments only after a full calendar year has passed during which the taxpayer's liability did not exceed $50,000.

* * * * *

■ 4. Section 19.523 is amended by revising paragraphs (a), (c), and (d) to read as follows:

§ 19.523 Time for filing returns.

(a) *Payment pursuant to semimonthly return.* Except when payment is pursuant to a quarterly return as provided in paragraph (d) of this section, where the proprietor of bonded premises has withdrawn spirits from those premises on determination and before payment of tax, the proprietor must file a semimonthly tax return covering those spirits on TTB F 5000.24, and remittance, as required by § 19.524 or § 19.525, not later than the 14th day after the last day of the return period, except as otherwise provided in paragraph (c) of this section. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance are due on the immediately preceding day that is not a Saturday, Sunday, or legal holiday, except as otherwise provided in paragraph (c)(3) of this section.

* * * * *

(c) *Special rule for taxes due for the month of September.* (1) *Division of second semimonthly period.* (i) *General.* Except as otherwise provided in paragraph (c)(1)(ii) of this section, the second semimonthly period for the month of September is divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The proprietor shall file a return on TTB F 5000.24, and make remittance, for the period September 16–26, no later than September 29. The proprietor shall file a return on TTB F 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(ii) *Taxpayment not by electronic fund transfer.* In the case of taxes for which remittance by electronic fund transfer (EFT) is not required by § 19.524, the second semimonthly period of September is divided into two payment periods, from the 16th day through the 25th day, and from the 26th day through the 30th day. The proprietor shall file a return on TTB F 5000.24, and make remittance, for the period September 16–25, no later than September 28. The proprietor shall file a return on TTB F 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(2) *Amount of payment—Safe harbor rule.* (i) *General.* Taxpayers are

considered to have met the requirements of paragraph (c)(1)(i) of this section if the amount paid no later than September 29 is not less than 11/15ths (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) *Taxpayment not by EFT.* Taxpayers are considered to have met the requirements of paragraph (c)(1)(ii) of this section if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(3) *Weekends and holidays.* If the required taxpayment due date for the period September 16–25 or September 16–26, as applicable, falls on a Saturday or legal holiday, the return and remittance are due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance are due on the immediately following day.

(4) *Example: Payment of tax for the month of September.* (i) *Facts.* X, a distilled spirits plant proprietor required to pay taxes by electronic fund transfer, incurred tax liability in the amount of $30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of $45,000, and for the period September 27–30, X incurred tax liability in the amount of $2,000.

(ii) *Payment requirement.* X's payment of tax in the amount of $30,000 for the first semimonthly period of September is due no later than September 29 (§ 19.522(a)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 19.523(c)(1)(i)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 19.523(c)(2)). Under the safe harbor rule, X's payment of tax must not be less than $21,990.00, that is, 11/15ths of the tax liability incurred during the first semimonthly period of September. Additionally, X must pay the tax in the amount of $2,000 for the period September 27–30 no later than October 14 (§ 19.523(c)(1)(i)). X must also pay the underpayment of tax, $23,010.00, for the period September 16–26, no later than October 14 (§ 19.523(c)(2)).

(d) *Payment pursuant to quarterly return.* Where the proprietor of bonded premises has withdrawn spirits from those premises on determination and before payment of tax, and the proprietor uses quarterly return periods as provided in § 19.522(a)(2)(ii), the proprietor shall file a quarterly tax return covering such spirits on TTB F 5000.24, and remittance, as required by § 19.525, not later than the 14th day after the last day of the quarterly return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance are due on the immediately preceding day that is not a Saturday, Sunday, or legal holiday.

* * * * *

■ 5. Section 19.565 is revised to read as follows:

§ 19.565 Shortages of bottled distilled spirits.

(a) *Determination of shortage.* Unexplained shortages shall be determined by comparing the spirits recorded to be on hand with the results of the quantitative determination of the spirits found to be on hand by actual count during the physical inventory required by § 19.402. When the recorded quantity is greater than the quantity determined by the physical inventory, the difference is an unexplained shortage. The records shall be adjusted to reflect the physical inventory.

(b) *Payment of tax on shortage.* An unexplained shortage of bottled distilled spirits shall be taxpaid:

(1) Immediately on a prepayment return on TTB F 5000.24, or

(2) On the return on TTB F 5000.24 for the return period during which the shortage was ascertained.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008))

■ 6. Section 19.703 is amended by revising paragraph (a) to read as follows:

§ 19.703 Taxpayment of samples.

* * * * *

(a) If the proprietor is qualified to defer payment of tax, the tax shall be included in the proprietor's next deferred payment of tax on TTB F 5000.24.

* * * * *

PART 24—WINE

■ 7. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5121, 5122–5124, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 8. Section 24.10 is amended by revising the definition of "calendar quarter and quarterly" to read as follows:

§ 24.10 Meaning of terms.

* * * * *

Calendar quarter and quarterly. These terms refer to the three-month periods ending on March 31, June 30, September 30, or December 31.

* * * * *

■ 9. Section 24.271 is revised to read as follows:

§ 24.271 Payment of tax by return with remittance.

(a) *General.* The tax on wine is paid by an Excise Tax Return, TTB F 5000.24, which is filled with remittance (check, cash, or money order) for the full amount of tax due. Prepayments of tax on wine during the period covered by the return are shown separately on the Excise Tax Return form. If no tax is due for the return period, the filing of a return is not required.

(b) *Return periods and due dates.* (1) *Return periods.* (i) *Semimonthly return period.* Except in the case of a taxpayer who qualifies for, and chooses to use, the annual return period as provided in § 24.273 or the quarterly return period as provided in paragraph (b)(1)(ii) of this section, all taxpayers who have filed a bond for deferred payment of taxes must use semimonthly return periods. The semimonthly return periods run from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month, except as otherwise provided in paragraph (c) of this section.

(ii) *Quarterly return period.* A taxpayer who has filed a bond for deferred payment of taxes may choose to use a quarterly return period if the taxpayer was not liable for more than $50,000 in taxes with respect to wine imposed by 26 U.S.C. 5041 and 7652 in the preceding calendar year and if that taxpayer reasonably expects to be liable for not more than $50,000 in such taxes during the current calendar year. In such a case the last day for paying the tax and filing the return shall be the 14th day after the last day of the calendar quarter. However, the taxpayer may not use the quarterly return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds $50,000, and any tax that has not been paid on that date shall be due on the 14th day after the last day of the semimonthly period in which that date occurs. The following additional

rules apply to the quarterly return period procedure under this section:

(A) A "taxpayer" is an individual, corporation, partnership, or other entity that is assigned a single Employer Identification Number as defined in 26 CFR 301.7701–12;

(B) "Reasonably expects" means that there is no existing or anticipated circumstance known to the taxpayer (such as an increase in production capacity) that would cause the taxpayer's tax liability to exceed the prescribed limit;

(C) A taxpayer with multiple locations must combine the wine tax liability for all locations to determine eligibility for the quarterly return procedure;

(D) A taxpayer who has both domestic operations and import transactions must combine the wine tax liability on the domestic operations and the imports to determine eligibility for the quarterly return procedure;

(E) The controlled group rules of 26 U.S.C. 5061(e), which concern treatment of controlled groups as one taxpayer, do not apply for purposes of determining eligibility for the quarterly return procedure. However, a taxpayer who is eligible for the quarterly return procedure, and who is a member of a controlled group that owes $5 million or more in wine excise taxes per year, is required to pay taxes by electronic fund transfer (EFT). Quarterly payments via EFT shall be transmitted in accordance with section 5061(e);

(F) A new taxpayer is eligible to file quarterly returns in the first year of business simply if the taxpayer reasonably expects to be liable for not more than $50,000 in wine taxes during that calendar year; and

(G) If a taxpayer filing quarterly exceeds $50,000 in tax liability during a taxable year and therefore must revert to the semimonthly return procedure, that taxpayer may resume quarterly payments only after a full calendar year has passed during which the taxpayer's liability did not exceed $50,000.

(2) *Semimonthly and quarterly tax return due dates.* The taxpayer shall file the semimonthly or quarterly return, with remittance, for each return period not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance are due on the immediately preceding day that is not a Saturday, Sunday, or legal holiday, except as otherwise provided in paragraph (c)(3) of this section.

(c) *Special September rule for taxes due by semimonthly return.* (1) *Division of second semimonthly period.* (i) *General.* Except as otherwise provided in paragraph (c)(1)(ii) of this section, the second semimonthly period for the month of September is divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The proprietor shall file a return on TTB F 5000.24, and make remittance, for the period September 16–26, no later than September 29. The proprietor shall file a return on TTB F 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(ii) *Taxpayment not by electronic fund transfer.* In the case of taxes for which remittance by electronic fund transfer (EFT) is not required by § 24.272, the second semimonthly period of September is divided into two payment periods, from the 16th day through the 25th day, and from the 26th day through the 30th day. The proprietor shall file a return on TTB F 5000.24, and make remittance, for the period September 16–25, no later than September 28. The proprietor shall file a return on TTB F 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(2) *Amount of payment—Safe harbor rule.* (i) *General.* Taxpayers are considered to have met the requirements of paragraph (c)(1)(i) of this section if the amount paid no later than September 29 is not less than 11/15ths (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) *Taxpayment not by EFT.* Taxpayers are considered to have met the requirements of paragraph (c)(1)(ii) of this section if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(3) *Weekends and holidays.* If the required taxpayment due date for the period September 16–25 or September 16–26, as applicable, falls on a Saturday or legal holiday, the return and remittance are due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance are due on the immediately following day.

(4) *Example: Payment of tax for the month of September.* (i) *Facts.* X, a proprietor required to pay taxes by electronic fund transfer, incurred tax liability in the amount of $30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of $45,000, and for the period September 27–30, X incurred tax liability in the amount of $2,000.

(ii) *Payment requirement.* X's payment of tax in the amount of $30,000 for the first semimonthly period of September is due no later than September 29 (§ 24.271(b)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 24.271(c)(1)(i)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 24.271(c)(2)). Under the safe harbor rule, X's payment of tax must not be less than $21,990.00, that is, 11/15ths of the tax liability incurred during the first semimonthly period of September. Additionally, X must pay the tax in the amount of $2,000 for the period September 27–30 no later than October 14 (§ 24.271(c)(1)(i)). X must also pay the underpayment of tax, $23,010.00, for the period September 16–26, no later than October 14 (§ 24.271(c)(2)).

■ 10. Section 24.273 is revised to read as follows:

§ 24.273 Exception to filing semimonthly or quarterly tax returns.

(a) *Eligibility for annual filing.* A proprietor may file the Excise Tax Return, TTB F 5000.24, and remittance within 30 days after the end of the calendar year instead of semimonthly or quarterly as provided in § 24.271, if the proprietor has not given a bond for deferred payment of wine excise tax and if the proprietor:

(1) Paid wine excise taxes in an amount less than $1000 during the previous calendar year, or

(2) Is the proprietor of a newly established bonded wine premises and expects to pay less than $1000 in wine excise taxes before the end of the calendar year.

(b) *Loss of eligibility for annual filing.* (1) If before the close of the current calendar year the wine excise tax owed will exceed the amount of the coverage under the proprietor's operations bond for wine removed from bonded wine premises on which tax has been determined but not paid, the proprietor will file an Excise Tax Return with the total remittance on the date the wine excise tax owed will exceed such amount and file an aggregate Excise Tax Return within 30 days after the close of the calendar year showing the total wine tax liability for such calendar year. If before the close of the current calendar year the wine excise tax liability (including any amounts paid or owed) equals $1000 or more, the proprietor will commence semimonthly or quarterly filing of the wine Excise Tax

Returns and making of payments as required by § 24.271.

(2) If there is a jeopardy to the revenue, the appropriate TTB officer may at any time require the proprietor to file Excise Tax Returns on a semimonthly or quarterly basis.

(c) *Other rules apply.* A proprietor who files on a calendar year basis under this section is subject to the failure to pay or file provisions of § 24.274.

■ 11. Section 24.300 is amended by revising paragraph (g) to read as follows:

§ 24.300 General.

* * * * *

(g) *TTB F 5120.17, Report of Bonded Wine Premises Operations.* A proprietor who conducts bonded wine premises operations must complete and submit TTB F 5120.17 in accordance with the instructions on the form.

(1) *Monthly report.* The proprietor must submit TTB F 5120.17 on a monthly basis, except as otherwise provided in paragraph (g)(2) or (g)(3) of this section.

(2) *Quarterly or annual report.* (i) *General.* A proprietor may file a completed TTB F 5120.17 on a quarterly or annual basis if the proprietor meets the criteria in paragraph (g)(2)(ii) or (g)(2)(iii) of this section. To begin the quarterly or annual filing of a report of bonded wine premises operations, a proprietor must state the intent to do so in the "Remarks" section when filing the prior month's TTB F 5120.17. A proprietor who is commencing operations during a calendar year and expects to meet these criteria may use a letter notice to the appropriate TTB officer and file TTB F 5120.17 quarterly or annually for the remaining portion of the calendar year. If a proprietor becomes ineligible for quarterly or annual filing by exceeding the applicable tax liability or activity limit, the proprietor must file TTB F 5120.17 for that month and for all subsequent months of the calendar year. If there is jeopardy to the revenue, the appropriate TTB officer may at any time require any proprietor otherwise eligible for quarterly or annual filing of a report of bonded wine premises operations to file such report monthly.

(ii) *Eligibility for quarterly report filing.* In order to be eligible to file TTB F 5120.17 on a quarterly basis, the proprietor must be filing quarterly tax returns under § 24.271, and the proprietor must not expect the sum of the bulk and bottled wine to be accounted for in all tax classes to exceed 60,000 gallons for any one quarter during the calendar year when adding up the bulk and bottled wine on hand at the beginning of the month, bulk wine produced by fermentation, sweetening, blending, amelioration or addition of wine spirits, bulk wine bottled, bulk and bottled wine received in bond, taxpaid wine returned to bond, bottled wine dumped to bulk, inventory gains, and any activity written in the untitled lines of the report form which increases the amount of wine to be accounted for.

(iii) *Eligibility for annual report filing.* In order to be eligible to file TTB F 5120.17 on an annual basis, the proprietor must be filing annual tax returns under § 24.273, and the proprietor must not expect the sum of the bulk and bottled wine to be accounted for in all tax classes to exceed 20,000 gallons for any one month during the calendar year when adding up the bulk and bottled wine on hand at the beginning of the month, bulk wine produced by fermentation, sweetening, blending, amelioration or addition of wine spirits, bulk wine bottled, bulk and bottled wine received in bond, taxpaid wine returned to bond, bottled wine dumped to bulk, inventory gains, and any activity written in the untitled lines of the report form which increases the amount of wine to be accounted for.

(3) *No reportable activity.* A proprietor who files a monthly TTB F 5120.17 and does not expect an inventory change or any reportable operations to be conducted in a subsequent month or months may attach to the filed TTB F 5120.17 a statement that, until a change in the inventory or a reportable operation occurs, a TTB F 5120.17 will not be filed.

* * * * *

PART 25—BEER

■ 12. The authority citation for part 25 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5121, 5122–5124, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

■ 13. Section 25.93 is amended by revising paragraph (a) to read as follows:

§ 25.93 Penal sum of bond.

(a)(1) *Brewers filing semimonthly tax returns.* For brewers filing tax returns and remitting taxes semimonthly under § 25.164(c)(2), the penal sum of the brewers bond must be equal to 10 percent of the maximum amount of tax calculated at the rates prescribed by law which the brewer will become liable to pay during a calendar year during the period of the bond on beer:

(i) Removed for transfer to the brewery from other breweries owned by the same brewer;

(ii) Removed without payment of tax for export or for use as supplies on vessels and aircraft;

(iii) Removed without payment of tax for use in research, development, or testing; and

(iv) Removed for consumption or sale.

(2) *Brewers filing quarterly tax returns.* For brewers filing tax returns and remitting taxes quarterly under § 25.164(c)(2), the penal sum of the brewers bond must be equal to 29 percent of the maximum amount of tax calculated at the rates prescribed by law which the brewer will become liable to pay during a calendar year during the period of the bond on beer:

(i) Removed for transfer to the brewery from other breweries owned by the same brewer;

(ii) Removed without payment of tax for export or for use as supplies on vessels and aircraft;

(iii) Removed without payment of tax for use in research, development, or testing; and

(iv) Removed for consumption or sale.

* * * * *

■ 14. In § 25.163, the first sentence is revised to read as follows:

§ 25.163 Method of tax payment.

A brewer shall pay the tax on beer by return on TTB F 5000.24, as provided in §§ 25.164, 25.164a, 25.173, and 25.175.

* * *

■ 15. Section 25.164 is amended by revising paragraphs (c) and (d) to read as follows:

§ 25.164 Quarterly and semimonthly returns.

* * * * *

(c) *Return periods.* (1) *Semimonthly return period.* Except in the case of a taxpayer who qualifies for, and chooses to use, quarterly return periods as provided in paragraph (c)(2) of this section, all taxpayers must use semimonthly return periods for deferred payment of tax. The semimonthly return periods run from the brewer's business day beginning on the first day of each month through the brewer's business day beginning on the 15th day of that month, and from the brewer's business day beginning on the 16th day of the month through the brewer's business day beginning on the last day of the month, except as otherwise provided in § 25.164a.

(2) *Quarterly return period.* A taxpayer may choose to use a quarterly return period if the taxpayer was not liable for more than $50,000 in taxes with respect to beer imposed by 26

U.S.C. 5051 and 7652 in the preceding calendar year and if that taxpayer reasonably expects to be liable for not more than $50,000 in such taxes during the current calendar year. In such a case the last day for paying the tax and filing the return shall be the 14th day after the last day of the calendar quarter. However, the taxpayer may not use the quarterly return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds $50,000, and any tax that has not been paid on that date shall be due on the 14th day after the last day of the semimonthly period in which that date occurs. The following additional rules apply to the quarterly return period procedure under this section:

(i) A "taxpayer" is an individual, corporation, partnership, or other entity that is assigned a single Employer Identification Number as defined in 26 CFR 301.7701–12;

(ii) "Reasonably expects" means that there is no existing or anticipated circumstance known to the taxpayer (such as an increase in production capacity) that would cause the taxpayer's tax liability to exceed the prescribed limit;

(iii) A taxpayer with multiple locations must combine the beer tax liability for all locations to determine eligibility for the quarterly return procedure;

(iv) A taxpayer who has both domestic operations and import transactions must combine the beer tax liability on the domestic operations and the imports to determine eligibility for the quarterly return procedure;

(v) The controlled group rules of 26 U.S.C. 5061(e), which concern treatment of controlled groups as one taxpayer, do not apply for purposes of determining eligibility for the quarterly return procedure. However, a taxpayer who is eligible for the quarterly return procedure, and who is a member of a controlled group that owes $5 million or more in beer excise taxes per year, is required to pay taxes by electronic fund transfer (EFT). Quarterly payments via EFT shall be transmitted in accordance with section 5061(e);

(vi) A new taxpayer is eligible to file quarterly returns in the first year of business simply if the taxpayer reasonably expects to be liable for not more than $50,000 in beer taxes during that calendar year; and

(vii) If a taxpayer filing quarterly exceeds $50,000 in tax liability during a taxable year and therefore must revert to the semimonthly return procedure, that taxpayer may resume quarterly payments only after a full calendar year has passed during which the taxpayer's liability did not exceed $50,000.

(d) *Time for filing returns and paying tax.* Except as otherwise provided in § 25.164a for semimonthly tax returns, the brewer shall file the tax return, TTB F 5000.24, for each return period, and make remittance as required by this section, not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance are due on the immediately preceding day that is not a Saturday, Sunday, or legal holiday, except as otherwise provided in § 25.164a(c).

* * * * *

■ 16. Section 25.164a is revised to read as follows:

§ 25.164a Special September rule for taxes due by semimonthly return.

(a) *Division of second semimonthly period.* (1) *General.* Except as otherwise provided in paragraph (a)(2) of this section, the second semimonthly period for the month of September is divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The brewer shall file a return, TTB F 5000.24, and make remittance, for the period September 16–26, no later than September 29. The brewer shall file a return on TTB F 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes for which remittance by electronic fund transfer (EFT) is not required by § 25.165, the second semimonthly period of September is divided into two payment periods, from the 16th day through the 25th day, and from the 26th day through the 30th day. The brewer shall file a return on TTB F 5000.24, and make remittance, for the period September 16–25, no later than September 28. The brewer shall file a return on TTB F 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(b) *Amount of payment—Safe harbor rule.* (1) *General.* Taxpayers are considered to have met the requirements of paragraph (a)(1) of this section if the amount paid no later than September 29 is not less than 11/15ths (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(2) *Taxpayment not by EFT.* Taxpayers are considered to have met the requirements of paragraph (a)(2) of this section if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(c) *Weekends and holidays.* If the required taxpayment due date for the period September 16–25 or September 16–26, as applicable, falls on a Saturday or legal holiday, the return and remittance are due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance are due on the immediately following day.

(d) *Example: Payment of tax for the month of September.* (1) *Facts.* X, a brewer required to pay taxes by electronic fund transfer, incurred tax liability in the amount of $30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of $45,000, and for the period September 27–30, X incurred tax liability in the amount of $2,000.

(2) *Payment requirement.* X's payment of tax in the amount of $30,000 for the first semimonthly period of September is due no later than September 29 (§ 25.164(d)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 25.164a(a)(1)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 25.164a(b)). Under the safe harbor rule, X's payment of tax must not be less than $21,990.00, that is, 11/15ths of the tax liability incurred during the first semimonthly period of September. Additionally, X must pay the tax in the amount of $2,000 for the period September 27–30 no later than October 14 (§ 25.164a(a)(1)). X must also pay the underpayment of tax, $23,010.00, for the period September 16–26, no later than October 14 (§ 25.164a(b)).

PART 26—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

■ 17. The authority citation for part 26 continues to read as follows:

Authority: 19 U.S.C. 81c: 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5111–5114, 5121, 5122–5124, 5131, 5132, 5207, 5232, 5271, 5275, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 18. Section 26.11 is amended by revising the definition of "calendar

quarter and quarterly" to read as follows:

§ 26.11 Meaning of terms.

* * * * *

Calendar quarter and quarterly. These terms refer to the three-month periods ending on March 31, June 30, September 30, or December 31.

* * * * *

■ 19. In § 26.112, paragraph (b), the last sentence of paragraph (c)(1), and paragraph (d) are revised to read as follows:

§ 26.112 Returns for deferred payments of tax.

* * * * *

(b) *Return periods.* (1) *Semimonthly return period.* Except in the case of a taxpayer who qualifies for, and chooses to use, quarterly return periods as provided in paragraph (b)(2) of this section, all taxpayers must use semimonthly return periods for deferred payment of tax. The semimonthly return periods run from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month, except as otherwise provided in paragraph (d) of this section.

(2) *Quarterly return period.* A taxpayer may choose to use a quarterly return period if the taxpayer was not liable for more than $50,000 in taxes imposed by 26 U.S.C. 7652 in the preceding calendar year and if that taxpayer reasonably expects to be liable for not more than $50,000 in such taxes during the current calendar year. In such a case the last day for paying the tax and filing the return shall be the 14th day after the last day of the calendar quarter. However, the taxpayer may not use the quarterly return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds $50,000, and any tax that has not been paid on that date shall be due on the 14th day after the last day of the semimonthly period in which that date occurs. The following additional rules apply to the quarterly return period procedure under this section:

(i) A "taxpayer" is an individual, corporation, partnership, or other entity that is assigned a single Employer Identification Number as defined in 26 CFR 301.7701–12;

(ii) "Reasonably expects" means that there is no existing or anticipated circumstance known to the taxpayer (such as an increase in production capacity) that would cause the taxpayer's tax liability to exceed the prescribed limit;

(iii) A taxpayer with multiple locations must combine the tax liability for all locations with respect to distilled spirits, wine, or beer tax liability to determine eligibility for the quarterly return procedure;

(iv) A taxpayer who has both domestic operations and import transactions must combine the tax liability on the domestic operations and the imports with respect to distilled spirits, wine, or beer tax liability to determine eligibility for the quarterly return procedure;

(v) The controlled group rules of 26 U.S.C. 5061(e), which concern treatment of controlled groups as one taxpayer, do not apply for purposes of determining eligibility for the quarterly return procedure. However, a taxpayer who is eligible for the quarterly return procedure, and who is a member of a controlled group that owes $5 million or more in distilled spirits, wine, or beer excise taxes per year, is required to pay taxes by electronic fund transfer (EFT). Quarterly payments via EFT shall be transmitted in accordance with section 5061(e);

(vi) A new taxpayer is eligible to file quarterly returns in the first year of business simply if the taxpayer reasonably expects to be liable for not more than $50,000 in distilled spirits, wine, or beer taxes during that calendar year; and

(vii) If a taxpayer filing quarterly exceeds $50,000 in tax liability during a taxable year and therefore must revert to the semimonthly return procedure, that taxpayer may resume quarterly payments only after a full calendar year has passed during which the taxpayer's liability did not exceed $50,000.

(c) *Filing.* (1) * * *. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance are due on the immediately preceding day that is not a Saturday, Sunday, or legal holiday, except as otherwise provided in paragraph (d) of this section.

* * * * *

(d) *Special September rule for taxes due by semimonthly return.* (1) *Division of second semimonthly period.* (i) *General.* Except as otherwise provided in paragraph (d)(1)(ii) of this section, the second semimonthly period for the month of September is divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The taxpayer shall file a return on TTB F 5000.24, and make remittance, for the period September 16–26, no later than September 29. The taxpayer shall file a return on TTB F 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(ii) *Taxpayment not by electronic fund transfer.* In the case of taxes for which remittance by electronic fund transfer (EFT) is not required by § 26.112a, the second semimonthly period of September is divided into two payment periods, from the 16th day through the 25th day, and from the 26th day through the 30th day. The taxpayer shall file a return on TTB F 5000.24, and make remittance, for the period September 16–25, no later than September 28. The taxpayer shall file a return on TTB F 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(2) *Amount of payment—Safe harbor rule.* (i) *General.* Taxpayers are considered to have met the requirements of paragraph (d)(1)(i) of this section if the amount paid no later than September 29 is not less than 11/15ths (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) *Taxpayment not by EFT.* Taxpayers are considered to have met the requirements of paragraph (d)(1)(ii) of this section if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(3) *Weekends and holidays.* If the required taxpayment due date for the period September 16–25 or September 16–26, as applicable, falls on a Saturday or legal holiday, the return and remittance are due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance are due on the immediately following day.

* * * * *

PART 40—MANUFACTURE OF TOBACCO PRODUCTS, CIGARETTE PAPERS AND TUBES, AND PROCESSED TOBACCO

■ 20. The authority citation for part 40 is amended to read as follows:

Authority: 26 U.S.C. 448, 5701, 5703–5705, 5711–5713, 5721–5723, 5731–5734, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 21. Section 40.163 is revised to read as follows:

§ 40.163 Semimonthly tax return periods.

Except as otherwise provided in § 40.164, the periods to be covered by semimonthly tax returns are from the 1st day of each month through the 15th day of that month and from the 16th day of each month through the last day of that month.

■ 22. Section 40.164 is revised to read as follows:

§ 40.164 Special rule for taxes due for the month of September.

(a) *Division of second semimonthly period.* (1) *General.* Except as otherwise provided in paragraph (a)(2) of this section, the second semimonthly period for the month of September is divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The manufacturer shall file a return on TTB F 5000.24, and make remittance, for the period September 16–26, no later than September 29. The manufacturer shall file a return on TTB F 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes for which remittance by electronic fund transfer (EFT) is not required by § 40.165a, the second semimonthly period of September is divided into two payment periods, from the 16th day through the 25th day, and from the 26th day through the 30th day. The manufacturer shall file a return on TTB F 5000.24, and make remittance, for the period September 16–25, no later than September 28. The manufacturer shall file a return on TTB F 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(b) *Amount of payment—Safe harbor rule.* (1) *General.* Taxpayers are considered to have met the requirements of paragraph (a)(1) of this section if the amount paid no later than September 29 is not less than 11/15ths (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(2) *Taxpayment not by EFT.* Taxpayers are considered to have met the requirements of paragraph (a)(2) of this section if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(c) *Weekends and holidays.* If the required taxpayment due date for the period September 16–25 or September 16–26, as applicable, falls on a Saturday or legal holiday, the return and remittance are due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance are due on the immediately following day.

(d) *Example: Payment of tax for the month of September.* (1) *Facts.* X, a manufacturer of tobacco products required to pay taxes by electronic fund transfer, incurred tax liability in the amount of $30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of $45,000, and for the period September 27–30, X incurred tax liability in the amount of $2,000.

(2) *Payment requirement.* X's payment of tax in the amount of $30,000 for the first semimonthly period of September is due no later than September 29 (§ 40.165(a)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 40.164(a)(1)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 40.164(b)). Under the safe harbor rule, X's payment of tax must not be less than $21,990.00, that is, 11/15ths of the tax liability incurred during the first semimonthly period of September. Additionally, X must pay the tax in the amount of $2,000 for the period September 27–30 no later than October 14 (§ 40.164(a)(1)). X must also pay the underpayment of tax, $23,010.00, for the period September 16–26, no later than October 14 (§ 40.164(b)).

■ 23. In § 40.165, paragraph (a) is revised to read as follows:

§ 40.165 Times for filing semimonthly return.

(a) *General.* Except as otherwise provided in § 40.164 and in paragraph (b) of this section, semimonthly returns on TTB F 5000.24 must be filed, for each return period, not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance are due on the immediately preceding day that is not a Saturday, Sunday, or legal holiday, except as otherwise provided in § 40.164(c).

* * * * *

■ 24. In § 40.355, paragraphs (b), (c), (f), and (g) are revised to read as follows:

§ 40.355 Return of manufacturer.

* * * * *

(b) *Waiver from filing.* The manufacturer need not file a return for each semimonthly return period if cigarette papers and tubes were not removed subject to tax during the period and the appropriate TTB officer has granted a waiver from filing in response to a written request from the manufacturer.

(c) *Semimonthly return periods.* Except as otherwise provided in paragraph (g) of this section, semimonthly return periods run from the 1st day of the month through the 15th day of that month, and from the 16th day of the month through the last day of that month.

* * * * *

(f) *Time for filing.* Except as otherwise provided in paragraph (g) of this section, for each semimonthly return period, the return shall be filed not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance are due on the immediately preceding day that is not a Saturday, Sunday or legal holiday.

(g) *Special rule for taxes due for the month of September.* (1) *Division of second semimonthly period.* (i) *General.* Except as otherwise provided in paragraph (g)(1)(ii) of this section, the second semimonthly period for the month of September is divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The manufacturer shall file a return on TTB F 5000.24, and make remittance, for the period September 16–26, no later than September 29. The manufacturer shall file a return on TTB F 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(ii) *Taxpayment not by electronic fund transfer.* In the case of taxes for which remittance by electronic fund transfer (EFT) is not required by § 40.357, the second semimonthly period of September is divided into two payment periods, from the 16th day through the 25th day, and from the 26th day through the 30th day. The manufacturer shall file a return on TTB F 5000.24, and make remittance, for the period September 16–25, no later than September 28. The manufacturer shall file a return on TTB F 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(2) *Amount of payment—Safe harbor rule.* (i) *General.* Taxpayers are considered to have met the requirements of paragraph (g)(1)(i) of this section if the amount paid no later

than September 29 is not less than 11/15ths (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15th, and if any underpayment of tax is paid by October 14th.

(ii) *Taxpayment not by EFT.* Taxpayers are considered to have met the requirements of paragraph (g)(1)(ii) of this section if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(3) *Weekends and holidays.* If the required taxpayment due date for the period September 16–25 or September 16–26, as applicable, falls on a Saturday, or legal holiday, the return and remittance are due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance are due on the immediately following day.

* * * * *

PART 41—IMPORTATION OF TOBACCO PRODUCTS, CIGARETTE PAPERS AND TUBES, AND PROCESSED TOBACCO

■ 25. The authority citation for part 41 continues to read as follows:

Authority: 26 U.S.C. 5701–5705, 5708, 5712, 5713, 5721–5723, 5741, 5754, 5761–5763, 6301, 6302, 6313, 6402, 6404, 7101, 7212, 7342, 7606, 7651, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 26. Section 41.113 is revised to read as follows:

§ 41.113 Return periods.

Except as otherwise provided in § 41.114, the periods to be covered in the semimonthly tax returns run from the 1st day of the month through the 15th day of that month, and from the 16th day of the month through the last day of that month.

■ 27. In § 41.114, paragraphs (b) and (d) are revised to read as follows:

§ 41.114 Time for filing.

* * * * *

(b) *Special rule for taxes due for the month of September.* (1) *Division of second semimonthly period.* (i) *General.* Except as otherwise provided in paragraph (b)(1)(ii) of this section, the second semimonthly period for the month of September is divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The bonded manufacturer shall file a return on TTB F 5000.25, and make remittance, for the period September 16–26, no later than September 29. The bonded manufacturer shall file a return on TTB F 5000.25, and make remittance, for the period September 27–30, no later than October 14.

(ii) *Taxpayment not by electronic fund transfer.* In the case of taxes for which remittance by electronic fund transfer (EFT) is not required by § 41.115a, the second semimonthly period of September is divided into two payment periods, from the 16th day through the 25th day, and from the 26th day through the 30th day. The bonded manufacturer shall file a return on TTB F 5000.25, and make remittance, for the period September 16–25, no later than September 28. The bonded manufacturer shall file a return on TTB F 5000.25, and make remittance, for the period September 26–30, no later than October 14.

(2) *Amount of payment—Safe harbor rule.* (i) *General.* Taxpayers are considered to have met the requirements of paragraph (b)(1)(i) of this section if the amount paid no later than September 29 is not less than 11/15ths (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) *Taxpayment not by EFT.* Taxpayers are considered to have met the requirements of paragraph (b)(1)(ii) of this section if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(3) *Weekend or holiday due date.* If the required taxpayment due date for the period September 16–25 or September 16–26, as applicable, falls on a Saturday or legal holiday, the return and remittance are due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance are due on the immediately following day.

* * * * *

(d) *Weekends and holidays.* Except as otherwise provided in paragraph (b)(3) of this section, if the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance are due on the immediately preceding day that is not a Saturday, Sunday, or legal holiday.

* * * * *

PART 70—PROCEDURE AND ADMINISTRATION

■ 28. The authority citation for part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552: 26 U.S.C. 4181, 4182, 5123, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656–6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

■ 29. In § 70.306, the section heading and the last sentence of paragraph (a) are revised to read as follows:

§ 70.306 Time for performance of acts other than payment of tax or filing of any return when the last day falls on Saturday, Sunday, or legal holiday.

(a) * * * For rules concerning the payment of any tax or the filing of any return required under the authority of 26 U.S.C. 4181 and 4182 relating to firearms and ammunition or subtitle E relating to alcohol, tobacco products, and cigarette papers and tubes, see 26 U.S.C. 5061, 5703, and 6302 and the regulations covering the specific commodity.

* * * * *

■ 30. In § 70.412, the second sentence of paragraph (a) is revised to read as follows:

§ 70.412 Excise taxes.

(a) *Collection.* * * * If the person responsible for paying the taxes has filed a proper bond to defer payment, that person may be eligible to file semimonthly or quarterly returns, with proper remittances, to cover the taxes incurred on distilled spirits, wines, and beer during the semimonthly or quarterly period. * * *

* * * * *

Signed: June 2, 2010.

Mary G. Ryan,

Acting Administrator.

Approved: August 18, 2010.

Timothy E. Skud,

Deputy Assistant Secretary, (Tax, Trade, and Tariff Policy).

[FR Doc. 2011–1142 Filed 1–19–11; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–1090]

Drawbridge Operation Regulations; Harlem River, New York City, NY

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 103rd Street (Wards Island) Bridge at mile 0.0, across the Harlem River, New York City, New York. The deviation is necessary to facilitate bridge rehabilitation maintenance. This deviation allows the bridge to remain in the closed position for one hundred nineteen days.

DATES: This deviation is effective from January 10, 2011 through April 29, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–1090 and are available online at *http://www.regulations.gov*, inserting USCG–2010–1090 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 103rd Street (Wards Island) Bridge across the Harlem River at mile 0.0 has a vertical clearance in the closed position of 55 feet at mean high water and 60 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.789(b)(1).

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

The owner of the bridge, New York City Department of Transportation, requested a temporary deviation to facilitate rehabilitation construction at the bridge.

Under this temporary deviation the 103rd Street (Wards Island) Bridge, may remain in the closed position from January 10, 2011 through April 29, 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: January 5, 2011.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2011–1194 Filed 1–19–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–1134]

Drawbridge Operation Regulations; Merrimack River, Newburyport and Salisbury, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Newburyport US1 Bridge across the Merrimack River, at mile 3.4, between Newburyport and Salisbury, Massachusetts. The deviation is necessary to paint the bridge. This deviation allows the bridge to remain in the closed position.

DATES: This deviation is effective from February 15, 2011 through April 30, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–1134 and are available online at *http://www.regulations.gov*, inserting USCG–2010–1134 in the "Keyword" and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION: The Newburyport US1 Bridge, across the Merrimack River at mile 3.4, between Newburyport and Salisbury, Massachusetts, has a vertical clearance in the closed position of 35 feet at mean high water and 42 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.605.

The owner of the bridge, Massachusetts Department of Transportation, requested a temporary deviation from the regulations to facilitate scheduled bridge painting at the bridge.

The waterway is predominantly recreational vessels. This temporary deviation is being scheduled during the winter months when the bridge normally does not receive requests to open.

Under this temporary deviation the Newburyport US1 Bridge may remain in the closed position from February 15, 2011 through April 30, 2011.

Vessels that can pass under the bridge in the closed position may do so at any time.

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: January 5, 2011.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2011–1196 Filed 1–19–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–1141]

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Belle Chasse, 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 23 bridge across the Gulf Intracoastal Waterway (Algiers Alternate Route), mile 3.8, at Belle Chasse, Plaquemines Parish, Louisiana. The deviation is necessary to facilitate movement of vehicular traffic for the 2011 N'Awlins Air Show, to be held at the U.S. Naval Air Station, Joint Reserve Base at Belle Chasse, Louisiana. This deviation allows the bridge to remain closed to navigation for several hours on three afternoons to allow for the movement of vehicular traffic.

DATES: This deviation is effective from 3:30 p.m. on Friday, May 6, 2011 until 7:45 p.m. on Sunday, May 8, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–1141 and are available online at *http://www.regulations.gov*. They are also available for inspection or copying at two locations: 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 David Frank, Bridge Administration Branch; telephone 504–671–2128, e-mail *David.m.frank@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 Department of the Navy requested a temporary deviation from the regulations governing the State Route 23 vertical lift span drawbridge. The change accommodates the additional volume of vehicular traffic that the N'Awlins Air Show generates each year. A large number of the public is expected to attend the Naval Air Station Open House and Air Show on each day. The change allows for the expeditious dispersal of the heavy volume of vehicular traffic expected to depart the Naval Air Station, Joint Reserve Base following the event. This year, the event is being held on the weekend of May 6–8, 2011. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 3:30 p.m. until 6:45 p.m. on Friday, May 6, 2011 and from 3:30 p.m. until 7:45 p.m. on Saturday, May 7, 2011 and Sunday, May 8, 2011.

In accordance with 33 CFR 117.451(b), the bridge currently opens on signal; except that, from 6 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays, the draw need not be opened for the passage of vessels.

The State Route 23 vertical lift span drawbridge across the Gulf Intracoastal Waterway (Algiers Alternate Route), mile 3.8, at Belle Chasse, Louisiana has a vertical clearance of 40 feet above mean high water in the closed-to-navigation position and 100 feet above mean high water in the open-to-navigation position. Navigation on the waterway consists primarily of tugs with tows, commercial fishing vessels, and occasional recreational craft. Mariners may use the Gulf Intracoastal Waterway (Harvey Canal) to avoid unnecessary delays.

The Coast Guard has coordinated the closure with waterway users, industry, and other Coast Guard units. It has been determined that this closure will not have a significant effect on vessel traffic; however, the bridge can be opened in an emergency.

In accordance with 33 CFR 117.35(e), the drawbridge 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: January 3, 2011.

David M. Frank,

Bridge Administrator.

[FR Doc. 2011–1197 Filed 1–19–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2005–0031; FRL–9255–1]

RIN 2060–AQ46

Standards of Performance for Fossil-Fuel-Fired, Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend the new source performance standards for electric utility steam generating units and industrial-commercial-institutional steam generating units. This action amends the testing requirements for owners/operators of steam generating units that elect to install particulate matter continuous emission monitoring systems. It also amends the opacity monitoring requirements for owners/operators of affected facilities subject to an opacity standard that are exempt from the requirement to install a continuous opacity monitoring system. In addition, this action corrects several editorial errors identified from previous rulemakings.

DATES: This final rule is effective on March 21, 2011 without further notice, unless EPA receives adverse comment by February 22, 2011. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that some or all of the amendments to the affected subparts will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0031, by one of the following methods:

- *http://www.regulations.gov:* Follow the instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov,* or *fellner.christian@epa.gov*.
- *Fax:* (202) 566–9744.
- *Mail:* EPA Docket Center (EPA/DC), Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* In person or by courier, deliver comments to: EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are accepted only during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2005–0031. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment.

If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Christian Fellner, Energy Strategies Group, Sector Policies and Programs Division (D243–01), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–4003, Fax number (919) 541–5450, electronic mail (e-mail) address: *fellner.christian@epa.gov.*

SUPPLEMENTARY INFORMATION:

The information presented in this preamble is organized as follows:

I. Why is EPA using a direct final rule?
II. Does this action apply to me?
III. Where can I get a copy of this document?
IV. Why are we amending the rule?
V. What amendments are we making to the rule?
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. Why is EPA using a direct final rule?

We are publishing this rule without a prior proposed rule because we view this as a non-controversial action and anticipate no adverse comment. As explained in section IV, this action amends the testing requirements for owners/operators of steam generating units that elect to install particulate matter continuous emission monitoring systems (PM CEMS). This action also amends the opacity monitoring requirements for owners/operators of affected facilities subject to an opacity standard that are exempt from the requirement to install a continuous opacity monitoring system (COMS). In addition, this action corrects several editorial errors identified from previous rulemakings. These amendments do not change the technical standards for owners/operators of affected facilities nor result in the imposition of any costs beyond those included in the final rule. Other issues raised by petitioners for reconsideration of the January 28, 2009, rulemaking will be addressed in a future rule proposal to provide opportunity for public comment on any additional revisions to subparts D, Da, Db, or Dc of 40 CFR part 60.

Because this is an amendment of regulatory language through a rule action, a rule redline has been created of the current rule with the amendments. The redline document is in the docket to aid the public to read and comment on the specific changes to the regulatory text, which will be promulgated by this direct final action.

However, in the "Proposed Rules" section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule for amending the regulatory text in the new source performance standards (NSPS) for electric utility steam generating units and industrial-commercial-institutional steam generating units if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, *see* the **ADDRESSES** section of this document.

If we receive adverse comment on this direct final rule, we will publish a timely withdrawal in the **Federal Register** informing the public that the amendments in this rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

II. Does this action apply to me?

The regulated categories and entities potentially affected by this direct final rule include, but are not limited to, the following:

Category	NAICS [1]	Examples of regulated entities
Industry	221112	Fossil fuel-fired electric utility steam generating units.
Federal Government	22112	Fossil fuel-fired electric utility steam generating units owned by the Federal Government.
State/local/tribal government	22112	Fossil fuel-fired electric utility steam generating units owned by municipalities.
	921150	Fossil fuel-fired electric utility steam generating units located in Indian Country.
Any industrial, commercial, or institutional facility using a steam generating unit as defined in 60.40b or 60.40c.	211	Extractors of crude petroleum and natural gas.
	321	Manufacturers of lumber and wood products.
	322	Pulp and paper mills.
	325	Chemical manufacturers.
	324	Petroleum refiners and manufacturers of coal products.
	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.
	331	Steel works, blast furnaces.

Category	NAICS [1]	Examples of regulated entities
	332	Electroplating, plating, polishing, anodizing, and coloring.
	336	Manufacturers of motor vehicle parts and accessories.
	221	Electric, gas, and sanitary services.
	622	Health services.
	611	Educational Services.

[1] North American Industry Classification System (NAICS) code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this final rule. To determine whether your facility is regulated by this final rule, you should examine the applicability criteria in § 60.40, § 60.40Da, § 60.40b, or § 60.40c of 40 CFR part 60. If you have any questions regarding the applicability of this final rule to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

III. Where can I get a copy of this document?

In addition to the docket, an electronic copy of this final action will be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

IV. Why are we amending the rule?

EPA published a final rule in the **Federal Register** on January 28, 2009 (74 FR 5072), that amended 40 CFR part 60, subparts D, Da, Db, and Dc to add compliance, recordkeeping, and reporting requirements for owners/operators of certain affected facilities. After promulgation, EPA received a petition for reconsideration of certain provisions of the amended rule from the Utility Air Regulatory Group (UARG). UARG also filed a petition for review with the United States Court of Appeals for the District of Columbia Circuit. EPA granted UARG's petition for reconsideration and intends to address the issues raised in the petition through a subsequent rulemaking. This direct final action addresses two specific issues raised by UARG. First, UARG asserts that the condensable PM testing requirements for owners/operators of subpart Da affected facilities that elect to install PM CEMS to determine compliance with an applicable filterable PM standard are technically problematic in a number of respects and are not necessary in light of other actions taken by EPA subsequent to the promulgation of the January 2009 amendments. Second, UARG asserts that there is confusion regarding the implementation of the amended opacity monitoring provisions requiring owners/operators of affected subpart D facilities that are subject to an opacity standard, but do not use a COMS to measure opacity, to perform periodic visible emissions performance testing using EPA Method 9. This direct final rule amends specific provisions in subparts D and Da to address these issues. (The direct final rule also amends parallel provisions in subparts Db and Dc requiring owners/operators of affected facilities that are subject to an opacity standard, but do not use a COMS to measure opacity, to perform periodic visible emissions performance testing using EPA Method 9.) None of these changes will affect EPA's ability to implement and enforce the emission standards as EPA intended. The rationale for the amendments made by this direct final rulemaking follows.

For the reasons discussed below, this direct final rule eliminates the condensable PM testing requirement added by the January 2009 rulemaking. The January 2009 rulemaking added a condition to subparts D, Da, Db, and Dc that requires owners/operators electing to use a PM CEMS, in lieu of a COMS, to conduct performance tests for condensable PM emissions during the correlation testing runs of the PM CEMS required by Performance Specification 11. The existing subparts D, Da, Db, and Dc do not include specific emissions standards for condensable PM. The inclusion of this requirement in the January 2009 amendments was an initial attempt by EPA to begin collecting data on the condensable PM component of total PM. As EPA explained in the preamble to the January 2009 final rule, EPA intended to use the data collected to determine if the condensable PM emissions from steam generating units have significant health and/or environmental impacts, and whether condensable PM should be included in future amendments to the PM standards under subparts Da, Db, and Dc (74 FR 5074, January 28, 2009).

Subsequent to the January 2009 rulemaking, EPA distributed to existing facilities operating electric utility steam generating units a comprehensive information collection request (ICR) to collect data to support various rule development directives. This ICR included a requirement for selected respondents to conduct, and submit the results of, tests for condensable PM emissions by September 2010. We have concluded that the data collected pursuant to this ICR will provide sufficient data to perform a condensable PM analysis. Therefore, the condensable PM testing requirement added to subparts D, Da, Db, and Dc through the January 2009 rulemaking is no longer required, and creates an unnecessary additional testing burden for affected owners/operators. Consequently, we are amending the rules to remove the requirement for owners/operators electing to use a PM CEMS, in lieu of a COMS, to conduct performance tests for condensable PM emissions during the correlation testing runs for the PM CEMS.

The January 2009 rulemaking exempted the owners/operators of certain affected facilities subject to subparts D, Da, Db, or Dc from the requirement to use COMS to measure opacity but not the otherwise applicable opacity standard. These affected sources must conduct periodic opacity observations using Method 9, Method 22, or the results from digital opacity compliance systems to demonstrate compliance with the applicable opacity standard (§ 60.45, § 60.49Da, § 60.48b, and § 60.47c of 40 CFR part 60). The requirement to monitor compliance with the opacity standard is an essential aspect of the NSPS. However, the implementation of the monitoring provisions as promulgated in the January 2009 rulemaking warrants clarification in a number of respects. First, the existing regulations require the owners/operators of affected sources with opacity readings above levels specified in the rule to conduct a new Method 9 test every 30 calendar days. This requirement potentially conflicts with the requirement in the general provisions (40 CFR part 60, subpart A) for an owner/operator to provide written notice to EPA at least 30 calendar days

before the date on which the owner/operator intends to conduct a performance test (40 CFR 60.8(d)). Thus, the regulations as written could potentially cause problems for owners/operators of affected facilities trying to meet the notification deadline.

Second, the opacity monitoring requirements, as written, were effective immediately for owners/operators of affected facilities subject to an opacity standard that are exempt from the COMS requirement. The amended regulatory text does not, however, specify a deadline by which new sources must complete the initial opacity performance test. In addition, since the required opacity testing or monitoring frequency depends on the results of the last performance test, there was some question as to when the first post January 2009 promulgation opacity reading needed to be completed by affected facilities already subject to the NSPS.

In addition to these issues specifically identified by the petitioner, EPA recognized another issue regarding the monitoring requirements. Consistent with the provisions of subparts D and Da prior to the January 2009 rulemaking, all steam generating units subject to either subpart D or Da must meet an opacity standard regardless of the fuel burned in the unit. The heat recovery steam generator (HRSG) portion of natural gas-fired combined cycle power plants can be subject to subpart D or Da. In cases where natural gas-fired duct burners are used to boost the temperature of the hot exhaust gases from the stationary combustion turbine entering the HRSG, the HRSG may be an affected facility that could be subject to subpart D or Da. Consequently, as an unintended result of the January 2009 rulemaking, some HRSGs using duct burners at combined cycle power plants became subject to the added requirements for opacity monitoring. Prior to the January 2009 rulemaking, State permitting authorities often imposed only minimal opacity monitoring requirements for these units. It was not our intent to require regular opacity monitoring from all natural gas-fired affected facilities.

We are planning to propose amendments to the opacity monitoring requirements in these subparts to address the issues raised by petitioners for reconsideration, as well as the issue regarding natural gas-fired affected facilities, thereby providing an opportunity for public comment on EPA's approach to resolving the issues. In the interim, we are taking a number of steps in this direct final rule to immediately address these issues. First, to allow time to meet the notification deadline in the General Provisions, this direct final rule amends the minimum time between Method 9 performance tests from 30 to 45 days. The extended testing deadline will still maintain the intent of frequent observations and will also provide a reasonable amount of time in which to comply with the notification requirement and conduct the performance test. Second, this direct final rule establishes a deadline of April 29, 2011, for owners/operators who have not already done so to implement the opacity monitoring requirements for all affected facilities subject to opacity standards that are exempt from the COMS requirement. This date is over 2 years after the publication of the final amendments and will provide owners/operators of affected facilities that are not yet monitoring opacity sufficient time to begin the required monitoring. Any owners/operators of affected facilities that are currently meeting the opacity testing and monitoring provisions of the January 2009 amendments are expected to continue to meet the promulgated monitoring schedule. Finally, to reduce unnecessary performance testing, subparts D and Da are amended to give the permitting authority the ability to exempt owners/operators of affected facilities burning only natural gas from the periodic opacity monitoring requirements.

The remaining amendments included in this direct final rule are correcting previous editorial mistakes made in the text to subparts D, Da, and Db. These errors were only recently identified. First, we are correcting an incorrect reference in paragraph 60.42(c) of subpart D. The regulatory text currently exempts owner/operators of affected facilities subject to subpart D that elect to use PM CEMS from the opacity standard if they also elect to comply with the relevant sulfur dioxide (SO_2) standard in paragraph 60.43Da(a) of subpart Da. However, as discussed in the preamble to the final rule (74 FR 5073), EPA intended to exempt owners/operators of subpart D affected facilities from the opacity standard if they elect to use PM CEMS and also elect to comply with the filterable PM standards in paragraph 60.42Da(a) of subpart Da. Second, we are adding the following as a new second sentence in paragraph 60.48Da(c): "The sulfur dioxide emission standards under § 60.43Da apply at all times except during periods of startup, shutdown, or when both emergency conditions exist and the procedures under paragraph (d) of this section are implemented." This sentence was included in the original 1979 rulemaking (44 FR 33616), but was unintentionally deleted during the 2005 promulgation of the Clean Air Mercury Rule (70 FR 28606) and subsequent rulemakings carried the deletion forward and failed to add the sentence back. Third, we are amending subpart Db by adding back paragraph 60.42b(k)(4) which the **Federal Register** inadvertently deleted in publishing the January 2009 final rule (74 FR 5072). Paragraph 60.42b(k)(4) was added to subpart Db in 2007 (72 FR 32745), and in the January 2009 final rule we amended paragraphs (k)(1) through (k)(3), but intended to leave (k)(4) as it existed prior to the amendments. The paragraph was, however, unintentionally dropped when the rule was published in the **Federal Register**.

V. What amendments are we making to the rule?

The applicable paragraphs in subparts D, Da, Db, and Dc in 40 CFR part 60 are amended to delay until April 29, 2011, the implementation of a requirement for owners/operators of affected facilities subject to an opacity standard that do not use a COMS to conduct periodic opacity observations. In addition, the applicable paragraphs in subparts D and Da are amended to give the permitting authority the ability to exempt owners/operators of affected facilities burning only natural from the periodic opacity monitoring requirements.

The applicable paragraphs in subparts Da, Db, and Dc in 40 CFR part 60 are amended to delete the condition for an owner/operator that elects to use a PM CEMS, in lieu of a COMS, to conduct condensable PM performance tests during the correlation testing runs of the CEMS required by Performance Specification 11.

Subpart D in 40 CFR part 60 is amended to correct the reference in § 60.42(c) from § 60.43Da(a) to § 60.42Da(a). As discussed above, this change will implement the original intent of the rule that owners/operators of subpart D affected facilities electing to use PM CEMS be exempt from the opacity standard if they also elect to comply with the PM, not the SO_2, standard in subpart Da.

Subpart Da in 40 CFR part 60 is amended to correct the unintentional deletion of a sentence from § 60.48Da(c) by reinstating the original provision which specified that the SO_2 emission standards under § 60.43Da apply at all times except during periods of startup, shutdown, or when both emergency conditions exist.

Finally, subpart Db in 40 CFR part 60 is amended to correct the unintentional

deletion of a paragraph from § 60.42Da(k) by reinstating the original provision under § 60.42Da(k)(4). The provision provides an alternative SO_2 emission standard of not emitting any gases that contain SO_2 in excess of 87 nanograms per joule (ng/J) (0.20 lb/million British thermal unit (MMBtu)) heat input or 10 percent (0.10) of the potential SO_2 emission rate (90 percent reduction) and 520 ng/J (1.2 lb/MMBtu) heat input for modified facilities that combust coal or a mixture of coal with other fuels.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is, therefore, exempt from review under 12866. EPA has concluded that the amendments EPA is promulgating will not change the costs or benefits of this direct final rule.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. These final amendments result in no changes to the information collection requirements of the existing standards of performance and will have no impact on the information collection estimate of projected cost and hour burden made and approved by the Office of Management and Budget (OMB) during the development of the existing standards of performance. Therefore, the information collection requests have not been amended. However, OMB has previously approved the information collection requirements contained in the existing standards of performance (40 CFR part 60, subparts D, Da, Db, and Dc) under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.,* at the time the standards were promulgated on June 11, 1979 (40 CFR part 60, subpart Da, 44 FR 33580), November 25, 1986 (40 CFR part 60, subpart Db, 51 FR 42768), and September 12, 1990 (40 CFR part 60, subpart Dc, 55 FR 37674). OMB assigned OMB control numbers 2060–0023 (ICR 1053.07) for 40 CFR part 60, subpart Da, 2060–0072 (ICR 1088.10) for 40 CFR part 60, subpart Db, 2060–0202 (ICR 1564.06) for 40 CFR part 60, subpart Dc. OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of these final amendments on small entities, small entity is defined as:

(1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 USC 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This direct final rule reduces testing requirements for owner/operators of affected facilities using PM CEMS and allows reduced opacity monitoring for owner/operators of natural gas-fired affected facilities. We have therefore concluded that today's direct final rule will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

This direct final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, these final amendments are not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Reform Act (UMRA).

This direct final rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments because the burden is small and the regulation does not unfairly apply to small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. These amendments will not impose substantial direct compliance costs on State or local governments, and they will not preempt State law. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

These final amendments do not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). These final amendments will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to the final amendments.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health and safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

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

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

I. National Technology Transfer and Advancement Act

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

This action does not involve any new technical standards or the incorporation by reference of existing technical standards. Therefore, the consideration of voluntary consensus standards is not relevant to this action.

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

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

EPA lacks the discretionary authority to address environmental justice in this final rulemaking. New Source Performance Standards are technology-based standards intended to promote use of the best air pollution control technologies, taking into account the cost of such technology and any other non-air quality, health, and environmental impact and energy requirements at a broad national level.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing these final amendments 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 final rules 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). These final amendments will be effective on March 21, 2011.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 7, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart D—[Amended]

■ 2. Section 60.42 is amended by revising the last sentence in paragraph (c) to read as follows:

§ 60.42 Standard for particulate matter (PM).

* * * * *

(c) * * * If the Administrator grants the petition, the source will from then on (unless the unit is modified or reconstructed in the future) have to comply with the requirements in § 60.42Da(a) of subpart Da of this part.

■ 3. Section 60.45 is amended as follows:

■ a. By revising paragraph (b)(7) introductory text;

■ b. By revising paragraph (b)(7)(i)(D); and

■ c. By revising the last sentence of paragraph (b)(7)(ii)(A).

§ 60.45 Emissions and fuel monitoring.

* * * * *

(b) * * *

(7) An owner or operator of an affected facility subject to an opacity standard under § 60.42 that elects to not use a COMS because the affected facility burns only fuels as specified under paragraph (b)(1) of this section, monitors PM emissions as specified under paragraph (b)(5) of this section, or monitors CO emissions as specified under paragraph (b)(6) of this section, shall conduct a performance test using Method 9 of appendix A–4 of this part and the procedures in § 60.11 to demonstrate compliance with the applicable limit in § 60.42 by April 29, 2011 or within 45 days after stopping use of an existing COMS, whichever is later, and shall comply with either paragraph (b)(7)(i), (b)(7)(ii), or (b)(7)(iii) of this section. The observation period for Method 9 of appendix A–4 of this part performance tests may be reduced from 3 hours to 60 minutes if all 6-minute averages are less than 10 percent and all individual 15-second observations are less than or equal to 20 percent during the initial 60 minutes of observation. The permitting authority may exempt owners or operators of affected facilities burning only natural gas from the opacity monitoring requirements.

(i) * * *

(D) If the maximum 6-minute average opacity is greater than 10 percent, a subsequent Method 9 of appendix A–4 of this part performance test must be completed within 45 calendar days from the date that the most recent performance test was conducted.

(ii) * * *

(A) * * * If the sum of the occurrence of visible emissions is greater than 5 percent of the observation period (i.e., 90 seconds per 30 minute period), the owner or operator shall either document and adjust the operation of the facility and demonstrate within 24 hours that the sum of the occurrence of visible emissions is equal to or less than 5 percent during a 30 minute observation (i.e., 90 seconds) or conduct a new Method 9 of appendix A–4 of this part performance test using the procedures in paragraph (b)(7) of this section within 45 calendar days according to the requirements in § 60.46(b)(3).

* * * * *

Subpart Da—[Amended]

■ 4. Section 60.48Da is amended by revising paragraph (c) to read as follows:

§ 60.48Da Compliance provisions.

* * * * *

(c) The PM emission standards under § 60.42Da and the NO_X emission standards under § 60.44Da apply at all times except during periods of startup, shutdown, or malfunction. The sulfur dioxide emission standards under § 60.43Da apply at all times except during periods of startup, shutdown, or when both emergency conditions exist

and the procedures under paragraph (d) of this section are implemented.

* * * * *

■ 5. Section 60.49Da is amended as follows:

■ a. By revising paragraph (a)(3) introductory text;

■ b. By revising paragraph (a)(3)(ii)(D);

■ c. By revising the last sentence of paragraph (a)(3)(iii)(A); and

■ d. By removing paragraph (v)(2)(ii); and

■ e. By redesignating paragraph (v)(2)(iii) as paragraph (v)(2)(ii).

§ 60.49Da Emission monitoring.

(a) * * *

(3) The owner or operators of an affected facility that meets the conditions in paragraph (a)(2) of this section may, as an alternative to using a COMS, elect to monitor visible emissions using the applicable procedures specified in paragraphs (a)(3)(i) through (iv) of this section. The opacity performance test requirement in paragraph (a)(3)(i) must be conducted by April 29, 2011, within 45 days after stopping use of an existing COMS, or within 180 days after initial startup of the facility, whichever is later. The permitting authority may exempt owners or operators of affected facilities burning only natural gas from the opacity monitoring requirements.

* * * * *

(ii) * * *

(D) If the maximum 6-minute average opacity is greater than 10 percent, a subsequent Method 9 of appendix A–4 of this part performance test must be completed within 45 calendar days from the date that the most recent performance test was conducted.

(iii) * * *

(A) * * * If the sum of the occurrence of visible emissions is greater than 5 percent of the observation period (*i.e.,* 90 seconds per 30 minute period), the owner or operator shall either document and adjust the operation of the facility and demonstrate within 24 hours that the sum of the occurrence of visible emissions is equal to or less than 5 percent during a 30 minute observation (*i.e.,* 90 seconds) or conduct a new Method 9 of appendix A–4 of this part performance test using the procedures in paragraph (a)(3)(i) of this section within 45 calendar days according to the requirements in § 60.50Da(b)(3).

* * * * *

Subpart Db—[Amended]

■ 6. Section 60.42b is amended by adding paragraph (k)(4) to read as follows:

§ 60.42b Standard for sulfur dioxide (SO_2).

* * * * *

(k) * * *

(4) As an alternative to meeting the requirements under paragraph (k)(1) of this section, modified facilities that combust coal or a mixture of coal with other fuels shall not cause to be discharged into the atmosphere any gases that contain SO_2 in excess of 87 ng/J (0.20 lb/MMBtu) heat input or 10 percent (0.10) of the potential SO_2 emission rate (90 percent reduction) and 520 ng/J (1.2 lb/MMBtu) heat input.

■ 7. Section 60.46b is amended by removing paragraph (j)(11)(ii) and redesignating paragraph (j)(11)(iii) as paragraph (j)(11)(ii).

■ 8. Section 60.48b is amended as follows:

■ a. By revising paragraph (a) introductory text;

■ b. By revising paragraph (a)(1)(iv); and

■ c. By revising the last sentence of paragraph (a)(2)(i).

§ 60.48b Emission monitoring for particulate matter and nitrogen oxides.

(a) Except as provided in paragraph (j) of this section, the owner or operator of an affected facility subject to the opacity standard under § 60.43b shall install, calibrate, maintain, and operate a continuous opacity monitoring system (COMS) for measuring the opacity of emissions discharged to the atmosphere and record the output of the system. The owner or operator of an affected facility subject to an opacity standard under § 60.43b and meeting the conditions under paragraphs (j)(1), (2), (3), (4), or (5) of this section who elects not to use a COMS shall conduct a performance test using Method 9 of appendix A–4 of this part and the procedures in § 60.11 to demonstrate compliance with the applicable limit in § 60.43b by April 29, 2011, within 45 days of stopping use of an existing COMS, or 180 days after initial startup of the facility, whichever is later, and shall comply with either paragraphs (a)(1), (a)(2), or (a)(3) of this section. The observation period for Method 9 of appendix A–4 of this part performance tests may be reduced from 3 hours to 60 minutes if all 6-minute averages are less than 10 percent and all individual 15-second observations are less than or equal to 20 percent during the initial 60 minutes of observation.

(1) * * *

(iv) If the maximum 6-minute average opacity is greater than 10 percent, a subsequent Method 9 of appendix A–4 of this part performance test must be completed within 45 calendar days from the date that the most recent performance test was conducted.

(2) * * *

(i) * * * If the sum of the occurrence of visible emissions is greater than 5 percent of the observation period (*i.e.,* 90 seconds per 30 minute period), the owner or operator shall either document and adjust the operation of the facility and demonstrate within 24 hours that the sum of the occurrence of visible emissions is equal to or less than 5 percent during a 30 minute observation (*i.e.,* 90 seconds) or conduct a new Method 9 of appendix A–4 of this part performance test using the procedures in paragraph (a) of this section within 45 calendar days according to the requirements in § 60.46d(d)(7).

* * * * *

Subpart Dc—[Amended]

■ 9. Section 60.45c is amended by removing paragraph (c)(11)(ii) and redesignating paragraph (c)(11)(iii) as paragraph (c)(11)(ii).

■ 10. Section 60.47c is amended as follows:

■ a. By revising paragraph (a) introductory text;

■ b. By revising paragraph (a)(1)(iv); and

■ c. By revising the last sentence of paragraph (a)(2)(i).

§ 60.47c Emission monitoring for particulate matter.

(a) Except as provided in paragraphs (c), (d), (e), (f), and (g) of this section, the owner or operator of an affected facility combusting coal, oil, or wood that is subject to the opacity standards under § 60.43c shall install, calibrate, maintain, and operate a continuous opacity monitoring system (COMS) for measuring the opacity of the emissions discharged to the atmosphere and record the output of the system. The owner or operator of an affected facility subject to an opacity standard in § 60.43c(c) that is not required to use a COMS due to paragraphs (c), (d), (e), or (f) of this section that elects not to use a COMS shall conduct a performance test using Method 9 of appendix A–4 of this part and the procedures in § 60.11 to demonstrate compliance with the applicable limit in § 60.43c by April 29, 2011, within 45 days of stopping use of an existing COMS, or 180 days after initial startup of the facility, whichever is later, and shall comply with either paragraphs (a)(1), (a)(2), or (a)(3) of this section. The observation period for Method 9 of appendix A–4 of this part performance tests may be reduced from 3 hours to 60 minutes if all 6-minute averages are less than 10 percent and all individual 15-second observations are less than or equal to 20 percent during the initial 60 minutes of observation.

(1) * * *

(iv) If the maximum 6-minute average opacity is greater than 10 percent, a subsequent Method 9 of appendix A–4 of this part performance test must be completed within 45 calendar days from the date that the most recent performance test was conducted.

(2) * * *

(i) * * * If the sum of the occurrence of visible emissions is greater than 5 percent of the observation period (*i.e.,* 90 seconds per 30 minute period), the owner or operator shall either document and adjust the operation of the facility and demonstrate within 24 hours that the sum of the occurrence of visible emissions is equal to or less than 5 percent during a 30 minute observation (*i.e.,* 90 seconds) or conduct a new Method 9 of appendix A–4 of this part performance test using the procedures in paragraph (a) of this section within 45 calendar days according to the requirements in § 60.45c(a)(8).

* * * * *

[FR Doc. 2011–1008 Filed 1–19–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002]

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
Ashley County, Arkansas, and Incorporated Areas Docket No.: FEMA–B–1085			
Snake Creek	Approximately 1,400 feet downstream of Main Street ..... Approximately 1,200 feet downstream of Main Street	+131 +131	City of Crossett.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

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

∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Crossett

Maps are available for inspection at City Hall, 201 Main Street, Crossett, Arkansas 71635.

Garrard County, Kentucky, and Incorporated Areas
Docket No.: FEMA–B–1111

Canoe Creek (backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 0.6 mile upstream of the confluence with the Kentucky River.	+567	Unincorporated Areas of Garrard County.
Davis Creek (backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 0.4 mile upstream of the confluence with the Kentucky River.	+570	Unincorporated Areas of Garrard County.
Dix River (backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 269 feet downstream of the confluence with Dix River Tributary 82.	+553	Unincorporated Areas of Garrard County.
Kentucky River	At the confluence with the Dix River	+553	Unincorporated Areas of Garrard County.
	At the confluence with Paint Lick Creek	+573	
Kentucky River Tributary 40 (backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 932 feet upstream of Old Lexington Road East.	+565	Unincorporated Areas of Garrard County.
Paint Lick Creek (backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 1.9 miles upstream of the confluence with the Kentucky River.	+573	Unincorporated Areas of Garrard County.
Scotch Fork (backwater effects from Kentucky River).	From the confluence with Sugar Creek to approximately 656 feet downstream of Poor Ridge Pike.	+570	Unincorporated Areas of Garrard County.
Sugar Creek (backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 0.7 mile upstream of the confluence with Scotch Fork.	+570	Unincorporated Areas of Garrard County.
White Oak Creek (backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 0.7 mile upstream of the confluence with the Kentucky River.	+563	Unincorporated Areas of Garrard County.

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

ADDRESSES

Unincorporated Areas of Garrard County

Maps are available for inspection at 15 Public Square, Lancaster, KY 40444.

McLean County, Kentucky, and Incorporated Areas
Docket No.: FEMA–B–1111

Black Lake Creek (backwater effects from Green River).	From the confluence with Cypress Creek to approximately 1 mile upstream of Coffman Schoolhouse Road.	+393	Unincorporated Areas of McLean County.
Buck Creek (backwater effects from Green River).	From the confluence with West Fork Buck Creek to approximately 275 feet upstream of Atherton Road.	+391	Unincorporated Areas of McLean County.
Cypress Creek Tributary 32 (backwater effects from Green River).	From the confluence with Cypress Creek to approximately 2 miles upstream of the confluence with Cypress Creek.	+393	Unincorporated Areas of McLean County.
Cypress Creek Tributary 36 (backwater effects from Green River).	From the confluence with Cypress Creek to approximately 1.8 miles upstream of KY–85.	+391	Unincorporated Areas of McLean County.
Cypress Creek Tributary 59 (backwater effects from Green River).	From the confluence with Cypress Creek to approximately 490 feet upstream of Bell Road.	+389	Unincorporated Areas of McLean County.
Delaware Creek (backwater effects from Ohio River).	From the confluence with the Green River to approximately 380 feet upstream of KY–593.	+386	Unincorporated Areas of McLean County.
Green River	Approximately 1.9 miles downstream of the confluence with Green River Tributary 33.	+387	City of Livermore, Town of Calhoun, Unincorporated Areas of McLean County.
	Approximately 2.5 miles downstream of KY–85	+393	

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
Green River Tributary 19 (backwater effects from Green River).	From the confluence with the Green River to approximately 0.73 mile downstream of KY–136.	+389	Unincorporated Areas of McLean County.
Green River Tributary 27 (backwater effects from Green River).	From the confluence with the Green River to approximately 1,270 feet upstream of KY–256.	+388	Unincorporated Areas of McLean County.
Green River Tributary 33 (backwater effects from Green River).	From the confluence with the Green River to approximately 1.1 miles upstream of the confluence with the Green River.	+387	Unincorporated Areas of McLean County.
Hanley Creek (backwater effects from Green River).	From the confluence with the Green River to approximately 0.54 mile upstream of KY–136.	+390	Unincorporated Areas of McLean County.
Long Falls Creek (backwater effects from Green River).	From the confluence with the Green River to approximately 2,330 feet upstream of KY–815.	+389	Unincorporated Areas of McLean County.
Long Falls Creek Tributary 18 (backwater effects from Green River).	From the confluence with Long Falls Creek to approximately 0.59 mile upstream of the confluence with Long Falls Creek.	+389	Unincorporated Areas of McLean County.
Long Falls Creek Tributary 22 (backwater effects from Green River).	From the confluence with Long Falls Creek to approximately 2,400 feet downstream of KY–140.	+389	Unincorporated Areas of McLean County.
Long Falls Creek Tributary 23 (backwater effects from Green River).	From the confluence with Long Falls Creek to approximately 0.88 mile upstream of Leachman Schoolhouse Road.	+389	Unincorporated Areas of McLean County.
Pond Drain (backwater effects from Green River).	From the confluence with Pond Drain Tributary 1 to approximately 1.3 miles upstream of the confluence with Pond Drain Tributary 1.	+390	Unincorporated Areas of McLean County.
Pond Drain Tributary 1 (backwater effects from Green River).	From the confluence with Pond Drain to approximately 656 feet downstream of Adams Schoolhouse Road.	+389	Unincorporated Areas of McLean County.
Pond Drain Tributary 2 (backwater effects from Green River).	From the confluence with Pond Drain to approximately 400 feet upstream of KY–81.	+390	Unincorporated Areas of McLean County.
Pond Drain Tributary 2.1 (backwater effects from Green River).	From the confluence with Pond Drain Tributary 2 to approximately 1,890 feet upstream of the confluence with Pond Drain Tributary 2.	+390	Unincorporated Areas of McLean County.
Pond River Tributary 107 (backwater effects from Green River).	From the county boundary to approximately 266 feet downstream of Branch Schoolhouse Road.	+389	Unincorporated Areas of McLean County.
West Fork Buck Creek (backwater effects from Green River).	From the confluence with the Green River to approximately 2,200 feet downstream of KY–250.	+390	Unincorporated Areas of McLean County.
West Fork Buck Creek Tributary 10 (backwater effects from Green River).	From the confluence with West Fork Buck Creek to 0.6 mile upstream of the confluence with West Fork Buck Creek.	+390	Unincorporated Areas of McLean County.
Yellow Creek (backwater effects from Green River).	From the confluence with Yellow Creek Tributary 6 to 0.65 mile upstream of the confluence with Yellow Creek Tributary 6.	+388	Unincorporated Areas of McLean County.
Yellow Creek Tributary 6 (backwater effects from Green River).	From the confluence with Yellow Creek to approximately 1,265 feet upstream of the confluence with Yellow Creek.	+388	Unincorporated Areas of McLean County.

* 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 Livermore

Maps are available for inspection at 105 West 3rd Street, Livermore, KY 42352.

Town of Calhoun

Maps are available for inspection at 325 West 2nd Street, Calhoun, KY 42327.

Unincorporated Areas of McLean County

Maps are available for inspection at 210 Main Street, Calhoun, KY 42327.

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
Rowan County, Kentucky, and Incorporated Areas Docket No.: FEMA–B–1110			
Cave Run Lake	Entire shoreline within community	+765	Unincorporated Areas of Rowan County.
Ramey Creek (backwater effects from Cave Run Lake).	From the confluence with Cave Run Lake to approximately 1,940 feet upstream of the confluence with Cave Run Lake.	+765	Unincorporated Areas of Rowan County.
Scott Creek (backwater effects from Cave Run Lake).	From the confluence with Cave Run Lake to approximately 0.9 mile upstream of KY–801.	+765	Unincorporated Areas of Rowan County.
Warix Run (backwater effects from Cave Run Lake).	From the confluence with Cave Run Lake to approximately 1,720 feet upstream of the confluence with Cave Run Lake.	+765	Unincorporated Areas of Rowan County.

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

ADDRESSES

Unincorporated Areas of Rowan County

Maps are available for inspection at 627 East Main Street, Morehead, KY 40351.

Andrew County, Missouri, and Incorporated Areas Docket No.: FEMA–B–1087			
Missouri River	Approximately 1,250 feet upstream of the Buchanan County boundary.	+825	City of Amazonia, Unincorporated Areas of Andrew County.
	Approximately 1,200 feet downstream of the Doniphan County boundary.	+833	

* 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 Amazonia

Maps are available for inspection at 441 Spring Street, Amazonia, MO 64421.

Unincorporated Areas of Andrew County

Maps are available for inspection at 410 Court Street, Savannah, MO 64485.

Perry County, Ohio, and Incorporated Areas Docket No.: FEMA–B–1085			
Black Fork (backwater effects from Moxahala Creek).	At the upstream side of Ceramic Road	+755	Unincorporated Areas of Perry County.
	At the confluence with Moxahala Creek	+755	
Brehm Run	At the confluence with Center Branch Rusk Creek	+824	Unincorporated Areas of Perry County.
	Approximately 1,640 feet upstream of Toll Gate Road	+838	
Buckeye Lake	Entire shoreline	+893	Unincorporated Areas of Perry County.
Center Branch Rush Creek	At the confluence with Rush Creek	+811	Unincorporated Areas of Perry County.
	Approximately 0.9 mile upstream of State Route 668	+856	
Clark Run	Approximately 0.7 mile downstream of the confluence with Salem Run.	+805	Unincorporated Areas of Perry County.
	Approximately 0.9 mile upstream of Mainesville Road	+819	
Jonathan Creek	Approximately 900 feet downstream of Main Street	+843	Unincorporated Areas of Perry County.
	Approximately 830 feet upstream of State Route 204	+847	
Lideys Run	At the confluence with Center Branch Rush Creek	+813	Unincorporated Areas of Perry County.
	Approximately 220 feet upstream of Pen Road	+817	

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
Moxahala Creek	At the confluence with Black Fork	+755	Unincorporated Areas of Perry County, Village of Crooksville.
	Approximately 1,380 feet upstream of State Route 669	+760	
Rush Creek	Approximately 1.0 mile downstream of Flagdale Road	+803	Unincorporated Areas of Perry County.
	Approximately 240 feet downstream of the confluence with Center Branch Rush Creek.	+810	
Salem Run	At the confluence with Clark Run	+806	Unincorporated Areas of Perry County.
	Approximately 0.6 mile upstream of Flagdale Road	+824	
Sunday Creek	Approximately 0.8 mile downstream of Main Street	+724	Unincorporated Areas of Perry County, Village of Corning.
	Approximately 890 feet upstream of Adams Street	+735	
West Branch Sunday Creek	Approximately 1,760 feet downstream of Main Street	+760	Unincorporated Areas of Perry County, Village of Hemlock.
	Approximately 1,700 feet upstream of Main Street	+767	

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

ADDRESSES

Unincorporated Areas of Perry County

Maps are available for inspection at 109–A East Gay Street, Somerset, OH 43783.

Village of Corning

Maps are available for inspection at 115 South Corning Avenue, Corning, OH 43730.

Village of Crooksville

Maps are available for inspection at 98 South Buckeye Street, Crooksville, OH 43731.

Village of Hemlock

Maps are available for inspection at 8810 Main Street Southeast, Hemlock, OH 43730.

Sandusky County, Ohio, and Incorporated Areas
Docket No.: FEMA–B–1085

Flag Run	Approximately 0.4 mile downstream of North Broadway Street.	+669	Unincorporated Areas of Sandusky County, Village of Green Springs.
	Approximately 1,700 feet downstream of North Broadway Street.	+670	
Portage River	Approximately 0.7 mile downstream of the railroad	+625	Unincorporated Areas of Sandusky County.
	Approximately 1,800 feet downstream of the railroad	+626	
	Approximately 1,300 feet upstream of South Cherry Street	+631	
	Approximately 0.5 mile upstream of South Cherry Street	+632	
Sandusky River	Approximately 1,800 feet upstream of U.S. Route 20	+586	City of Fremont.
	Approximately 0.4 mile downstream of Tiffin Road	+596	
Victoria Creek	Approximately 200 feet upstream of Fort Findlay Road	+629	Village of Woodville.
	Approximately 100 feet downstream of Grand Avenue	+629	

* 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 Fremont

Maps are available for inspection at 323 South Front Street, Fremont, OH 43420.

Unincorporated Areas of Sandusky County

Maps are available for inspection at 606 West State Street, Fremont, OH 43420.

Village of Green Springs

Maps are available for inspection at 120 Catherine Street, Green Springs, OH 44836.

Village of Woodville

Maps are available for inspection at 219 West Main Street, Woodville, OH 43469.

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
Scioto County, Ohio, and Incorporated Areas Docket No.: FEMA–B–1085			
Bonser Run (backwater effects from Ohio River).	Approximately 1,240 feet upstream of Milldale Road	+538	Unincorporated Areas of Scioto County.
	Approximately 620 feet upstream of Elliot Hill Road	+538	
Candy Run (backwater effects from Scioto River).	At the confluence with the Scioto River	+535	Unincorporated Areas of Scioto County.
	Approximately 0.5 mile upstream of Huston Hollow-Long Run Road.	+535	
Duck Run (backwater effects from Scioto River).	Approximately 547 feet upstream of Duck Run-Otway Road.	+535	Unincorporated Areas of Scioto County.
	Just downstream of McDermott Pond Creek Road	+535	
Lick Run (backwater effects from Ohio River).	Approximately 0.5 mile upstream of State Route 522	+538	Unincorporated Areas of Scioto County.
	At the confluence with Pine Creek	+538	
Little Scioto River (backwater effects from Ohio River).	Approximately 4.6 miles upstream of Dixon Mill Road	+538	Unincorporated Areas of Scioto County.
	Approximately 447 feet upstream of Slocum Avenue	+538	
Little Scioto River Tributary 3 (backwater effects from Ohio River).	At the confluence with the Little Scioto River	+538	Unincorporated Areas of Scioto County.
	Approximately 680 feet upstream of Chesapeake-Ohio Railway.	+538	
Munn Run	Just upstream of U.S. Route 52 Westbound (Gallia Street)	+536	City of Portsmouth, Village of New Boston.
	Approximately 860 feet upstream of Valley Street	+551	
Oven Lick Run (backwater effects from Ohio River).	Approximately 0.4 mile upstream of State Route 140	+538	Unincorporated Areas of Scioto County.
	At the confluence with Wards Run	+538	
Scioto Brush Creek (backwater effects from Scioto River).	Approximately 840 feet downstream of McDermott Pond Creek Road.	+535	Unincorporated Areas of Scioto County.
	Approximately 0.5 mile downstream of State Route 104	+535	
Swaugar Valley Run (backwater effects from Ohio River).	Approximately 1,250 feet downstream of Elliot Hill Road	+538	Unincorporated Areas of Scioto County.
	Approximately 1,200 feet upstream of Elliot Hill Road	+538	
Swaugar Valley Run Tributary 1 (backwater effects from Ohio River).	At the confluence with Swaugar Valley Run	+538	Unincorporated Areas of Scioto County.
	Approximately 600 feet upstream of Swaugar Valley Road	+538	
Wards Run (backwater effects from Ohio River).	At the confluence with the Little Scioto River	+538	Unincorporated Areas of Scioto County.
	Approximately 0.7 mile upstream of State Route 140	+538	

* 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 Portsmouth
Maps are available for inspection at 728 2nd Street, Portsmouth, OH 45662.

Unincorporated Areas of Scioto County
Maps are available for inspection at 617 Court Street, Portsmouth, OH 45662.

Village of New Boston
Maps are available for inspection at 3980 Rhodes Avenue, New Boston, OH 45662.

Caddo County, Oklahoma, and Incorporated Areas Docket No.: FEMA–B–1091			
Deer Creek East Tributary	Approximately 250 feet upstream of N2480 Road	+1484	Unincorporated Areas of Caddo County.
	Approximately 1,700 feet upstream of N2480 Road	+1503	

* 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 Caddo County

Maps are available for inspection at the Caddo County Courthouse, 201 West Oklahoma Avenue, Room 11, Anadarko, OK 73005.

Denton County, Texas, and Incorporated Areas
Docket No.: FEMA–B–7740 and B–1083

Cooper Creek	Approximately 2 feet upstream of North Mayhill Road	+570	City of Denton, Unincorporated Areas of Denton County.
	Approximately 570 feet downstream of Mingo Road	+585	
	Approximately 586 feet downstream of East Sherman Drive.	+628	
	Approximately 5 feet downstream of North Locust Street	+652	
Dudley Branch	Approximately 2,455 feet downstream of Indian Road	+449	City of Carrollton, Town of Hebron.
	Approximately 2,600 feet downstream of Standridge Drive	+501	
Fletcher Branch	Approximately 10 feet downstream of Hickory Creek Road	+555	City of Denton, Unincorporated Areas of Denton County.
	Approximately 360 feet upstream of El Paso Street	+612	
Furneaux Creek	Approximately 1,320 feet upstream of Old Denton Road	+464	City of Carrollton, City of Plano, Town of Hebron.
	Approximately 115 feet upstream of East Hebron Parkway	+549	
Indian Creek	Approximately 180 feet downstream of Hebron Parkway	+463	City of Carrollton, City of Lewisville, City of Plano, City of The Colony, Town of Hebron, Unincorporated Areas of Denton County.
	Approximately 2,940 feet upstream of East Old Denton Road.	+477	
Stream 6E1	Approximately 980 feet downstream of North Josey Lane	+485	City of Carrollton, City of Dallas.
	Approximately 1,095 feet upstream of East Frankford Road.	+524	
Timber Creek	Approximately 4,925 feet downstream of Hebron Parkway	+450	City of Lewisville, Town of Double Oak, Town of Flower Mound.
	Approximately 295 feet upstream of South Woodland Trail	+626	

* 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 Carrollton
Maps are available for inspection at 1945 East Jackson Road, Carrollton, TX 75006.

City of Dallas
Maps are available for inspection at 320 East Jefferson Boulevard, Room 321, Dallas, TX 75203.

City of Denton
Maps are available for inspection at 215 East McKinney Street, Denton, TX 76201.

City of Lewisville
Maps are available for inspection at 1197 West Main Street, Lewisville, TX 75067.

City of Plano
Maps are available for inspection at 1520 Avenue K, Plano, TX 75086.

City of The Colony
Maps are available for inspection at 5151 North Colony Boulevard, The Colony, TX 75056.

Town of Double Oak
Maps are available for inspection at 1100 Cross Timber Drive, Double Oak, TX 75067.

Town of Flower Mound
Maps are available for inspection at 2121 Cross Timbers Road, Flower Mound, TX 75028.

Town of Hebron
Maps are available for inspection at 4624 Charles Street, Carrollton, TX 75010.

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
Unincorporated Areas of Denton County			
Maps are available for inspection at 306 North Loop 288, Suite 115, Denton, TX 76201.			

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

Dated: January 11, 2011.

Edward L. Connor,

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

[FR Doc. 2011–1058 Filed 1–19–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002]

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
Hempstead County, Arkansas, and Incorporated Areas Docket No.: FEMA–B–1085			
Black Branch	Approximately 0.60 mile downstream of County Highway 118	+318	Unincorporated Areas of Hempstead County.
	Approximately 1,850 feet upstream of Patmos Road	+364	
North Tributary to Caney Creek	Approximately 1,200 feet downstream of I–30	+288	Unincorporated Areas of Hempstead County.
	Approximately 1,700 feet upstream of I–30	+302	
Pate Creek	Approximately 0.62 mile downstream of South Phillips Drive.	+278	Unincorporated Areas of Hempstead County.
	Just upstream of County Highway 248	+311	
Tributary to Caney Creek	Approximately 0.41 mile downstream of West 3rd Street	+285	Unincorporated Areas of Hempstead County.
	Approximately 1,800 feet upstream of West 3rd Street	+299	
Tributary to Pate Creek	At the confluence with Pate Creek	+301	Unincorporated Areas of Hempstead County.
	Approximately 700 feet downstream of Bill Clinton Drive	+319	

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

ADDRESSES
Unincorporated Areas of Hempstead County
Maps are available for inspection at the Hempstead County Courthouse, 400 South Washington Street, Hope, AR 71801.

Jones County, Iowa, and Incorporated Areas Docket No.: FEMA–B–1075			
Maquoketa River	Approximately 425 feet downstream of U.S. Route 151	+803	Unincorporated Areas of Jones County.
	Approximately 0.73 mile upstream of U.S. Route 151	+805	
Unnamed Stream	Approximately 600 feet downstream of U.S. Route 151	+818	Unincorporated Areas of Jones County.
	Approximately 250 feet downstream of U.S. Route 151	+819	

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

ADDRESSES
Unincorporated Areas of Jones County
Maps are available for inspection at the Jones County Courthouse, 500 West Main Street, Anamosa, IA 52205.

Calhoun County, Michigan (All Jurisdictions) Docket No.: FEMA–B–1085			
Duck Lake	Entire shoreline within community	+930	Township of Clarence.
Kalamazoo River	Approximately 705 feet downstream of 20th Street	+807	City of Springfield.
	Approximately 0.33 mile upstream of Angell Street	+808	
Kalamazoo River	Approximately 5 miles upstream of I-69 North	+881	Township of Marshall.
	Approximately 200 feet downstream of Kalamazoo Avenue.	+885	
Kalamazoo River	Approximately 1.08 miles upstream of 23 Mile Road	+919	Township of Sheridan.
	Approximately 1.1 miles upstream of 23 Mile Road	+919	
	Approximately 1.08 miles downstream of Albion Street	+929	
	Approximately 0.7 mile downstream of Albion Street	+930	
Lyon Lake	Entire shoreline within community	+941	Township of Fredonia.
North Branch Kalamazoo River	Approximately 225 feet upstream of 29 ½ Mile Road	+947	Township of Sheridan.
	Approximately 0.75 mile upstream of 29 ½ Mile Road	+947	

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

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

ADDRESSES

City of Springfield
Maps are available for inspection at 601 Avenue A, Springfield, MI 49037.

Township of Clarence
Maps are available for inspection at 27052 R Drive North, Albion, MI 49224.

Township of Fredonia
Maps are available for inspection at 8803 17 Mile Road, Marshall, MI 49068.

Township of Marshall
Maps are available for inspection at 13551 Myron Avery Drive, Marshall, MI 49068.

Township of Sheridan
Maps are available for inspection at 13355 29th Mile Road, Albion, MI 49224.

Clinton County, Missouri, and Incorporated Areas
Docket No.: FEMA–B–1106

Concord Creek	Approximately 30 feet upstream of the confluence with Funkhouser Creek.	+879	City of Plattsburg.
	Approximately 25 feet downstream of East Concord Drive	+901	
Dicks Creek	Approximately 20 feet upstream of the City of Trimble corporate limit.	+931	City of Trimble, Unincorporated Areas of Clinton County.
Funkhouser Creek	Approximately 725 feet downstream of the confluence with Concord Creek.	+876	City of Plattsburg.
	Approximately 350 feet downstream of the confluence with Concord Creek.	+878	
Funkhouser Creek	Approximately 225 feet upstream of Broadway Street	+923	City Plattsburg, Unincorporated Areas of Clinton County.
	Approximately 25 feet downstream of Plotsky Avenue	+943	
Smithland Lake	Entire shoreline within community	+876	City of Trimble, Unincorporated Areas of Clinton County.

* 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 Plattsburg
Maps are available for inspection at 114 West Maple Street, Plattsburg, MO 64477.

City of Trimble
Maps are available for inspection at 201 Port Arthur Road, Trimble, MO 64492.

Unincorporated Areas of Clinton County
Maps are available for inspection at 207 North Main Street, Plattsburg, MO 64477.

Fulton County, Ohio, and Incorporated Areas
Docket No.: FEMA–B–1085

Bad Creek	Approximately 1,200 feet downstream of State Highway 109.	+694	Village of Delta.
	Approximately 50 feet downstream of State Highway 109	+697	
Brush Creek	Approximately 0.5 mile upstream of County Highway 24	+713	Village of Archbold.
	Approximately 100 feet upstream of County Highway 22	+724	
North Turkeyfoot Creek	Approximately 0.7 mile upstream of County Highway 13	+742	City of Wauseon.
	Approximately 0.8 mile upstream of County Highway 13	+743	

* 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 Wauseon
Maps are available for inspection at City Hall, 230 Clinton Street, Wauseon, OH 43567.

Village of Archbold
Maps are available for inspection at the Municipal Building, 300 North Defiance Street, Archbold, OH 43502.

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
Village of Delta Maps are available for inspection at the Memorial Hall, 401 Main Street, Delta, OH 43515.			
Richland County, Ohio, and Incorporated Areas **Docket No.: FEMA–B–1087**			
Clear Fork Mohican River	Approximately 0.72 mile upstream of Benedict Road	+1,062	Unincorporated Areas of Richland County.
	Approximately 0.09 mile upstream of State Route 95	+1,068	
Clear Fork Mohican River	Approximately 0.95 mile upstream of Main Street	+1,161	Village of Lexington.
	Approximately 0.23 mile upstream of Lexington Ontario Road.	+1,178	

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

ADDRESSES

Unincorporated Areas of Richland County

Maps are available for inspection at 1495 West Longview Avenue, Mansfield, OH 44906.

Village of Lexington

Maps are available for inspection at 44 Main Street, Lexington, OH 44904.

McCormick County, South Carolina, and Incorporated Areas **Docket No.: FEMA–B–1087**			
Clark Hill Reservoir/Lake Thurmond.	Entire shoreline within community	+339	Town of Parksville, Unincorporated Areas of McCormick County.

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

ADDRESSES

Town of Parksville

Maps are available for inspection at the McCormick County Administrative Offices, 362 Airport Road, McCormick, SC 29835.

Unincorporated Areas of McCormick County

Maps are available for inspection at the McCormick County Administrative Offices, 362 Airport Road, McCormick, SC 29835.

Maverick County, Texas, and Incorporated Areas **Docket No.: FEMA–B–1085**			
Tributary to Seco Creek	Approximately 115 feet downstream of U.S. Route 277	+737	City of Eagle Pass, Unincorporated Areas of Maverick County.
	Approximately 200 feet upstream of U.S. Route 277	+740	
Unnamed Tributary of Rio Grande.	Approximately 200 feet upstream of Laura Street	+737	Unincorporated Areas of Maverick County.
	Just downstream of Montemayor Street	+749	

* 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 Eagle Pass

Maps are available for inspection at 500 Quarry Street, Suite 3, Eagle Pass, TX 78852.

Unincorporated Areas of Maverick County

Maps are available for inspection at 100 South Monroe Street, Eagle Pass, TX 78852.

Trempealeau County, Wisconsin, and Incorporated Areas **Docket No.: FEMA–B–1056**			
Beaver Creek	Approximately 330 feet downstream of State Highway 93	+680	Unincorporated Areas of Trempealeau 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) Modified	Communities affected
	Approximately 400 feet upstream of State Highway 93	+685	
Buffalo River	Approximately 575 feet upstream of Chimney Rock Road	+855	City of Osseo, Unincorporated Areas of Trempealeau County, Village of Eleva, Village of Strum.
	Approximately 4,200 feet upstream of County Highway R	+991	
Lake Marinuka (Beaver Creek)	Approximately 1,950 feet upstream of Main Street	+702	Unincorporated Areas of Trempealeau County.
	Approximately 3,400 feet upstream of Main Street	+702	
Mississippi River	At the LaCrosse County boundary	+651	Unincorporated Areas of Trempealeau County, Village of Trempealeau.
	At the Buffalo County boundary	+659	
North Fork Beaver Creek	Approximately 1,500 feet downstream of Bridge Street	+765	Unincorporated Areas of Trempealeau County.
	Approximately 1,330 feet downstream of Bridge Street	+766	
Rod and Gun Club Tributary	Approximately 560 feet downstream of the confluence with the Trempealeau River.	+950	City of Osseo.
	Just downstream of 5th Street	+951	
South Fork Beaver Creek	Approximately 1,860 feet downstream of South Main Street.	+765	Unincorporated Areas of Trempealeau County.
	Approximately 420 feet upstream of South Main Street	+767	
South Fork Buffalo River	Approximately 700 feet downstream of County Highway B	+961	Unincorporated Areas of Trempealeau County.
	Approximately 625 feet downstream of County Highway B	+961	
Trempealeau River	Approximately 3.1 miles downstream of West Main Street	+717	City of Arcadia, City of Blair, City of Independence, City of Whitehall, Unincorporated Areas of Trempealeau County.
	Approximately 4.15 miles upstream of Spring Street	+861	
Turton Creek	Approximately 100 feet upstream of Main Street	+730	City of Arcadia.
	Approximately 1,175 feet downstream of Oak Street	+734	

* 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 Arcadia
Maps are available for inspection at City Hall, 203 West Main Street, Arcadia, WI 54612.

City of Blair
Maps are available for inspection at City Hall, 122 South Urberg Avenue, Blair, WI 54616.

City of Independence
Maps are available for inspection at City Hall, 23688 Adams Street, Independence, WI 54747.

City of Osseo
Maps are available for inspection at City Hall, 13712 8th Street, Osseo, WI 54758.

City of Whitehall
Maps are available for inspection at City Hall, 18620 Hobson Street, Whitehall, WI 54773.

Unincorporated Areas of Trempealeau County
Maps are available for inspection at the Trempealeau County Courthouse, 36245 Main Street, Whitehall, WI 54773.

Village of Eleva
Maps are available for inspection at the Village Hall, 25952 East Mondovi Street, Eleva, WI 54738.

Village of Strum
Maps are available for inspection at the Village Hall, 202 South 5th Avenue, Strum, WI 54770.

Village of Trempealeau
Maps are available for inspection at the Village Hall, 24455 3rd Street, Trempealeau, WI 54661.

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

Dated: January 11, 2011.

Edward L. Connor,

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

[FR Doc. 2011–1060 Filed 1–19–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 216, 219, 225, 227, 233, 245, 249, and 252

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 provide needed editorial changes and guidance to contracting officers.

DATES: *Effective Date:* January 20, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Ynette Shelkin, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 703–602–0311; facsimile 703–602–0350.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS as follows:

○ *216.504.* Adds a paragraph inadvertently omitted from an interim rule published at 75 FR 40716 on July 13, 2010.

○ *Subpart 219.3.* Adds new subpart with language to direct contracting officers to additional procedures and guidance.

○ *225.7503.* Thresholds are updated (*see* 75 FR 45072, August 2, 2010, DFARS Case 2009–D003) and minor corrections to inconsistencies in prescription of clause alternates.

○ *227.7004.* Correct the format of the list of offices to contact.

○ *227.7203–5.* Grammar is corrected and commas added for clarity.

○ *227.7203–6, 227.7204.* Corrects the name of the Small Business Innovation Research Program referenced in these sections.

○ *227.7203–14.* Corrects reference to DFARS 246.7.

○ *Subpart 233.1.* Adds new subpart with language to direct contracting officers to additional procedures and guidance.

○ *245.1, 245.2, and 245.4.* Adds language in subpart 245.1 and adds two new subparts to direct contracting officers to additional Government property procedures and guidance.

○ *249.7000.* Updates the reference to the Canadian Supply Manual for terminations for convenience.

○ *252.212–7001.* Corrects a clause number in (b)(11)(iii) and reverses the order of two clauses in paragraphs (c)(1) and (2).

○ *252.219–7004.* Updates thresholds (see 75 FR 45072, August 2, 2010, DFARS Case 2009–D003).

○ *252.225–7009.* Changes an incorrect numerical reference.

○ *252.227.7016; 252.227–7017; 252.227–7018; and 252.227–7025.* Corrects the name of the Small Business Innovation Research Program where incorrectly referenced as the "Small Business Innovative Research Program."

List of Subjects in 48 CFR Parts 216, 219, 225, 227, 233, 245, 249, and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 216, 219, 225, 227, 233, 245, 249, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 216, 219, 225, 227, 233, 245, 249, and 252 continues to read as follows:

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

PART 216—TYPES OF CONTRACTS

■ 2. Section 216.504 is amended to add paragraph (c)(1)(ii)(D)(3) to read as follows:

216.504 Indefinite-quantity contracts.

(c)(1)(ii)(D) * * *

(3) A copy of any determination made in accordance with FAR 16.504(c)(1)(ii)(D) shall be submitted to: Deputy Director, Defense Procurement (Contract Policy and International Contracting), OUSD (AT&L) DPAP (CPIC), 3060 Defense Pentagon, Washington, DC 20301–3060.

PART 219—SMALL BUSINESS PROGRAMS

■ 3. Subpart 219.3 is added to read as follows:

Subpart 219.3 Determination of Small Business Status for Small Business Programs

Sec.

219.303 Determining North American Industry Classification System (NAICS) codes and size standards.

Subpart 219.3 Determination of Small Business Status for Small Business Programs

219.303 Determining North American Industry Classification System (NAICS) codes and size standards.

Contracting officers shall follow the procedures for "Correctly Identifying Size Status of Contractors" in the OUSD (AT&L) DPAP memorandum dated July 21, 2010.

PART 225—FOREIGN ACQUISITION

■ 4. Section 225.7503 is amended by revising paragraph (b) to read as follows:

225.7503 Contract clauses.

* * * * *

(b)(1) Use the clause at 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements, in solicitations and contracts for construction to be performed outside the United States with a value of $7,804,000 or more.

(2) For acquisitions with a value of $7,804,000 or more, but less than $9,110,318, use the clause with its Alternate I, unless the acquisition is in support of operations in Afghanistan.

(3) If the acquisition is for construction with a value of $9,110,318 or more and is in support of operations in Afghanistan, use the clause with its Alternate II.

(4) If the acquisition is for construction with a value of $7,804,000 or more, but less than $9,110,318, and is in support of operations in Afghanistan, use the clause with its Alternate III.

PART 227—PATENTS, DATA, AND COPYRIGHTS

■ 5. Section 227.7004 is amended by revising paragraph (c) to read as follows:

227.7004 Requirements for filing an administrative claim for patent infringement.

* * * * *

(c) Any department receiving an allegation of patent infringement which meets the requirements of this paragraph shall acknowledge the same and supply the other departments that may have an interest therein with a copy of such communication and the acknowledgement thereof.

(1) For the Department of the Army—Chief, Patents, Copyrights, and Trademarks Division, U.S. Army Legal Services Agency;

(2) For the Department of the Navy—the Patent Counsel for Navy, Office of Naval Research;

(3) For the Department of the Air Force—Chief, Patents Division, Office of the Judge Advocate General;

(4) For the Defense Logistics Agency—the Office of Counsel;

(5) For the National Security Agency—the General Counsel;

(6) For the Defense Information Systems Agency—the Counsel;

(7) For the Defense Threat Reduction Agency—the General Counsel; and

(8) For the National Geospatial-Intelligence Agency—the Counsel.

* * * * *

■ 6. Section 227.7203–5 is amended by revising paragraph (c)(1), to read as follows:

227.7203–5 Government rights.

* * * * *

(c) * * *

(1) The Government obtains restricted rights in noncommercial computer software, required to be delivered or otherwise provided to the Government under a contract, that was developed exclusively at private expense.

* * * * *

227.7203–6 [Amended]

■ 7. Section 227.7203–6 is amended in paragraph (a)(1) by removing "Innovative" and adding in its place "Innovation".

227.7203–14 [Amended]

■ 8. Section 227.7204 is amended in paragraph (b)(2)(i) by removing "246.770" and adding in its place "246.7".

227.7204 [Amended]

■ 9. Section 227.7204 is amended by removing "Innovative" and adding in its place "Innovation" in the heading and in the text.

PART 233—PROTESTS, DISPUTES, AND APPEALS

■ 10. Subpart 233.1 is added to read as follows:

Subpart 233.1—Protests

Sec.
233.170 Briefing requirement for protested acquisitions valued at $1 billion or more.

Subpart 233.1—Protests

233.170 Briefing requirement for protested acquisitions valued at $1 billion or more.

Follow the procedures at PGI 233.170 for briefing protested acquisitions valued at $1 billion or more.

PART 245—GOVERNMENT PROPERTY

■ 11. Section 245.102 is amended by adding introductory text to read as follows:

245.102 Policy.

(*See* the policy guidance at PGI 245.102–70.)

* * * * *

■ 12. Section 245.103 is added to read as follows:

245.103 General.

(1) Follow the procedures at PGI 245.103–70 for furnishing Government property to contractors.

(2) Follow the procedures at PGI 245.103–71 for transferring Government property accountability.

■ 13. Subpart 245.2 is added to read as follows:

Subpart 245.2—Solicitation and Evaluation Procedures

Sec.
245.201 Solicitation.
245.201–70 Definitions.
245.201–71 GFP attachments to solicitations and awards.
245.201–72 Contracting office responsibilities.
245.201–73 Security classification.

Subpart 245.2—Solicitation and Evaluation Procedures

245.201 Solicitation.

245.201–70 Definitions.

See the definitions at PGI 245.201–70.

245.201–71 GFP attachments to solicitations and awards.

See PGI 245.201–71 for procedures for preparing GFP attachments to solicitations and awards.

245.201–72 Contracting office responsibilities.

See PGI 245.201–72 for contracting office responsibilities.

245.201–73 Security classification.

Follow the procedures at PGI 245.201–73 for security classification.

■ 14. Subpart 245.4 is added to read as follows:

Subpart 245.4—Title to Government Property

Sec.
245.402 Title to contractor-acquired property.
245.402–70 Policy.
245.402–71 Delivery of contractor-acquired property.

Subpart 245.4—Title to Government Property

245.402 Title to contractor-acquired property.

245.402–70 Policy.

Review the guidance and follow the procedures at PGI 245.402–70 with regard to recording and financial/accounting treatment of contractor-acquired property.

245.402–71 Delivery of contractor-acquired property.

Follow the procedures at PGI 245.402–71 for the delivery of contractor-acquired property.

PART 249—TERMINATION OF CONTRACTS

■ 15. Section 249.7000, paragraph (a)(3), is revised to read as follows:

249.7000 Terminated contracts with Canadian Commercial Corporation.

(a) * * *

(3) The Canadian Supply Manual, Chapter 8, Annex 8.3, available at *http://www.tpsgc-pwgsc.gc.ca/app-acq/ga-sm/index-eng.html,* "Termination for Convenience Process, Public Works and Government Services Canada."

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 16. Section 252.212–7001 is amended by:

■ a. Amending the clause date by removing "(DEC 2010)" and adding in its place "(JAN 2011)";

■ b. Amending paragraph (b)(11)(iii) by removing "252.225–7001" and adding in its place "252.225–7021"; and

■ c. Removing paragraph (c)(1); redesignating paragraph (c)(2) as paragraph (c)(1); and adding a new paragraph (c)(2) to read as follows:

252.212–7001 Contract terms and conditions required to implement statutes or Executive orders applicable to Defense acquisitions of commercial items.

* * * * *

(c) * * *

(2) 252.237–7019, Training for Contractor Personnel Interacting with Detainees (SEP 2006) (Section 1092 of Public Law 108–375).

* * * * *

■ 17. Section 252.219–7004 is revised to read as follows:

252.219–7004 Small business subcontracting plan (test program).

As prescribed in 219.708(b)(1)(B), use the following clause:

SMALL BUSINESS SUBCONTRACTING PLAN (TEST PROGRAM) (JAN 2011)

(a) Definitions.

Electronic Subcontracting Reporting System (eSRS) means the Governmentwide, electronic, Web-based system for small business subcontracting program reporting. The eSRS is located at *http://www.esrs.gov*.

Subcontract, as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(b) The Contractor's comprehensive small business subcontracting plan and its successors, which are authorized by and approved under the test program of section 834 of Pub. L. 101–189, as amended, shall be included in and made a part of this contract. Upon expulsion from the test program or expiration of the test program, the Contractor shall negotiate an individual subcontracting plan for all future contracts that meet the requirements of section 211 of Public Law 95–507.

(c) The Contractor shall—

(1) Ensure that subcontractors with subcontracting plans agree to submit an Individual Subcontract Report (ISR) and/or Summary Subcontract Report (SSR) using the Electronic Subcontracting Reporting System (eSRS).

(2) Provide its contract number, its DUNS number, and the e-mail address of the Contractor's official responsible for acknowledging or rejecting the ISR to all first-tier subcontractors, who will be required to submit ISRs, so they can enter this information into the eSRS when submitting their reports.

(3) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the subcontractor's official responsible for acknowledging or rejecting the ISRs to its subcontractors with subcontracting plans who will be required to submit ISRs.

(4) Acknowledge receipt or reject all ISRs submitted by its subcontractors using eSRS.

(d) The Contractor shall submit SSRs using eSRS at *http://www.esrs.gov*. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower-tier subcontractors unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from a member firm of the Alaska Native Corporations or an Indian tribe. Only subcontracts involving performance in the U.S. or its outlying areas should be included in these reports.

(1) This report may be submitted on a corporate, company, or subdivision (*e.g.,* plant or division operating as a separate profit center) basis, as negotiated in the comprehensive subcontracting plan with the Defense Contract Management Agency.

(2) This report encompasses all subcontracting under prime contracts and subcontracts with the Department of Defense, regardless of the dollar value of the subcontracts, and is based on the negotiated comprehensive subcontracting plan.

(3) The report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. Reports are due 30 days after the close of each reporting period.

(4) The authority to receipt or reject the SSR resides with the Comprehensive Subcontracting Program Division, the Defense Contract Management Agency Small Business Center.

(e) All reports submitted at the close of each fiscal year shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the year-end SSR is submitted, the prime Contractor and/or subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the year-end SSR. The authority to acknowledge receipt or reject the year-end report resides with the Comprehensive Subcontracting Program Division, the Defense Contract Management Agency Small Business Center.

(f) The failure of the Contractor or subcontractor to comply in good faith with the clause of this contract entitled "Utilization of Small Business Concerns," or an approved plan required by this clause, shall be a material breach of the contract.

(g) The Contractor shall include, in contracts that offer subcontracting possibilities, are expected to exceed $650,000 ($1.5 million for construction of any public facility), and are required to include the clause at 52.219–8, Utilization of Small Business Concerns—

(1) FAR 52.219–9, Small Business Subcontracting Plan, and 252.219–7003 Small Business Subcontracting Plan (DoD Contracts), when the Contracting Officer has included these clauses in the contract for purposes of flowdown to subcontractors, or

(2) 52.219–9, Small Business Subcontracting Plan, with its Alternate III, and 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), with its Alternate I, when the Contracting Officer has included these clauses in the contract for flowdown to subcontractors to allow for submission of SF 294s in lieu of ISRs, or

(3) 252.219–7004, Small Business Subcontracting Plan (Test Program), in subcontracts with subcontractors that participate in the test program described in DFARS 219.702.

(End of clause)

■ 18. Section 252.225–7009 is amended by revising the clause date, and revising paragraph (a)(10) to read as follows:

252.225–7009 Restriction on Acqusition of Certain Articles Containing Specialty Metals.

* * * * *

RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS (JAN 2011)

(a) * * *

(10) *Qualifying country* means any country listed in the definition of "Qualifying country" at 225.003 of the Defense Federal Acquisition Regulation Supplement (DFARS).

* * * * *

252.227–7016 [Amended]

■ 19. Section 252.227–7016 is amended by:

■ a. Amending the clause date by removing "(JUN 1995)" and adding in its place "(JAN 2011)"; and

■ b. Removing the term "Innovative" wherever it occurs in paragraphs (a)(1), (a)(2), and (c)(2) and adding in its place the term "Innovation".

252.227–7017 [Amended]

■ 20. Section 252.227–7017 is amended by:

■ a. Amending the clause date by removing "(JUN 1995)" and adding in its place "(JAN 2011)"; and

■ b. Removing the term "Innovative" wherever it occurs in paragraphs (a)(1), (a)(2), and (b) and adding in its place the term "Innovation".

252.227–7018 [Amended]

■ 21. Section 252.227–7018 is amended by:

■ a. Amending the clause date by removing "(JUN 1995)" and adding in its place "(JAN 2011)"; and

■ b. Removing the term "Innovative" wherever it occurs in paragraphs (f)(2) through (f)(4) and adding in its place the term "Innovation".

252.227–7025 [Amended]

■ 22. Section 252.227–7025 is amended by:

■ a. Amending the clause date by removing "(JUN 1995)" and adding in its place "(JAN 2011)"; and

■ b. Removing the term "Innovative" wherever it occurs in paragraph (a)(3) and adding in its place the term "Innovation".

[FR Doc. 2011–822 Filed 1–19–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 100830407–0626–02]

RIN 0648–XY51

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the annual harvest guideline (HG) for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the Pacific coast. The HG accords with the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and establishes allowable harvest levels for Pacific mackerel off the Pacific coast. The total HG for the 2010–2011 fishing year is 11,000 metric tons (mt) divided into a directed fishery HG of 8,000 mt and an incidental fishery of 3,000 mt. If 8,000 mt are landed, the directed fishery for Pacific mackerel will close and a 45-percent by weight incidental trip allowance for landing Pacific mackerel with other CPS will be implemented, with the exception that 1 mt may be landed per trip without any other CPS.

DATES: Effective February 22, 2011, through June 30, 2011.

FOR FURTHER INFORMATION CONTACT: Amber Morris, Southwest Region, NMFS, (562) 980–3231.

SUPPLEMENTARY INFORMATION: The CPS FMP, which is implemented by regulation at 50 CFR part 660, subpart I, divides management unit species into two categories: Actively managed and monitored. The HGs for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates.

The biomass and harvest specifications for each actively managed species within the CPS FMP are reviewed every year by the Pacific Fishery Management Council (Council) at their public meetings. The Scientific and Statistical Committee (SSC), the Coastal Pelagic Species Management Team (Team) and the Council's Coastal Pelagic Species Advisory Subpanel (Subpanel) review and discuss the biomass, the acceptable biological catch (ABC) and the status of the fisheries, and present their comments to the Council. Following review by the Council and after hearing public comments, the Council makes its HG recommendation to NOAA's National Marine Fisheries Service (NMFS). The Council reviewed relevant materials, heard public comments and made recommendations related to the 2010–2011 Pacific mackerel fishing season at their June 2010 public meeting.

For the 2010–2011 fishing year, the Council recommended and NMFS is implementing a total HG of 11,000 metric tons (mt) divided into a directed fishery HG of 8,000 mt and an incidental fishery of 3,000 mt. If 8,000 mt are landed, the directed fishery for Pacific mackerel will close and a 45-percent by weight incidental trip allowance for landing Pacific mackerel with other CPS will be implemented, with the exception that 1 mt may be landed per trip without any other CPS.

In making its recommendations, the Council relied on the 2009 full stock assessment, 2009 landings, and public comments in developing the series of management measures for the July 1, 2010, through June 30, 2011, Pacific mackerel fishing season. The Council recommended and NMFS approved an ABC of 55,408 mt which was calculated from the biomass estimate of 282,049 mt that was produced by the stock assessment and reviewed by a Stock Assessment Review Panel. The Council recommended and NMFS approved an overall HG of 11,000 mt with 8,000 mt allocated to a directed fishery and 3,000 mt set aside for incidental landings in other CPS fisheries should the 8,000 mt directed fishery HG be attained. The 1,000 mt increase in the set aside for incidental landings as compared to last season was in response to comments made by industry at the June 2010 Pacific Council meeting that Pacific mackerel availability to the fleet may be increasing and that fishing opportunities for other CPS could be forgone if the mackerel season closed early. The Council also recommended and NMFS approved that NMFS close the directed fishery if the 8,000 mt directed fishery HG is attained and implement a 45-percent incidental catch allowance for landing Pacific mackerel with other CPS (in other words, no more than 45% by weight of the CPS landed per trip may be Pacific mackerel) with the exception that up to 1 mt of Pacific mackerel could be landed per trip without landing any other CPS.

On September 17, 2010, a proposed rule was published for this action and public comments solicited (74 FR 56976). No comments were received. For further background information on this action please refer to the preamble of the proposed rule (74 FR 56976, September 17, 2010).

Classification

The Administrator, Southwest Region, NMFS, determined that this final rule is necessary for the conservation and management of the CPS fishery and that it is consistent with the Magnuson-Stevens Fishery and Conservation and Management Act and other applicable laws. This final rule is exempt from review under Executive Order 12866. The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

Dated: January 13, 2011.

Samuel D. Rauch III,

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

[FR Doc. 2011–1181 Filed 1–19–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 13
Thursday, January 20, 2011

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC–2010–0366]

Proposed Generic Communications Reporting for Decommissioning Funding Status Reports

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed generic communication; Reopening of comment period.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is reopening the public comment period for the proposed regulatory issue summary (RIS) that was published on November 26, 2010 (75 FR 72737). The purpose of the RIS is to clarify for licensees and external stakeholders the information that they should use and present to the NRC in the Decommissioning Funding Status reports to ensure that the NRC staff, licensees, and stakeholders are using the same, correct figures and to prevent potential issues resulting from shortfalls in the licensee's decommissioning fund. The comment period for this RIS, which closed on December 27, 2010, is reopened and will remain open until March 5, 2011.

DATES: The comment period has been reopened and now closes on March 5, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2010–0366 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *Regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments by any one of the following methods:

Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0366. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301–492–3668, *e-mail: Carol.Gallagher@nrc.gov.*

Mail comments to: Chief, Rules, Directives, and Announcements Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop TWB–05–B01M, Washington, DC 20555–0001, or by fax to 301–492–3446.

You can access publicly available documents related to this document using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The Draft Regulatory Issue Summary 2010–XXX, "10 CFR 50–75, Reporting for Decommissioning Funding Status Reports" is available electronically under ADAMS Accession Number ML102640060.

Federal rulemaking Web site: Public comments and supporting materials related to this document can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2010–0366.

FOR FURTHER INFORMATION CONTACT: Aaron L. Szabo, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; *telephone:* 301–415–1985; *e-mail: Aaron.Szabo@nrc.gov.*

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Deputy Director, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–1140 Filed 1–19–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

RIN 3150–AI84

[NRC–2010–0134]

U.S. Advanced Boiling Water Reactor Aircraft Impact Design Certification Amendment

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) proposes to amend its regulations to certify an amendment to the U.S. Advanced Boiling Water Reactor (ABWR) standard plant design to comply with the NRC's aircraft impact assessment (AIA) regulations. This action would allow applicants or licensees intending to construct and operate a U.S. ABWR to comply with the NRC's AIA regulations by referencing the amended design certification rule (DCR). The applicant for certification of the amendment to the U.S. ABWR design is STP Nuclear Operating Company (STPNOC). The public is invited to submit comments on this proposed DCR, the STPNOC design control document (DCD) that would be incorporated by reference into the DCR, and the environmental assessment (EA) for the amendment to the U.S. ABWR design. The public is also invited to submit comments on the NRC's proposed approach for treating multiple suppliers of a single certified design.

DATES: Submit comments on the DCR, DCD, and/or EA by April 5, 2011.

Submit comments on the information collection aspects of this rule by February 22, 2011. Comments received after the above dates will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after these dates.

ADDRESSES: Please include Docket ID NRC–2010–0134 in the subject line of your comments. For instructions on submitting comments and accessing documents related to this action, *see* Section I, "Submitting Comments and Accessing Information" in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods.

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0134. Address questions about NRC dockets to Carol Gallagher, telephone 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *E-mail comments to: Rulemaking.Comments@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays; telephone 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

FOR FURTHER INFORMATION CONTACT: Ms. Nanette V. Gilles, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone at 301–415–1180; e-mail: *Nanette.Gilles@nrc.gov;* or Stacy Joseph, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–2849; e-mail: *Stacy.Joseph@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Submitting Comments and Accessing Information
II. Background
III. Discussion
A. Technical Evaluation of STPNOC Amendment to U.S. ABWR Design
B. Regulatory and Policy Issues
C. Changes to Appendix A to Part 52—Design Certification Rule for the U.S. Advanced Boiling Water Reactor
IV. Section-by-Section Analysis
A. Introduction (Section I)
B. Definitions (Section II)
C. Scope and Contents (Section III)
D. Additional Requirements and Restrictions (Section IV)
E. Applicable Regulations (Section V)
F. Issue Resolution (Section VI)
G. Processes for Changes and Departures (Section VIII)
H. Records and Reporting (Section X)
V. Agreement State Compatibility
VI. Availability of Documents
VII. Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Preparation of Comments on the Proposed Amendment to the U.S. ABWR Design Certification
VIII. Plain Language
IX. Voluntary Consensus Standards
X. Finding of No Significant Environmental Impact: Availability
XI. Paperwork Reduction Act Statement
XII. Regulatory Analysis
XIII. Regulatory Flexibility Act Certification
XIV. Backfitting

I. Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

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Documents that are not publicly available because they are considered to be either Sensitive Unclassified Non-Safeguards Information (SUNSI) (including SUNSI constituting proprietary information), or Safeguards Information (SGI) may be available to interested persons who may wish to comment on the proposed design certification amendment. Interested persons shall follow the procedures described in the **SUPPLEMENTARY INFORMATION** section of this document, Section VII, "Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Preparation of Comments on the Proposed Amendment to the U.S. ABWR Design Certification."

II. Background

Title 10 of the Code of Federal Regulations, (10 CFR) Part 52 "Licenses, Certifications, and Approvals for Nuclear Power Plants," Subpart B, presents the process for obtaining standard design certifications. Section 52.63, "Finality of standard design certifications," provides criteria for determining when the Commission may amend the certification information for a previously certified standard design in response to a request for amendment from any person. On June 30, 2009, STPNOC tendered its application with the NRC for amendment of the U.S. ABWR standard plant design certification to comply with the requirements of 10 CFR 50.150, "Aircraft impact assessment" (ADAMS Accession Number ML092040048). STPNOC submitted this application in accordance with 10 CFR 52.63. STPNOC proposed several changes to the certified U.S. ABWR design to comply with 10 CFR 50.150, including the addition of an alternate feedwater injection system, the addition and upgrading of fire barriers and doors, and the strengthening of certain structural barriers. The NRC formally accepted the application as a docketed application for amendment to the U.S. ABWR design certification (Docket No. 52–001) on December 1, 2009 (74 FR 62829).

On June 12, 2009 (74 FR 28112), the NRC amended its regulations to require applicants for new nuclear power reactor designs to perform a design-specific assessment of the effects of the impact of a large, commercial aircraft (the AIA rule). These new provisions in 10 CFR 50.150 require applicants to use

realistic analyses to identify and incorporate design features and functional capabilities to ensure, with reduced use of operator actions, that (1) the reactor core remains cooled or the containment remains intact, and (2) spent fuel cooling or spent fuel pool integrity is maintained. When it issued the AIA rule, the Commission stated that the requirements in existence at that time, in conjunction with the March 2009 revisions to 10 CFR 50.54 to address loss of large areas of the plant due to explosions or fires, would continue to provide adequate protection of the public health and safety and the common defense and security. Nevertheless, the Commission decided to also require applicants for new nuclear power reactors to incorporate into their design additional features to show that the facility can withstand the effects of an aircraft impact. The Commission stated that the AIA rule to address the capability of new nuclear power reactors relative to an aircraft impact is based both on enhanced public health and safety and enhanced common defense and security, but is not necessary for adequate protection. Rather, the AIA rule's goal is to enhance the facility's inherent robustness at the design stage.

The AIA rule requirements apply to various categories of applicants, including applicants for combined licenses (COLs) that reference a standard design certification issued before the effective date of the AIA rule, which have not been amended to comply with the rule. These COL applicants have two methods by which they can comply with 10 CFR 50.150. They can request an amendment to the certified design or they can address the requirements of 10 CFR 50.150 directly in their COL application. STPNOC submitted an application for a COL on September 20, 2007. STPNOC has requested this amendment to the U.S. ABWR certified design to address the requirements of the AIA rule.

III. Discussion

A. Technical Evaluation of STPNOC Amendment to U.S. ABWR Design

The NRC's review of the applicant's proposed amendment to the U.S. ABWR design certification confirmed that the applicant has complied with 10 CFR 50.150. Specifically, the staff confirmed that the applicant adequately described key AIA design features and functional capabilities in accordance with the AIA rule and conducted an assessment reasonably formulated to identify design features and functional capabilities to show, with reduced use of operator action, that the facility can withstand the effects of an aircraft impact. In addition, the staff determined that there will be no adverse impacts from complying with the requirements for consideration of aircraft impacts on conclusions reached by the NRC in its review of the original U.S. ABWR design certification. Finally, the staff determined that STPNOC and its contractors are technically qualified to perform the design work associated with the amended portion of the U.S. ABWR design represented by STPNOC's application and to supply the amended portion of the U.S. ABWR design. STPNOC's amendment to the U.S. ABWR design has achieved the Commission's objectives of enhanced public health and safety and enhanced common defense and security through improvement of the facility's inherent robustness at the design stage.

B. Regulatory and Policy Issues

Multiple Suppliers for a Single Certified Design

In the 1989 10 CFR part 52 rulemaking, the Commission decided to approve standard reactor designs by rulemaking, as opposed to licensing, and stated that a design certification rule "does not, strictly speaking, belong to the designer" (54 FR 15327; April 18, 1989, at 15375, third column). Nonetheless, the Commission implicitly recognized the need to protect the commercial and proprietary interests of the original applicant who intends to supply the certified design, should there be another entity who intends to use the design in some fashion without approval or compensation to the original design certification applicant. Id. The protection was provided, in part, through the decision of the Commission to protect "proprietary information"[1] developed by the original design certification applicant, as well as by several other regulatory provisions in both 10 CFR part 52 and 10 CFR part 170.

Based upon the licensing experience with operating nuclear power plants, the Commission understood that portions of proposed design certifications, primarily in the area of fuel design, would likely be regarded as proprietary information (trade secrets) by future design certification applicants. To ensure that design certification applicants would not be adversely affected in their capability to protect this proprietary information as a result of the NRC's decision to approve designs by rulemaking rather than licensing, the Commission adopted 10 CFR 52.51(c), which states, in relevant part:

> Notwithstanding anything in 10 CFR 2.390 to the contrary, proprietary information will be protected in the same manner and to the same extent as proprietary information submitted in connection with applications for licenses, provided that the design certification shall be published in Chapter I of this title.

10 CFR 52.51(c) (1990, as originally promulgated in the 1989 Part 52 rulemaking, *see* 54 FR 15372; April 18, 1989, at 15390).[2]

Having protected proprietary information developed by the design certification applicant, the Commission then adopted several additional rulemaking provisions in 10 CFR part 52 providing additional regulatory protection to the original design certification applicant against unfair use of the design certification by other suppliers. The Commission required the (original) design certification applicant, as well as the applicant for renewal of the design certification, to include in the application:

> a level of design information sufficient to enable the Commission to judge the applicant's proposed means of assuring that construction conforms to the design and to reach a final conclusion on all safety questions associated with the design before the certification is granted. The information submitted for a design certification must include performance requirements and design information sufficiently detailed to permit the preparation of acceptance and inspection requirements by the NRC, and procurement specifications and construction and installation specifications by an applicant.

10 CFR 52.47(a)(2) (1990, as originally promulgated in the 1989 Part 52 rulemaking, *see* 54 FR 15372; April 18, 1989; at 15390);[3] 10 CFR 52.57(a).

The Commission also adopted 10 CFR 52.63(c), requiring the applicant referencing the design certification to provide the information required to be developed by 10 CFR 52.47(a)(2) or its equivalent:

[1] The term, "proprietary information," means trade secrets or commercial or financial information that are privileged or confidential, as those terms are used under the Freedom of Information Act and the NRC's implementing regulation at 10 CFR part 9.

[2] As originally adopted in 1989, 10 CFR 52.51(c) consisted of two sentences. The first sentence limited the bases for a decision in a hearing on a design certification to information on which all parties had an opportunity to comment; the second sentence is the language of the current regulation. The first sentence was removed in 2004 as a conforming change when the Commission removed the hearing requirements for design certification (69 FR 2182; January 14, 2004).

[3] This language was moved to the introductory paragraph of the current 10 CFR 52.47 in the 2007 revision of 10 CFR part 52.

The Commission will require, before granting a construction permit, combined license, operating license, or manufacturing license which references a design certification rule, that information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if the information is necessary for the Commission to make its safety determinations, including the determination that the application is consistent with the certification information. This information may be acquired by appropriate arrangements with the design certification applicant.

10 CFR 52.63(c) (1990). By requiring a level of detailed information supporting the certified design to be developed and available for NRC audit at renewal and when the design was referenced for use, the Commission ensured (among other things) that entities who were not the original design certification applicant would not have an inordinate financial advantage when either supplying the certified design to a referencing user, or referencing the certified design in an application.

The Commission also relied on its statutory authority to make a technical qualifications finding under Section 182 of the Atomic Energy Act of 1954 (AEA) as amended, to adopt 10 CFR 52.73, which effectively prohibits a COL applicant from referencing a certified design unless the entity that actually supplies the design to the referencing applicant is technically qualified to supply the certified design:

In the absence of a demonstration that an entity other than the one originally sponsoring and obtaining a design certification is qualified to supply such design, the Commission will entertain an application for a combined license which references a standard design certification issued under Subpart B only if the entity that sponsored and obtained the certification supplies the certified design for the applicant's use.

10 CFR 52.73 (1990, as originally promulgated in the 1989 Part 52 rulemaking, *see* 54 FR 15372; April 18, 1989, at 15393).[4]

Apart from the provisions discussed previously, the Commission also indicated in the statements of consideration for the 1989 10 CFR part 52 rulemaking that the finality provisions in 10 CFR 52.63 provided some protection against arbitrary amendment or rescission of the design certification. Any proposed rescission or amendment of the design certification must be accomplished under notice and comment rulemaking procedures, as required by 10 CFR 52.63(a)(1). The original applicant would, accordingly, have the opportunity to comment on any proposed change to the design, including those changes initiated by other entities.

Finally, the Commission adopted, as part of the 1989 rulemaking, conforming amendments to 10 CFR 170.12(d) and (e). Under these provisions, entities other than the original design certification applicant who provide either the renewed or original certified design to a referencing applicant for a construction permit, operating license or COL must pay the applicable installment of the deferred NRC fee[5] for review of the original or renewed design certification.

After the 1989 rulemaking, in each of the four existing DCRs in 10 CFR part 52, Appendices A through D, the Commission adopted an additional provision serving to protect the proprietary information and SGI developed by the original design certification applicant. Paragraph IV.A.3 of each rule required an applicant referencing the DCR to "physically include in the plant-specific DCD proprietary information and safeguards information referenced in the DCD." The Commission's view was that by "physically" including the proprietary information and SGI developed by the original DCR applicant in the application, this would be demonstrative of the referencing applicant's rights to use that information; otherwise, the referencing applicant could provide the equivalent information (62 FR 25800; May 12, 1997, at 25818, third column). In 2007, at the request of NEI and other industry commenters, the word, "physically" was removed from Paragraph IV of each of the four DCRs, to allow the DCR applicant more flexibility in how the proprietary information and SGI are included in the application referencing the DCR (72 FR 49352; August 28, 2007, at 49363–49365). This change was not intended to represent a retreat from the Commission's position that the referencing applicant has the appropriate commercial rights to reference the proprietary and SGI information or its equivalent. However, the NRC acknowledges that under the current language of paragraph IV.A.3., the NRC must do more to verify that the referencing applicant has the appropriate commercial rights to the proprietary and SGI information developed by the originating applicant (unless, of course, the referencing applicant indicates that it is supplying "equivalent" information).

The Commission did not describe in the 1989 rulemaking the particular regulatory approach and structure to be used for a design certification rule with two or more suppliers of the certified design. In the years after the 1989 Part 52 rulemaking, the Commission did not need to address the circumstance of multiple suppliers of the same certified design (multiple suppliers) to an end user.[6] However, with the filing of the U.S. ABWR design certification amendment request by STPNOC, as well as Toshiba's March 3, 2010, letter to the NRC stating that it intends to seek renewal of the U.S. ABWR design certification (ADAMS Accession No. ML100710026), the NRC must now determine the regulatory approach and structure for the amendment (and, for completeness, the renewal) of a certified design where there will be multiple suppliers.

When the NRC was advised of STPNOC's intent to submit an amendment of the U.S. ABWR design certification, it began a process of identifying and considering possible regulatory alternatives, with the goal of identifying a single regulatory approach and structure to be used for all design certifications with multiple suppliers. The NRC considered three alternatives which it could reasonably select:

1. *Separate rules:* Develop separate design certification rules for each supplier.

2. *Branches:* Develop one design certification rule with multiple branches, with each branch describing a complete design to be supplied by each supplier.

3. *Options:* Develop one design certification rule with options, with each option describing a portion of the certified design which may be selected by the user as an option to the original "reference" certified design.

Table 1 presents the NRC's current views with respect to the differences between these three alternatives.

[4] This provision was slightly reworded in the 2007 rulemaking amending 10 CFR part 52 in a newly-designated paragraph (b) to 10 CFR 52.73 (72 FR 49352; August 28, 2007).

[5] In the 1989 final 10 CFR part 52 rulemaking, the Commission decided that the payment of the fee imposed upon the design certification applicant to recover the NRC's costs for review and approval of the certified design via rulemaking, and renewal of the design certification rule, should be deferred and recovered in equal increments the first five times the DCR was referenced in an application. *See* 10 CFR 107.12(d)(2) (renewal of DCR); 10 CFR 170.12(e)(2)(i) (initial certification) (1990), as originally promulgated in the 1989 10 CFR part 52 rulemaking (*see* 54 FR 15372; April 18, 1989, at 15399).

[6] The term, "user," means an entity which references the standard design certification rule in its application, and the holder of a permit or license which incorporates the standard design certification.

In light of the Commission's past practice of protecting the proprietary information and legitimate commercial interests of the original design certification applicant wherever consistent with other applicable law, the NRC believes that it should consider that practice when evaluating possible alternatives for the approach and structure of a design certification rule with multiple suppliers. Upon consideration, the NRC concludes that the "branches" alternative should be adopted as the general approach for all renewals of design certifications and for major design certification amendments. The "branches" alternative: (1) Is consistent with all applicable law; (2) protects the proprietary information and legitimate commercial interests of the original design certification applicant (as well as the additional suppliers); and (3) meets the NRC's regulatory concerns. Each of these considerations is discussed separately below.

No Statutory or Other Legal Prohibition to the "Branches" Alternative

There is no statutory or other legal prohibition, explicit or otherwise, against use of the "branches" alternative in the AEA, the Administrative Procedure Act, the National Technology Transfer and Advancement Act, or other statutes applicable to the NRC. Design certification rulemaking is not specifically addressed in the AEA. The AEA provisions do not appear to circumscribe or prohibit the NRC's use of a regulatory approach of approving multiple suppliers of a set of closely related certified designs in a single codified rule. Moreover, nothing in Part 52 compels the use of a particular alternative for addressing multiple suppliers. As discussed previously, the Commission contemplated that multiple suppliers could supply the same certified design from the time it first adopted the concept of design certification by rulemaking. However, the Commission did not mandate any specific regulatory approach for accommodating multiple suppliers of a certified design. Those provisions intended to protect proprietary information and the commercial interests of each supplier do not mandate any specific approach for accommodating multiple suppliers, and do not foreclose the use of the "branches" alternative.

Protection of Proprietary Information and Legitimate Commercial Interests of All Suppliers

The "branches" alternative fully protects the proprietary information and legitimate commercial interests of all suppliers. Under the "branches" alternative, each supplier is responsible for creating and maintaining its own DCD (including the non-public version of the DCD containing SUNSI (including proprietary information) and SGI developed by the supplier). Because each DCD is self-contained, the NRC does not foresee any circumstance that would require the NRC to provide the non-public DCD (or information supporting its DCD) prepared and supported by the original design certification applicant to the new supplier, or to provide the non-public DCD prepared and supported by the new supplier to the original applicant. Nor does the use of the "branches" alternative affect the legal issues associated with providing access to SUNSI (including proprietary information) and SGI to members of the public to facilitate public comment on a proposed design certification rulemaking adding a new supplier and branch.

The "branches" alternative has no effect on the legal applicability, or on the NRC's implementation of the 10 CFR part 52 and part 170 provisions discussed previously, which are directed at protecting the proprietary information and commercial interests of the original design applicant. These provisions, properly applied, should also protect the proprietary information and interests of all other suppliers of a subsequently-approved "branch." Thus, the "branches" alternative affords all suppliers all of the protection of their proprietary information and commercial interests, which the Commission intended to be provided to these suppliers.

A rulemaking adopting a new "branch" (a " 'branch' rulemaking") would not disturb the issue resolution and finality accorded to the original certified design (as amended in any subsequent rulemakings), or to the certified design of any other suppliers in any previously approved branches. Nor would a "branch" rulemaking necessarily require the Commission to consider and address, in the final rulemaking adding the new "branch," comments on the existing certified design. The NRC believes that each "branch" rulemaking is limited to adding the new "branch" together with requirements and conditions specific to the new "branch." Therefore, the NRC asserts that: (1) The nuclear safety and other associated matters (severe accident mitigation design alternatives (SAMDAs)) resolved in the preceding design certification rulemaking(s) continue to be effective and are not being re-examined in the "branch" rulemaking; and (2) comments on the existing certified design(s) are out-of-scope and should not be considered in the "branch" rulemaking.[7]

The "branches" alternative would not require the original supplier (or indeed any previously-approved supplier) of the certified design to modify their DCD, or incur other costs as part of the "branch" rulemaking. Hence, there is no financial impact upon the pre-existing suppliers. The NRC has not identified any credible argument that could be raised by the original design certification applicant that an NRC decision allowing a new supplier to supply the certified design could be the proximate cause of any diminution in the commercial value of the original applicant's certified design. The concept of multiple suppliers of a single certified design is inherent in the concept of design certification by rulemaking. The Commission anticipated multiple suppliers of a single design certification when it was considering the regulatory approach for certification (rulemaking versus licensing), and afforded protection to the original applicant by various provisions of 10 CFR part 52. This protection was embodied in provisions included in each of the design certification rules issued to date, and these provisions would continue to be included in future design certification rules. Hence, no supplier—including the original design certification applicant—may reasonably claim that the approval of a new "branch" constitutes an unwarranted diminution in the commercial value of the certified design which it sponsored.

NRC's Regulatory Concerns Are Met

The NRC believes that any alternative and structure for a design certification rule with multiple suppliers must meet the following regulatory concerns. Any rule amendment (or renewal) which introduces a new supplier must

[7] If the out-of-scope comment seeking to modify the existing certified design was submitted by the original sponsor of that design, then the NRC believes that the original sponsor should seek an amendment of its certified design in accordance with the design certification amendment process as addressed in 10 CFR 52.57 and 52.59, and 10 CFR 2.800(c) and 10 CFR 2.811 through 2.819 (as well as the procedures common to all petitions for rulemaking in 10 CFR 2.804 through 2.810, as prescribed in 10 CFR 2.800(b)). By contrast, if the out-of-scope comment seeking to modify the existing certified design was submitted by any other entity (*e.g.,* an entity that is not the supplier of that certified design branch), then the staff believes that these comments should be regarded as petitions for rulemaking and processed in accordance with the provisions of 10 CFR 2.800(c) and 10 CFR 2.802 through 2.803 (as well as the procedures common to all petitions for rulemaking in 10 CFR 2.804 through 2.810, as prescribed in 10 CFR 2.800(b)).

minimize the possibility of re-opening the safety and regulatory conclusions reached by the NRC with respect to previously approved aspects of the design and supplier(s). In addition, if the new supplier is proposing changes to the actual certified design, then the substitute or new portions of the design[8] must, to the maximum extent practical, be attributable solely to the "sponsoring" supplier, and therefore distinguishable from the "common" portions of the design which each supplier must support (the "branches" alternative adopting the premise that the supplier must be technically qualified to supply all of the certified design, including the "common" portions).[9] The regulatory approach and structure must reflect a sound basis for allowing the NRC to make a technical qualifications finding with respect to the supplier. Finally, the approach and structure must allow for imposition of applicable NRC requirements on each supplier, and the legal ability of the NRC to undertake enforcement and regulatory action on each supplier.

The "branches" alternative meets all of these regulatory concerns. By creating a separate branch for the design to be supplied by the new supplier in the rule and requiring the new certified design to be described in a separate DCD created and supported by the new supplier, there is a strong basis for arguing that the certified design(s) already approved by the NRC are not affected and that the issue finality accorded to those certified designs (as controlled by 10 CFR 52.63) continues. Hence, in any rulemaking approving a new branch, the NRC need not consider any comments seeking changes to the existing certified design.

The use of a separate DCD to describe the new certified design, by its very nature, serves to distinguish any substitute or new portions of the certified design sponsored only by the new supplier, and make clear that the substitute or new portions are being sponsored solely by the new supplier (because the other branches do not contain any reference to or mention of the substitute or new portions of the design sponsored by the new supplier). The use of a separate DCD describing the entire design is also consistent with the NRC's position that it must conduct a technical qualifications review of the new supplier, and make a finding that the new supplier is technically qualified to provide the entire certified design. The NRC's recommendation to use a separate DCD, coupled with a structure of the design certification rule language (as codified in one of the appendices to 10 CFR part 52) that applies common regulatory requirements to all suppliers, allows for the NRC to take regulatory action against any supplier without regard to whether the supplier was the original design certification applicant.

For these reasons, the NRC concluded that its regulatory concerns are met under the "branches" alternative. However, during discussions with STPNOC about the processing of its request to amend the U.S. ABWR design certification, STPNOC proposed that the NRC adopt a process similar to the "options" approach for the STPNOC U.S. ABWR amendment. The STPNOC request was based upon a number of factors which the NRC considered to be unique to STPNOC's situation. First, under the "branches" approach, STPNOC would have to supply the U.S. ABWR proprietary information (or its equivalent) which was originally developed by GE Nuclear Energy (GE) and approved by the NRC in the original U.S. ABWR design certification rulemaking. While STPNOC has contractual rights from GE Hitachi Nuclear Energy (GEH) to use the GE-developed U.S. ABWR proprietary information for South Texas Project (STP) Units 3 & 4, it does not have the right to supply the GE-developed U.S. ABWR proprietary information to other companies in connection with any other application for a COL that references the certified U.S. ABWR. In addition, neither STPNOC nor its contractors would be in a position to provide complete information to substitute for the GE-developed U.S. ABWR proprietary information in time to support the schedule for issuance of the COLs for STP Units 3 & 4, should they be approved by the NRC. Second, STPNOC indicated that some portion of the GE-developed U.S. ABWR proprietary information relates to fuel design, and STPNOC does not intend to use the GE fuel design for initial operation of STP Units 3 & 4. Rather, STPNOC intends to use another fuel design and obtain NRC approval via an application for a COL amendment (*i.e.,* after the issuance of the COLs). The GE-developed fuel design also would not be used to operate any of the possible six U.S. ABWRs that could be developed under the agreement between Toshiba and Nuclear Innovation North America LLC, which has the right to develop four U.S. ABWRs in addition to STP Units 3 & 4. Finally, STPNOC indicated that the "options" approach would not be used at renewal; the renewal application Toshiba was developing would reflect the use of the "branches" alternative (*i.e.,* Toshiba would be seeking approval of and supplying the entire U.S. ABWR design at renewal, including replacement proprietary information). Based on these factors, STPNOC requested that it be considered the supplier for only that portion of the U.S. ABWR design certification necessary to comply with the AIA, and which is the subject of its amendment request.

Upon consideration, the NRC is proposing to use the "options" approach for the STPNOC amendment of the U.S. ABWR design certification, based on the following considerations. As with the "branches" alternative, there is no statute or NRC regulation prohibiting the use of the "options" approach. Nor is there any provision which prohibits the concurrent use of both alternatives—so long as the NRC is able to articulate a basis for doing so. Moreover, all of the NRC's safety and regulatory objectives are met. STPNOC is providing sufficient information to determine its technical qualifications[10] to supply the STPNOC-sponsored amendments addressing the AIA rule to third party users (*i.e.,* users other than STPNOC itself). In addition, the NRC believes that there are no

[8] A "substitute" portion of the certified design sponsored by the new supplier serves to replace a discrete portion of a design as sponsored by the original design certification applicant (in other words, the basis for comparison of a new branch must always be the original certified design), but without augmenting or adding a completely new functional capability. By contrast, a "new" portion of the certified design sponsored by the new supplier serves to either: (1) Augment a discrete portion of the design as sponsored by the original design certification applicant; or (2) add a completely new functional capability not previously considered and addressed in the original certified design. As an example, the amendment of the ABWR DCR sought by STPNOC would add new functional capabilities—the ability to withstand aircraft impacts of the kind described in the AIA rule, 10 CFR 50.150. Hence, the "changes" sought by STPNOC would be considered "new" portions of the certified design.

[9] The NRC believes a broad finding of technical qualifications is necessary because the original design certification applicant is under no legal or NRC regulatory obligation (consistent with the concept of providing protection to the proprietary information and legitimate commercial interests of the original supplier) to provide technical support on the "common" portions of the certified design to either the new supplier or a user.

[10] The NRC staff determined that STPNOC and its contractors are technically qualified to perform the design work associated with the amended portion of the ABWR design represented by STPNOC's application and to supply the amended portion of the ABWR design. However, the NRC staff determined that STPNOC, by itself, is not technically qualified to supply the amended portion of the ABWR design certification represented in STPNOC's DCD, Revision 1. The NRC is proposing a provision in the amended ABWR DCR to specify that if a COL applicant references the STPNOC option but does not show they are obtaining the design from STPNOC and Toshiba American Nuclear Energy (TANE), acting together, then the COL applicant must demonstrate that the entity supplying the STPNOC option to the applicant possesses the technical qualifications to do so.

insurmountable issues in requiring the user (in most cases, the COL applicant referencing the U.S. ABWR and the STPNOC option) to prepare a single DCD integrating information from both the DCD developed by GE and the DCD developed by STPNOC. The "options" approach also avoids or addresses all of STPNOC's concerns with the use of the "branches" alternative for its request to amend the U.S. ABWR. STPNOC would not have to develop and submit to the NRC information equivalent to the proprietary information developed by GE to support the STPNOC amendment application. Nor does STPNOC have to demonstrate its technical qualifications to supply the entire U.S. ABWR certified design; it would only have to demonstrate its technical qualifications to supply the STPNOC option. Toshiba will prepare an application for renewal of the U.S. ABWR design certification (with Toshiba being the renewal applicant) that reflects the "branches" approach, and that application is likely to be submitted within the next year. Thus, the STPNOC option would have a limited period of effectiveness, that is, until the renewal of the U.S. ABWR design certification. Finally, the "options" approach fully protects the legitimate proprietary and commercial interests of GE in the original U.S. ABWR design certification.

Based on these considerations, the NRC is proposing to adopt the "options" alternative for the STPNOC amendment of the U.S. ABWR design certification, but will regard the "branches" alternative as the default for all renewals of design certifications and for major design certification amendments. Under the "options" approach, applicants seeking amendments to already certified designs must be found to be qualified to supply the limited scope of the revisions they seek. If the NRC receives other limited-scope design certification amendments (similar in scope to the STPNOC amendment request), it will consider whether the "branches" approach or the "options" approach offers the most effective and efficient regulatory option at that time based on the scope of the amendment and the specific circumstances associated with the particular application.

By implementing the "options" approach for the STPNOC U.S. ABWR amendment, a COL applicant that references the U.S. ABWR standard design certification can meet the requirements of the AIA rule by referencing both the GE DCD and the STPNOC DCD or by referencing only the GE DCD and addressing the requirements of the AIA rule separately in its COL application.

TABLE 1—DIFFERENCES IN REGULATORY TREATMENT OF ALTERNATIVES FOR ADDRESSING MULTIPLE DESIGN CERTIFICATION SUPPLIERS

Regulatory feature	Alternative 1: separate rules	Alternative 2: one rule with multiple branches	Alternative 3: one rule with options
Summary Description of Alternative.	Each supplier's certified design would be contained in a separate design certification rule (separate appendices to 10 CFR part 52). Thus, there would be multiple rules for the same general design.. Single DCD (*see* below)	Each supplier's certified design would be contained in a single design certification rule (a single appendix to 10 CFR part 52).. Each supplier's design is a complete design, and presented as an alternative or "branch" within the rule.	The original applicant's certified design would be contained in a single design certification rule (a single appendix to 10 CFR part 52). An "option" represents an alternative to the specified portion(s) of the original applicant's certified design. The supplier of the option would be providing only the portion(s) of the certified design contained within the option. A COL referencing a design with options would obtain the total design from two (or more) suppliers: (i) the main portion of the design from the original applicant (unless the COL applicant demonstrated that another entity was qualified to supply the design); and (ii) the selected design option from the applicable supplier of the option. Two choices for the DCDs (*see* below).
DCD	One complete DCD for each rule. Rule language would incorporate by reference a single DCD.	Two separate DCDs (one for each supplier), each DCD describing design for that supplier. Rule language would incorporate by reference two DCDs.	*Choice 1(NRC preferred)* Two separate DCDs: (i) original applicant's DCD (no change to document); and (ii) a limited-scope DCD describing only the information in the option. *Choice 2* Two separate DCDs: (i) original applicant's DCD (no change to document); and (ii) new DCD, prepared by supplier of option, integrating the original certified design with the substitute design description of the option in the appropriate locations.

TABLE 1—DIFFERENCES IN REGULATORY TREATMENT OF ALTERNATIVES FOR ADDRESSING MULTIPLE DESIGN CERTIFICATION SUPPLIERS—Continued

Regulatory feature	Alternative 1: separate rules	Alternative 2: one rule with multiple branches	Alternative 3: one rule with options
Identification of Applicant in Rule ..	Each supplier identified as original applicant in its rule.	The original applicant and the applicant for each branch (each entity constituting a supplier) are identified. NOTE: Original applicant would always be the first branch..	Original applicant and applicant for each "option" (each entity constituting a supplier) are identified.
Technical Content of Application for Amendment.	Design information for amended portion of design.	Design information for amended portion of design branch.	*Original supplier* Design information for amended portion of design. *Supplier of option-initial application for option* Design information for amended portion of design. *Supplier of option-application for amendment to option* Design information for amended portion of option.
Technical Content of Application for Renewal.	Design information for entire design, necessary to comply with renewal updating in accordance with § 52.57.	Design information for entire design branch, necessary to comply with renewal updating in accordance with § 52.57.	*Original supplier* Design information for entire design necessary to comply with renewal updating in accordance with § 52.57. *Supplier of option* NA (supplier of option may not renew the DCR option. If both the original applicant and the applicant for the option seek renewal, then renewal will be implemented as "branches" under Alternative 2 with two named applicants/suppliers. If the original applicant or the applicant for the option, alone, seeks renewal, then renewal will be implemented as a single rule with one named applicant/supplier.)
Submission of SUNSI (including proprietary information), and SGI (if applicable).	*Amendment* ..... *Original supplier* Submit publicly available DCD without new SUNSI (including proprietary information) and SGI and separate DCD with any new SUNSI (including proprietary information) and SGI. *Additional supplier* ..... Submit publicly available DCD without SUNSI (including proprietary information) and SGI, and separate DCD with SUNSI (including proprietary information) and SGI that is equivalent to all SUNSI (including proprietary information) and SGI provided by original applicant. *Renewal*	*Amendment* ..... *Original supplier* Submit publicly available DCD without new SUNSI (including proprietary information) and SGI, and separate DCD with any new SUNSI (including proprietary information) and SGI. *Supplier of branch* ..... Submit publicly available DCD without SUNSI (including proprietary information) and SGI, and separate DCD with SUNSI (including proprietary information) and SGI that is equivalent to all SUNSI (including proprietary information) and SGI provided by original applicant. *Renewal* ..... *Original supplier* ..... Submit publicly available DCD without new SUNSI (including proprietary information) and SGI, and separate DCD with any new SUNSI (including proprietary information) and SGI.	*Amendment* *Original supplier* Submit publicly available DCD without new SUNSI (including proprietary information) and SGI, and separate DCD with any new SUNSI (including proprietary information) and SGI. *Supplier of option* Submit publicly available DCD without SUNSI (including proprietary information) and SGI, and separate DCD with SUNSI (including proprietary information) and SGI that is equivalent to that SUNSI (including proprietary information) and SGI provided by original applicant which is within the scope of the amendment, plus any new SUNSI (including proprietary information) and SGI necessary to support the amendment. *Renewal*

TABLE 1—DIFFERENCES IN REGULATORY TREATMENT OF ALTERNATIVES FOR ADDRESSING MULTIPLE DESIGN CERTIFICATION SUPPLIERS—Continued

Regulatory feature	Alternative 1: separate rules	Alternative 2: one rule with multiple branches	Alternative 3: one rule with options
	Original supplier ..... Submit publicly available DCD without new SUNSI (including proprietary information) and SGI, and separate DCD with any new SUNSI (including proprietary information) and SGI. *Additional supplier* ..... Submit publicly available DCD without SUNSI (including proprietary information) and SGI, and separate DCD with SUNSI (including proprietary information) and SGI that is equivalent to all SUNSI (including proprietary information) and SGI provided by original applicant (unless previously provided by the non-original applicant in an earlier amendment proceeding)..	*Supplier of branch* ..... Submit publicly available DCD without SUNSI (including proprietary information) and SGI, and separate DCD with SUNSI (including proprietary information) and SGI that is equivalent to all SUNSI (including proprietary information) and SGI provided by original applicant (unless previously provided by the non-original applicant in an earlier amendment proceeding)..	*Original supplier* Submit publicly available DCD without new SUNSI (including proprietary information) and SGI, and separate DCD with any new SUNSI (including proprietary information) and SGI.
Nature and Scope of NRC Safety Review—Amendment.	Findings that: (i) portion of design being amended meets current applicable NRC requirements; and (ii) proposed change does not affect previous conclusions in other design areas.	Findings that: (i) portion of design being amended meets current applicable NRC requirements; and (ii) proposed change does not affect previous conclusions in other design areas.	*Original supplier* Findings that: (i) portion of design being amended meets current applicable NRC requirements; and (ii) proposed change does not affect previous conclusions in other design areas. *Supplier of option* Findings that: (i) design proposed to be added as an option, or portion of existing design being amended (as applicable), meets current applicable NRC requirements; (ii) (if applicable) proposed change to an option does not affect previous conclusions in other design areas of the option; and (iii) design proposed to be added as an option, or proposed change to existing option (as applicable) does not affect safety of design areas in the portion of the design supplied by the original supplier.
Nature and Scope of NRC Safety Review—Renewal.	Findings that: (i) design complies with AIA Rule, 10 CFR 50.150 (if not already amended); (ii) design complies with all regulations applicable and in effect at time or original certification; (iii) relevant findings for any changes to the design requested by the supplier, per 10 CFR 52.59(c); and (iv) the findings required by 10 CFR 52.59(b) for those changes imposed by the NRC under that section.	Findings that: (i) design complies with AIA Rule, 10 CFR 50.150 (if not already amended); (ii) design complies with all regulations applicable and in effect at time or original certification; (iii) relevant findings for any changes to the design requested by the supplier, per 10 CFR 52.59(c); and relevant findings for changes imposed by the NRC per 10 CFR 52.59(b); and (iv) the findings required by 10 CFR 52.59(b) for those changes imposed by the NRC under that section.	*Original supplier* Findings that: (i) design complies with AIA Rule, 10 CFR 50.150 (if not already amended); (ii) design complies with all regulations applicable and in effect at time or original certification; (iii) relevant findings for any changes to the design requested by the supplier, per 10 CFR 52.59(c); and (iv) the findings required by 10 CFR 52.59(b) for those changes imposed by the NRC under that section. *Supplier of option* NA (supplier of option would not be allowed to renew the option)

TABLE 1—DIFFERENCES IN REGULATORY TREATMENT OF ALTERNATIVES FOR ADDRESSING MULTIPLE DESIGN CERTIFICATION SUPPLIERS—Continued

Regulatory feature	Alternative 1: separate rules	Alternative 2: one rule with multiple branches	Alternative 3: one rule with options
Nature and Scope of NRC Technical Qualifications Review—Initial Supplier Approval.	Supplier is technically qualified to provide entire design, including detailed design information.	*Original supplier* ..... Supplier is technically qualified to provide entire design, including detailed design information.. *Supplier of branch* ..... Supplier is technically qualified to provide entire design, including detailed design information and the equivalent SUNSI (including proprietary information) and SGI.	*Original supplier* Supplier is technically qualified to provide entire design, including detailed design information. *Supplier of option* Supplier is technically qualified to provide detailed design information and the equivalent SUNSI (including proprietary information) and SGI, if any, which is within the scope of the amendment.
Nature and Scope of NRC Technical Qualifications Review—Amendment.	NA	NA	NA (if amendment is in same area as original option)
Nature and Scope of NRC Technical Qualifications Review—Renewal.	None, unless significant change in organization or corporate structure/ownership or information showing a change in circumstances so a supplier no longer has technical qualifications..	None, unless significant change in organization or corporate structure/ownership, or information showing a change in circumstances so a supplier no longer has technical qualifications..	None, unless significant change in organization or corporate structure/ownership, or information showing a change in circumstances so a supplier no longer has technical qualifications. (supplier of option would not be allowed to renew the option unless it was incorporated into a wholesale renewal of the design certification).
Scope of Comments in Proposed Rule FRN—New Rule or Initial Approval of Branch or Option.	Comments on design for new rule (no comment on original DCR)	*Original supplier* NA ..... (comments on the original supplier's design would be out-of-scope of a rulemaking proposing to add a branch). *Supplier of branch* ..... Same as scope of comments on initial approval of a new DCR.	*Original supplier* NA (comments on the original supplier's design would be out-of-scope of a rulemaking proposing to add an option) *Supplier of option* (i) Proposed option meets applicable NRC requirements; (ii) proposed option does not affect safety of design areas in the portion of the design supplied by the original supplier.
Scope of Comments in Proposed Rule FRN—Amendment.	Whether: (i) changed portion of design meets current applicable NRC requirements; and (ii) changes adversely affect previous conclusions in other design areas.	Whether: (i) changed portion of design branch meets current applicable NRC requirements; and (ii) changes adversely affect previous conclusions in other design areas.	*Original supplier* Whether: (i) changed portion of design meets current applicable NRC requirements; (ii) changes adversely affect previous conclusions in other design areas; and (iii) changed portion of design requires the NRC to implement conforming changes in the design option. *Supplier of option* Whether: (i) proposed change to the option meets applicable NRC requirements; (ii) proposed change to the option affects previous conclusions in unchanged portions of the option; and (iii) proposed change to the option affects safety of design areas in the portion of the design supplied by the original supplier.
Scope of Comments in Proposed Rule FRN—Renewal.	Consistent with finding that NRC must make at renewal.	Consistent with finding that NRC must make at renewal.	NA (Supplier of option would not be allowed to renew the option).

TABLE 1—DIFFERENCES IN REGULATORY TREATMENT OF ALTERNATIVES FOR ADDRESSING MULTIPLE DESIGN CERTIFICATION SUPPLIERS—Continued

Regulatory feature	Alternative 1: separate rules	Alternative 2: one rule with multiple branches	Alternative 3: one rule with options
Part 21—Applicability	Each supplier is responsible for Part 21 compliance with respect to its design.	Each supplier is responsible for Part 21 compliance with respect to its design branch.. NOTE: NRC is responsible for advising suppliers of branches of any defects in the portion of the design which was sponsored by another supplier.	*Original supplier* Responsible for Part 21 compliance with respect to the entire design with the exception of the option(s). *Supplier of option* Responsible for Part 21 compliance with respect to its option. NOTE: NRC is responsible for advising: (i) suppliers of options of any defects in the design of the original supplier; and (ii) original supplier of any defects in any of the options, for the purpose of facilitating the original supplier's consideration of the option's defect on the original supplier's design.
Supplier Recordkeeping Responsibilities.	Each supplier required to maintain its DCD..	Each supplier required to maintain the DCD representing the branch it sponsored..	*Original supplier* Maintain the DCD for the entire design. *Supplier of option* Maintain the DCD for its option.
Mode of Referencing by COL applicant.	Reference the selected rule.	Reference one branch of the rule.	Reference the rule with identification of option selected.

NOTES:
1. If there is only a single description in a table cell, then that means that the description applies to all suppliers.
2. For purposes of this table, "supplier" means an entity that: (1) Submits an application for a new design certification, an amendment to an existing design certification, or a renewal for a design certification; and (2) intends to, has offered, or is providing design and engineering services related to the certified design to a license applicant. The information in this table does not apply to petitions for rulemaking under 10 CFR 2.802 submitted by entities who are not acting, do not intend to act, or the NRC believes are not reasonably capable of acting as a "supplier." "Original supplier" means the supplier who was the original applicant for the design certification.

C. Changes to Appendix A to Part 52—Design Certification Rule for the U.S. Advanced Boiling Water Reactor

1. Introduction (Section I)

The NRC proposes to amend Section I, "Introduction," to identify STPNOC as the applicant for the amendment of the U.S. ABWR design certification rule to address the AIA rule, 10 CFR 50.150. The portion of the certified design sponsored by STPNOC in this amendment, and which this rulemaking finds STPNOC (acting together with TANE) is technically qualified to supply, is termed the "STPNOC certified design option" or "STPNOC option." As discussed in greater detail in the section-by-section analysis for Section III, "Scope and Contents," an applicant or licensee referencing this appendix may use the GE certified design (which was first certified by the NRC in a 1997 rulemaking (62 FR 25800; May 12, 1997)), or both the GE certified design together with the STPNOC option (the GE/STPNOC composite certified design).

The overall purpose of paragraph I of this appendix is to identify the standard plant design that was approved and the applicant for certification of the standard design. Identification of both the original design certification applicant and the applicant for any amendment to the design is necessary to implement this appendix, for two reasons. First, the implementation of 10 CFR 52.63(c) depends on whether an applicant for a COL contracts with the design certification applicant to provide the generic DCD and supporting design information. If the COL applicant does not use the design certification applicant to provide the design information and instead uses an alternate nuclear plant supplier, then the COL applicant must meet the requirements in paragraph IV.A.4 of this appendix and 10 CFR 52.73. The COL applicant must demonstrate that the alternate supplier is qualified to provide the standard plant design information.

By identifying STPNOC as the applicant for the amendment of the U.S. ABWR design certification rule, the provisions of 10 CFR 52.63 will be given effect whenever a COL applicant references the certified design option sponsored by STPNOC, but does not use STPNOC to supply the design information for this option and instead uses an alternate supplier. In this circumstance, the COL applicant must meet the requirements in paragraph IV.A.4 of this appendix and 10 CFR 52.73 with respect to the STPNOC option (*i.e.,* the COL applicant must demonstrate that the alternate supplier is qualified to provide the certified design information constituting the STPNOC option).

In addition, by identifying STPNOC as the applicant, STPNOC must maintain the generic DCD for the STPNOC option throughout the time this appendix may be referenced by a COL, as required by paragraph X.A.1 of this appendix.

2. Definitions (Section II)

The NRC is proposing to revise the definition of "generic design control document (generic DCD)" in paragraph A in Section II, "Definitions," to indicate that there will now be two generic DCDs incorporated by reference into this appendix—the DCD for the original U.S. ABWR design certification submitted by GE Nuclear Energy (GE DCD) and the DCD for the amendment to the U.S. ABWR design submitted by STPNOC (STPNOC DCD). The NRC is proposing this change to the definition of "generic DCD" to make it clear that all requirements in this appendix related to

the "generic DCD" apply to both the GE DCD and the STPNOC DCD, unless otherwise specified.

During development of the first two DCRs, the Commission decided that there would be both generic (master) DCDs maintained by the NRC and the design certification applicant, as well as individual plant-specific DCDs maintained by each applicant and licensee that reference this appendix. This distinction is necessary to specify the relevant plant-specific requirements to applicants and licensees referencing the appendix. To facilitate the maintenance of the master DCDs, the NRC proposes that each application for a standard design certification or amendment to a standard design certification be updated to include an electronic copy of the final version of the DCD. The final version would be required to incorporate all amendments to the DCD submitted since the original application as well as any changes directed by the NRC as a result of its review of the original DCD or as a result of public comments. This final version would become the master DCD incorporated by reference in the DCR. The master DCD would be revised as needed to include generic changes to the version of the DCD approved in this design certification rulemaking. These changes would occur as the result of generic rulemaking by the Commission, under the change criteria in Section VIII.

The NRC proposes to incorporate by reference a second DCD into Appendix A of 10 CFR part 52, *i.e.,* the DCD for the STPNOC option (STPNOC DCD). Under the proposed rule, a reference to a "generic DCD" means, in context, either or both: (i) The DCD for the original U.S. ABWR design certification submitted by GE (GE DCD); and (ii) the STPNOC DCD submitted by STPNOC.

3. Scope and Contents (Section III)

The purpose of Section III is to describe and define the scope and contents of this design certification and to present how documentation discrepancies or inconsistencies are to be resolved. Paragraph III.A is the required statement of the Office of the Federal Register (OFR) for approval of the incorporation by reference of Tier 1, Tier 2, and the generic technical specifications into this appendix. The NRC is proposing to redesignate the existing paragraph A regarding the GE DCD as paragraph A.1 and to add a new paragraph A.2 indicating that the STPNOC DCD is also approved for incorporation by reference.

The legal effect of incorporation by reference is that the incorporated material has the same legal status as if it were published in the Code of Federal Regulations. This material, like any other properly issued regulation, has the force and effect of law. The STPNOC DCD was prepared to meet the technical information contents of application requirements for design certifications under 10 CFR 52.47(a) and the requirements of the OFR for incorporation by reference under 1 CFR part 51. One of the requirements of the OFR for incorporation by reference is that the applicant for the design certification (or amendment to the design certification) must make the generic DCD available upon request after the final rule becomes effective. Therefore, paragraph III.A.2 would identify a STPNOC representative to be contacted to obtain a copy of the STPNOC DCD.

The generic DCD (master copy) for the STPNOC DCD is electronically accessible in ADAMS (Accession No. ML102870017); at the OFR; and at www.regulations.gov by searching under Docket ID NRC–2010–0134. Copies of the generic DCD would also be available at the NRC's PDR. Questions concerning the accuracy of information in an application that references this appendix will be resolved by checking the master copy of the generic DCD in ADAMS. If the design certification amendment applicant makes a generic change (through NRC rulemaking) to the DCD under 10 CFR 52.63 and the change process provided in Section VIII, then at the completion of the rulemaking the NRC would request approval of the Director, OFR, for the revised master DCD. The NRC would require that the design certification amendment applicant maintain an up-to-date copy of the master DCD under paragraph X.A.1 that includes any generic changes it has made because it is likely that most applicants intending to reference the standard design would obtain the generic DCD from the design certification amendment applicant.

In addition, the NRC is proposing to revise paragraph III.B to add text indicating that an applicant or licensee referencing this appendix may reference either the GE DCD, or both the GE DCD and the STPNOC DCD. An applicant referencing this appendix would be required to indicate in its application and in all necessary supporting documentation which of these two alternatives it is implementing. This information is necessary to support the NRC's review and processing of the license application. A COL applicant that does not reference both the GE DCD and the STPNOC DCD will be required, in accordance with 10 CFR 50.150(a)(3)(v)(B) to comply with the requirements of 10 CFR 50.150 as part of its COL application.

Paragraphs III.C and III.D set forth the way potential conflicts are to be resolved. Paragraph III.C would establish the Tier 1 description in the DCD as controlling in the event of an inconsistency between the Tier 1 and Tier 2 information in the DCD. The NRC is proposing a minor change to paragraph III.C, which currently states that, if there is a conflict between Tier 1 and Tier 2 of the DCD, then Tier 1 controls. The revised paragraph would state that, if there is a conflict between Tier 1 and Tier 2 of a DCD, then Tier 1 controls. This change is necessary to indicate that this requirement applies to both the GE DCD and the STPNOC DCD.

The NRC is also proposing a change to paragraph III.D. Paragraph III.D establishes the generic DCD as the controlling document in the event of an inconsistency between the DCD and the Final Safety Evaluation Report (FSER) for the certified standard design. The proposed revision would indicate that this is also the case for an inconsistency between the STPNOC DCD and the NRC's associated FSER, referred to as the "AIA FSER."

The NRC is proposing to redesignate current paragraph III.E as proposed paragraph III.F and to add a new paragraph, III.E. Proposed paragraph III.E would state that, if there is a conflict between the design as described in the GE DCD and a design matter which implements the STPNOC certified design option but is not specifically described in the STPNOC DCD, then the GE DCD controls. This paragraph, which would be effective only with respect to the GE/STPNOC composite certified design, addresses the situation when, despite the best efforts of STPNOC and the NRC, there are unintended consequences or unaddressed issues resulting from STPNOC's amendment to the U.S. ABWR design. The NRC would expect the applicant or licensee discovering such issues to notify the NRC and STPNOC so that the issue could be addressed generically (if not reportable under existing NRC requirements such as 10 CFR part 21, 10 CFR 52.6, 10 CFR 50.72 and 10 CFR 50.73).

4. Additional Requirements and Restrictions (Section IV)

Section IV presents additional requirements and restrictions imposed upon an applicant who references this appendix. Paragraph IV.A presents the information requirements for these applicants. Paragraph IV.A.3 currently requires the applicant to include, not

simply reference, the proprietary and SGI referenced in the U.S. ABWR DCD, or its equivalent, to ensure that the applicant has actual notice of these requirements. The NRC is proposing to revise paragraph IV.A.3 to indicate that a COL applicant must include, in the plant-specific DCD, the proprietary information and SGI referenced in both the GE DCD and the STPNOC DCD, as applicable.

The NRC is also proposing to add a new paragraph IV.A.4 to indicate requirements that must be met in cases where the COL applicant is not using the entity that was the original applicant for the design certification (or amendment) to supply the design for the applicant's use. Proposed paragraph IV.A.4.a would require that a COL applicant referencing this appendix include, as part of its application, a demonstration that an entity other than GE Nuclear Energy is qualified to supply the U.S. ABWR certified design unless GE Nuclear Energy supplies the design for the applicant's use. Proposed paragraph IV.A.4.b would require that a COL applicant referencing the STPNOC certified design option include, as part of its application, a demonstration that an entity other than STPNOC and TANE acting together is qualified to supply the STPNOC certified design option, unless STPNOC and TANE acting together supply the design option for the applicant's use. In cases where a COL applicant is not using GE Nuclear Energy to supply the U.S. ABWR certified design, or is not using STPNOC and TANE acting together to supply the STPNOC certified design option, this information is necessary to support any NRC finding under 10 CFR 52.73(a) that an entity other than the one originally sponsoring the design certification or design certification amendment is qualified to supply the certified design or certified design option.

Under 10 CFR 52.47(a)(7), a design certification applicant is required to include information in its application to demonstrate that it is technically qualified to engage in the proposed activities (*e.g.,* supplying the certified design to license applicants). Based on the NRC's review of the STPNOC application to amend to the U.S. ABWR certified design, the NRC determined that STPNOC and its contractors are technically qualified to perform the design work associated with the amended portion of the U.S. ABWR design represented by STPNOC's application and to supply the amended portion of the U.S. ABWR design. However, the staff determined that STPNOC, by itself, is not technically qualified to supply the amended portion of the U.S. ABWR design certification represented in STPNOC's DCD. Rather, the staff determined that STPNOC and TANE acting together are qualified to supply the amended portion of the U.S. ABWR design certification represented in STPNOC's DCD. Therefore, the NRC is including paragraph IV.A.4.b to ensure that the basis for the NRC finding of technical qualifications in support of this design certification amendment remains valid.

5. Applicable Regulations (Section V)

The purpose of Section V is to specify the regulations applicable and in effect when the design certification is approved (*i.e.,* as of the date specified in paragraph V.A, which is the date that Appendix A was originally approved by the Commission and signed by the Secretary of the Commission). The NRC is proposing to revise paragraph V.A to indicate that the current text in this paragraph applies to the GE DCD and to add a new paragraph indicating the regulations that apply to the STPNOC DCD (10 CFR Parts 50 and 52), as would be approved by the Commission and signed by the Secretary of the Commission should this amendment to Appendix A be approved. All of the requirements related to the NRC's AIA requirements can be found in 10 CFR Parts 50 and 52.

6. Issue Resolution (Section VI)

The purpose of Section VI is to identify the scope of issues that were resolved by the Commission in the original certification rulemaking and, therefore, are "matters resolved" within the meaning and intent of 10 CFR 52.63(a)(5). Paragraph VI.B presents the scope of issues that may not be challenged as a matter of right in subsequent proceedings and describes the categories of information for which there is issue resolution. Paragraph VI.B.1 provides that all nuclear safety issues arising from the Atomic Energy Act of 1954, as amended, that are associated with the information in the NRC staff's FSER (ADAMS Accession No. ML102710198), the Tier 1 and Tier 2 information and the rulemaking record for this appendix are resolved within the meaning of 10 CFR 52.63(a)(5). These issues include the information referenced in the DCD that are requirements (*i.e.,* "secondary references"), as well as all issues arising from proprietary information and SGI which are intended to be requirements. Paragraph VI.B.2 provides for issue preclusion of proprietary and SGI.

The NRC is proposing to revise paragraphs VI.B.1 and VI.B.2 to redesignate references to the "FSER" as references to the "ABWR FSER," and references to the "generic DCD" as references to the "GE DCD" to distinguish the FSER and DCD for the original certified design from the FSER and DCD that would be issued to support the STPNOC amendment to the U.S. ABWR design. In addition, this proposed revision would add additional text to paragraph VI.B.1 to identify the information that would be resolved by the Commission in the rulemaking to certify the STPNOC amendment to the U.S. ABWR design.

The NRC is also proposing to revise paragraph VI.B.7, which identifies as resolved all environmental issues concerning severe accident mitigation design alternatives arising under the National Environmental Policy Act of 1969 (NEPA) associated with the information in the NRC's final environmental assessment for the U.S. ABWR design and Revision 1 of the technical support document for the U.S. ABWR, dated December 1994, for plants referencing this appendix whose site parameters are within those specified in the technical support document. The NRC is proposing to revise this paragraph to also identify as resolved all environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's final environmental assessment and Revision 0 of ABWR–LIC–09–621, "Applicant's Supplemental Environmental Report-Amendment to ABWR Standard Design Certification," for the AIA amendment to the U.S. ABWR design for plants referencing this appendix whose site parameters are within those specified in the technical support document.

Finally, the NRC is proposing to revise paragraph VI.E, which provides the procedure for an interested member of the public to obtain access to proprietary information and SGI for the U.S. ABWR design, and to request and participate in proceedings identified in paragraph VI.B of this appendix, that is, proceedings involving licenses and applications which reference this appendix. The NRC is proposing to replace the current information in this paragraph with a statement that the NRC will specify, at an appropriate time, the procedure for interested persons to review SGI or SUNSI (including proprietary information), for the purpose of participating in the hearing required by 10 CFR 52.85, the hearing provided under 10 CFR 52.103, or in any other proceeding relating to this appendix in which interested persons have a right to request an adjudicatory hearing.

Access to such information would be for the sole purpose of requesting or participating in certain specified hearings, viz., (i) the hearing required by 10 CFR 52.85 where the underlying application references this appendix; (ii) any hearing provided under 10 CFR 52.103 where the underlying COL references this appendix; and (iii) any other hearing relating to this appendix in which interested persons have the right to request an adjudicatory hearing.

For proceedings where the notice of hearing was published before [effective date of final rule], the Commission's order governing access to SUNSI and SGI shall be used to govern access to SUNSI (including proprietary information) and SGI on the STPNOC option. For proceedings in which the notice of hearing or opportunity for hearing is published after [effective date of final rule], paragraph VI.E. applies and governs access to SUNSI (including proprietary information) and SGI for both the original GE certified design, and the STPNOC option; as stated in paragraph VI.E, the NRC will specify the access procedures at an appropriate time.

The NRC expects to follow its current practice of establishing the procedures by order when the notice of hearing is published in the **Federal Register**. (*See, e.g.,* Florida Power and Light Co, Combined License Application for the Turkey Point Units 6 & 7, Notice of Hearing, Opportunity To Petition for Leave To Intervene and Associated Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation (75 FR 34777; June 18, 2010); Notice of Receipt of Application for License; Notice of Consideration of Issuance of License; Notice of Hearing and Commission Order and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation; In the Matter of AREVA Enrichment Services, LLC (Eagle Rock Enrichment Facility) (74 FR 38052; July 30, 2009).

In the four currently approved design certifications (10 CFR part 52, Appendices A through D), paragraph VI.E presents specific directions on how to obtain access to proprietary information and SGI on the design certification in connection with a license application proceeding referencing that design certification rule. The NRC is proposing this change because these provisions were developed before the terrorist events of September 11, 2001. After September 11, 2001, the Congress changed the statutory requirements governing access to SGI, and the NRC revised its rules, procedures, and practices governing control and access to SUNSI and SGI. The NRC now believes that generic direction on obtaining access to SUNSI and SGI is no longer appropriate for newly approved DCRs. Accordingly, the specific requirements governing access to SUNSI and SGI contained in paragraph VI.E of the four currently approved DCRs should not be included in the design certification rule for the U.S. ABWR. Instead, the NRC should specify the procedures to be used for obtaining access at an appropriate time in the COL proceeding referencing the U.S. ABWR DCR. The NRC intends to include this change in any future amendment or renewal of the other existing DCRs. However, the NRC is not planning to initiate rulemaking to change paragraph VI.E of the existing DCRs, to minimize unnecessary resource expenditures by both the original DCR applicant and the NRC.

7. Processes for Changes and Departures (Section VIII)

The purpose of Section VIII is to present the processes for generic changes to, or plant-specific departures (including exemptions) from, the DCD. The Commission adopted this restrictive change process to achieve a more stable licensing process for applicants and licensees that reference this DCR. The change processes for the three different categories of Tier 2 information, namely, Tier 2, Tier 2*, and Tier 2* with a time of expiration, are presented in paragraph VIII.B.

Departures from Tier 2 that a licensee may make without prior NRC approval are addressed under paragraph VIII.B.5 (similar to the process in 10 CFR 50.59). The NRC is proposing changes to Section VIII to address the change control process specific to departures from the information required by 10 CFR 52.47(a)(28) to address the NRC's AIA requirements in 10 CFR 50.150. Specifically, the NRC is proposing to revise paragraph VIII.B.5.b to indicate that the criteria in this paragraph for determining if a proposed departure from Tier 2 requires a license amendment do not apply to a proposed departure affecting information required by 10 CFR 52.47(a)(28) to address 10 CFR 50.150. In addition, the NRC is proposing to redesignate paragraphs VIII.B.5.d, B.5.e, and B.5.f as paragraphs VIII.B.5.e, B.5.f, and B.5.g, respectively, and to add a new paragraph VIII.B.5.d. Proposed paragraph VIII.B.5.d would require an applicant or licensee who proposed to depart from the information required by 10 CFR 52.47(a)(28) to be included in the final safety analysis report (FSAR) for the standard design certification to consider the effect of the changed feature or capability on the original assessment required by 10 CFR 50.150(a). The FSAR information required by the aircraft impact rule which is subject to this change control requirement are the descriptions of the design features and functional capabilities incorporated into the final design of the nuclear power facility and the description of how the identified design features and functional capabilities meet the assessment requirements in 10 CFR 50.150(a)(1). The objective of the change controls is to determine whether the design of the facility, as changed or modified, is shown to withstand the effects of the aircraft impact with reduced use of operator actions. In other words, the applicant or licensee must continue to show, with the modified design, that the acceptance criteria in 10 CFR 50.150(a)(1) are met with reduced use of operator actions. The rule does not require an applicant or a licensee implementing a design change to redo the complete aircraft impact assessment (AIA) to evaluate the effects of the change. The NRC believes it may be possible to demonstrate that a design change is bound by the original design or that the change provides an equivalent level of protection, without redoing the original assessment.

Consistent with the NRC's intent when it issued the AIA rule, under the proposed revision to this section, plant-specific departures from the AIA information in the FSAR would not require a license amendment, but may be made by the licensee upon compliance with the substantive requirements of the AIA rule (*i.e.,* the AIA rule acceptance criteria). The applicant or licensee would also be required to document, in the plant-specific departure, how the modified design features and functional capabilities continue to meet the assessment requirements in 10 CFR 50.150(a)(1) in accordance with Section X of this appendix. Applicants and licensees making changes to design features or capabilities included in the certified design may also need to develop alternate means to cope with the loss of large areas of the plant from explosions or fires to comply with the requirements in 10 CFR 50.54(hh). The proposed addition of these provisions to this appendix is consistent with the NRC's intent when it issued the AIA rule in 2009, as noted in the statements of consideration for that rule (74 FR

28112; June 12, 2009, at 28122, third column).

8. Records and Reporting (Section X)

The purpose of Section X is to present the requirements that apply to maintaining records of changes to and departures from the generic DCD, which would be reflected in the plant-specific DCD. Section X also presents the requirements for submitting reports (including updates to the plant-specific DCD) to the NRC. Paragraph X.A.1 requires that a generic DCD and the proprietary information and SGI referenced in the generic DCD be maintained by the applicant for this rule. The NRC is proposing to revise paragraph X.A.1 to indicate that there are two applicants for this appendix and that the requirements to maintain a copy of the applicable generic DCD would apply to both the applicant for the original U.S. ABWR certification (GE) and the applicant for the AIA amendment to the U.S. ABWR design (STPNOC). Paragraph X.A.1 would also require the design certification applicant to maintain the proprietary information and SGI referenced in the generic DCD. The NRC is proposing to replace the term "proprietary information" with the broader term "sensitive unclassified non-safeguards information (including proprietary information)." Information categorized as SUNSI is information that is generally not publicly available and encompasses a wide variety of categories, including information about a licensee's or applicant's physical protection or material control and accounting program for special nuclear material not otherwise designated as SGI or classified as National Security Information or Restricted Data (security-related information), which is required by 10 CFR 2.390 to be protected in the same manner as commercial or financial information (*i.e.,* they are exempt from public disclosure). This change is necessary because, although the NRC is not approving any proprietary information or SGI as part of this amendment rulemaking, it is approving some security-related information that is categorized as SUNSI.

This change would ensure that both GE and STPNOC (as well as any future applicants for amendments to the U.S. ABWR DCR who intend to supply the certified design) are required to maintain a copy of the applicable generic DCD, and maintain the applicable SUNSI (including proprietary information) and SGI—developed by that applicant—that were approved as part of the relevant design certification rulemakings. In the certification of the original U.S. ABWR design, the NRC approved both proprietary information and SGI as part of the design certification rulemaking. In this amendment to the U.S. ABWR design, the NRC would only be approving non-proprietary SUNSI as part of the amendment rulemaking.

The NRC notes that the generic DCD concept was developed, in part, to meet OFR requirements for incorporation by reference, including public availability of documents incorporated by reference. However, the proprietary information and SGI were not included in the public version of the DCD prepared by GE, and the SUNSI was not included in the public version of the DCD prepared by STPNOC. Only the public version of the generic STPNOC DCD would be identified and incorporated by reference into this rule. Nonetheless, the SUNSI for the STPNOC option was reviewed by the NRC and, as stated in paragraph VI.B.2, the NRC would consider the information to be resolved within the meaning of 10 CFR 52.63(a)(5). Because this information is in the non-public versions of the GE and STPNOC DCDs, this SUNSI (including proprietary information) and SGI, or its equivalent, is required to be provided by an applicant for a license referencing this DCR.

In addition, the NRC is proposing to add a new paragraph X.A.4.a that would require the applicant for the amendment to the U.S. ABWR design to address the AIA requirements to maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) for the term of the certification (including any period of renewal). The NRC is also proposing a new paragraph X.A.4.b that would require an applicant or licensee who references this appendix to include both the GE DCD and the STPNOC DCD to maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) throughout the pendency of the application and for the term of the license (including any period of renewal). The addition of paragraphs X.A.4.a and X.A.4.b is consistent with the NRC's intent when it issued the AIA rule in 2009 (74 FR 28112; June 12, 2009, at 28121, second column).

IV. Section-by-Section Analysis

A. Introduction (Section I)

The NRC is proposing to amend Section I, "Introduction," to identify STPNOC as the applicant for the amendment of the U.S. ABWR design certification rule to address the AIA rule, 10 CFR 50.150.

B. Definitions (Section II)

The NRC is proposing to revise the definition of "generic design control document (generic DCD)" to indicate that there will be two generic DCDs incorporated by reference into this appendix—the DCD for the original U.S. ABWR design certification submitted by GE Nuclear Energy (GE DCD) and the DCD for the amendment to the U.S. ABWR design submitted by STPNOC (STPNOC DCD). This will make it clear that all requirements in this appendix related to the "generic DCD" apply to both the GE DCD and the STPNOC DCD, unless otherwise specified.

C. Scope and Contents (Section III)

The NRC is proposing to redesignate existing paragraph A regarding the GE DCD as paragraph A.1 and to add a new paragraph A.2 indicating that the STPNOC DCD is also approved for incorporation by reference into 10 CFR part 52, Appendix A by OFR.

The NRC is proposing to revise paragraph III.B to add text indicating that an applicant or licensee referencing this appendix may use either the GE DCD, or both the GE DCD and the STPNOC DCD. By doing so, the applicant or licensee effectively indicates which generic design it is using (*i.e.,* the GE certified design, or the GE/STPNOC composite certified design). An applicant referencing this appendix would be required to indicate in its application and in all necessary supporting documentation which of these two alternatives it is implementing.

The NRC is proposing a minor change to paragraph III.C, which currently states that, if there is a conflict between Tier 1 and Tier 2 of the DCD, then Tier 1 controls. The revised paragraph would state that, if there is a conflict between Tier 1 and Tier 2 of a DCD, then Tier 1 controls, because the requirement would also apply to the STPNOC DCD.

Paragraph III.D establishes the generic DCD as the controlling document in the event of an inconsistency between the DCD and the FSER for the certified standard design. The NRC is proposing a change to paragraph III.D which would indicate that in the event of an inconsistency between the STPNOC DCD and the AIA FSER, the STPNOC DCD controls.

The NRC is proposing to redesignate current paragraph III.E as proposed paragraph III.F and to add a new paragraph III.E. Proposed paragraph III.E would state that, if there is a conflict between the design as described in the GE DCD and a design matter which implements the STPNOC certified

design option but is not specifically described in the STPNOC DCD, then the GE DCD controls.

D. Additional Requirements and Restrictions (Section IV)

The NRC is proposing to revise paragraph IV.A.3 to indicate that a COL applicant must include, in the plant-specific DCD, the proprietary information and SGI referenced in both the GE DCD and the STPNOC DCD, as applicable, or its equivalent.

Section IV presents additional requirements and restrictions imposed upon an applicant who references this appendix. Paragraph IV.A presents the information requirements for these applicants. Paragraph IV.A.3 requires the applicant to include the proprietary information and SGI referenced in the DCD, or its equivalent, to ensure that the applicant has actual notice of these requirements. The NRC is proposing to revise paragraph IV.A.3 to indicate that a COL applicant must include, in the plant-specific DCD, the proprietary information and SGI referenced in both the GE DCD and the STPNOC DCD, as applicable, or the equivalent of this information. If the COL applicant is referencing only the GE DC, then the applicant must include the proprietary information and SGI developed by GE (as presented in the non-public version of the GE DCD), or the equivalent of this information. If the COL applicant is referencing both the GE DCD and the STPNOC DCD, then the applicant must include: (1) The proprietary information and SGI developed by GE (as presented in the non-public version of the GE DCD), or the equivalent of this information; and (2) the proprietary information and SGI developed by STPNOC (as presented in the non public version of the STPNOC DCD), or the equivalent of this information.

The NRC is also proposing to add a new paragraph IV.A.4 to indicate requirements that must be met in cases where the COL applicant is not using the entity that was the original applicant for the design certification (or amendment) to supply the design for the applicant's use. Proposed paragraph IV.A.4.a would require that a COL applicant referencing this appendix include, as part of its application, a demonstration that an entity other than GE is qualified to supply the U.S. ABWR certified design unless GE supplies the design for the applicant's use. Proposed paragraph IV.A.4.b would require that a COL applicant referencing the STPNOC certified design option include, as part of its application, a demonstration that an entity other than STPNOC and TANE acting together is qualified to supply the STPNOC certified design option, unless STPNOC and TANE acting together supply the design option for the applicant's use. In cases where a COL applicant is not using GE to supply the U.S. ABWR certified design, or is not using STPNOC and TANE acting together to supply the STPNOC certified design option, the required information would be used to support any NRC finding under 10 CFR 52.73(a) that an entity other than the one originally sponsoring the design certification or design certification amendment is qualified to supply the certified design or certified design option.

E. Applicable Regulations (Section V)

Paragraph V.A would be revised so that the first sentence of paragraph V.A identifies the applicable regulations for the GE certified design, and the second sentence presents the applicable regulations for the STPNOC Option.

F. Issue Resolution (Section VI)

The NRC is proposing to revise paragraphs VI.B.1 and VI.B.2 to redesignate references to the "FSER" as references to the "ABWR FSER" and references to the "generic DCD" as references to the "GE DCD" to distinguish the FSER and DCD for the original certified design from the FSER and DCD that would be issued to support the STPNOC amendment to the U.S. ABWR design. In addition, this proposed revision would add text to paragraph VI.B.1 to identify the information that would be resolved by the Commission in the rulemaking to certify the STPNOC AIA amendment to the U.S. ABWR design.

The NRC is proposing to revise paragraph VI.B.7 to identify as resolved all environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's final environmental assessment and Revision 0 of ABWR–LIC–09–621, "Applicant's Supplemental Environmental Report-Amendment to ABWR Standard Design Certification," for the AIA amendment to the U.S. ABWR design for plants referencing this appendix whose site parameters are within those specified in the technical support document. The existing site parameters specified in the technical support document are not affected by this design certification amendment.

G. Processes for Changes and Departures (Section VIII)

The NRC is proposing changes to Section VIII to address the change control process specific to departures from the information required by 10 CFR 52.47(a)(28) to address the NRC's AIA requirements in 10 CFR 50.150. Specifically, the NRC is proposing to revise paragraph VIII.B.5.b to indicate that the criteria in this paragraph for determining if a proposed departure from Tier 2 requires a license amendment do not apply to a proposed departure affecting information required by 10 CFR 52.47(a)(28) to address aircraft impacts.

In addition, the NRC is proposing to redesignate paragraphs VIII.B.5.d, B.5.e, and B.5.f as paragraphs VIII.B.5.e, B.5.f, and B.5.g, respectively, and to add a new paragraph VIII.B.5.d. Proposed paragraph VIII.B.5.d would require an applicant referencing the U.S. ABWR DCR, who proposed to depart from the information required by 10 CFR 52.47(a)(28) to be included in the FSAR for the standard design certification, to consider the effect of the changed feature or capability on the original 10 CFR 50.150(a) assessment.

H. Records and Reporting (Section X)

The NRC is proposing to revise paragraph X.A.1 to refer to "applicants" for this appendix and to replace the term "proprietary information" with the broader term "sensitive unclassified non-safeguards information." Paragraph X.A.1 would be revised to require the design certification amendment applicant to maintain the SUNSI which it developed and used to support its design certification amendment application. This would ensure that the referencing applicant has direct access to this information from the design certification amendment applicant, if it has contracted with the applicant to provide the SUNSI to support its license application. The STPNOC generic DCD and the NRC-approved version of the SUNSI would be required to be maintained for the period that this appendix may be referenced.

The NRC is also proposing to add a new paragraph X.A.4.a that would require STPNOC to maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) for the term of the certification (including any period of renewal). This proposed provision, which is consistent with 10 CFR 50.150(c)(3), would facilitate any NRC inspections of the assessment that the NRC decides to conduct.

Similarly, the NRC is proposing new paragraph X.A.4.b that would require an applicant or licensee who references this appendix, to include both the GE DCD and the STPNOC DCD, to maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) throughout the pendency of

the application and for the term of the license (including any period of renewal). This provision is consistent with 10 CFR 50.150(c)(4). For all applicants and licensees, the supporting documentation retained onsite should describe the methodology used in performing the assessment, including the identification of potential design features and functional capabilities to show that the acceptance criteria in 10 CFR 50.150(a)(1) would be met.

V. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement States Programs," approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this rule is classified as compatibility "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of this chapter. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements by a mechanism that is consistent with the particular State's administrative procedure laws. Category "NRC" regulations do not confer regulatory authority on the State.

VI. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods, as indicated. To access documents related to this action, *see* Section I, "Submitting Comments and Accessing Information" of this document.

Document	PDR	Web	ADAMS
SECY–10–0142, "Proposed Rule—U.S. Advanced Boiling Water Reactor Aircraft Impact Design Certification Amendment".	X	x	ML102100129
STPNOC Application to Amend the Design Certification Rule for the U.S. ABWR.	X	x	ML092040048
South Texas Project, Units 3 and 4, Combined License Application	X	x	ML072850066
March 3, 2010, letter from Toshiba to NRC stating that Toshiba intends to seek renewal of the U.S. ABWR design certification.	X	.....	ML100710026
General Electric ABWR Design Control Document	X	x	Official version is hard copy
ABWR STP AIA Amendment Design Control Document, Revision 3 (public version).	X	x	ML102870017
Applicant's Supplemental Environmental Report—Amendment to the ABWR Standard Design Certification.	X	x	ML093170455
Final Safety Evaluation Report for the STPNOC Amendment to the ABWR Design Certification.	x	x	ML102710198
NRC's Final Environmental Assessment Relating to the Certification of the U.S. ABWR (Attachment 2 of SECY 96–077).	x	x	ML003708129
Revision 1 of the Technical Support Document for the U.S. ABWR, December 1994.	x	.....	ML100210563
Environmental Assessment by the U.S. NRC Relating to the Certification of the STPNOC Amendment to the U.S. ABWR Standard Plant Design.	x	.....	ML103470203
NUREG–1503, "Final Safety Evaluation Report Related to the Certification of the Advanced Boiling Water Reactor Design".	x	x	ML080670592
NUREG–1503, Supplement 1, "Final Safety Evaluation Report Related to the Certification of the Advanced Boiling Water Reactor Design".	x	x	ML080710134
Regulatory History of Design Certification[11]	x	.....	ML003761550

[11] The regulatory history of the NRC's design certification reviews is a package of documents that is available in NRC's PDR and ADAMS. This history spans the period during which the NRC simultaneously developed the regulatory standards for reviewing these designs and the form and content of the rules that certified the designs.

VII. Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Preparation of Comments on the Proposed Amendment to the U.S. ABWR Design Certification

This section contains instructions regarding how interested persons who wish to comment on the proposed design certification amendment may request access to documents containing SUNSI to prepare their comments.

Submitting a Request to the NRC

Within 10 days after publication of this document, an individual or entity (thereinafter, the "requester") may request access to such information. Requests for access to SUNSI submitted more than 10 days after publication of this document will not be considered absent a showing of good cause for the late filing explaining why the request could not have been filed earlier.

The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Attention: Rulemakings and Adjudications Staff, Washington, DC 20555–0001. The expedited delivery or courier mail address is: Office of the Secretary, U.S. Nuclear Regulatory Commission, Attention: Rulemakings and Adjudications Staff, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary is *rulemaking.comments@nrc.gov.* The requester must send a copy of the request to the design certification applicant at the same time as the original transmission to the NRC using the same method of transmission. Copies of the request to the applicant must be sent to Mr. Scott M. Head, Regulatory Affairs Manager, South Texas Project Nuclear Operating Company, P.O. Box 289, Wadsworth, TX 77483, or to *smhead@STPEGS.com.* For purposes of complying with this requirement, a "request" includes all the information required to be submitted to the NRC as presented in this section.

The request must include the following information:

1. The name of this design certification amendment at the top of the first page of the request, and a citation to this document.

2. The name, address, and e-mail or FAX number of the requester. If the requester is an entity, the name of the individual(s) to whom access is to be provided, then the address and e-mail or FAX number for each individual, and a

statement of the authority granted by the entity to each individual to review the information and to prepare comments on behalf of the entity must be provided. If the requester is relying upon another individual to evaluate the requested SUNSI and prepare comments, then the name, affiliation, address, and e-mail or FAX number for that individual must be provided.

3. The requester's need for the information to prepare meaningful comments on the proposed design certification must be demonstrated. Each of the following areas must be addressed with specificity.

(a) The specific issue or subject matter on which the requester wishes to comment;

(b) An explanation why information which is publicly available, including the publicly available versions of the application and design control document, and information on the NRC's docket for the design certification application is insufficient to provide the basis for developing meaningful comment on the proposed design certification with respect to the issue or subject matter described previously in paragraph 3(a); and

(c) Information demonstrating that the individual to whom access is to be provided has the technical competence (demonstrable knowledge, skill, experience, education, training or certification) to understand and use (or evaluate) the requested information in order to develop meaningful comments on the proposed design certification with respect to the issue or subject matter described in paragraph 3(a) above.

4. Based on an evaluation of the information submitted under paragraph 3 of this section, the NRC staff will determine within 10 days of receipt of the written access request whether the requester has established a legitimate need for the SUNSI access requested.

5. If the NRC staff determines that the requester has established a legitimate need for access to SUNSI, the NRC staff will notify the requester in writing that access to SUNSI has been granted.

The written notification to the requester will contain instructions on how the requester may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions will include, but are not necessarily limited to, the signing of a protective order presenting terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI. Claims that the provisions of such a protective order have not been complied with may be filed by calling NRC's toll-free safety hotline at 1–800–695–7403. Please note that calls to this number are not recorded between the hours of 7 a.m. to 5 p.m. Eastern Time. However, calls received outside these hours are answered by the Incident Response Operations Center on a recorded line. Claims may also be filed via e-mail to *NRO_Allegations@nrc.gov,* or may be sent in writing to the U.S. Nuclear Regulatory Commission, Attention: N. Rivera-Feliciano, Mail Stop T7–D24, Washington, DC 20555–0001.

6. Any comments in this rulemaking proceeding that are based upon the disclosed SUNSI must be filed by the requester no later than 25 days after receipt of (or access to) that information, or the close of the public comment period, whichever is later. The commenter must comply with the NRC requirements regarding the submission of SUNSI to the NRC when submitting comments to the NRC (including marking and transmission requirements).

7. Review of Denials of Access.

(a) If the request for access to SUNSI is denied by the NRC staff, the staff shall promptly notify the requester in writing, briefly stating the reason or reasons for the denial.

(b) Appeals from a denial of access must be made to the Executive Director for Operations (EDO) in accordance with 10 CFR 9.29. The decision of the EDO constitutes final agency action, as provided in 10 CFR 9.29(d).

VIII. Plain Language

The Presidential memorandum 'Plain Language in Government Writing" published on June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible language. The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the NRC as explained in the **ADDRESSES** heading of this document.

IX. Voluntary Consensus Standards

The National Technology and Transfer Act of 1995 (Act), Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. The NRC proposes to approve the AIA amendment to the U.S. ABWR standard plant design for use in nuclear power plant licensing under 10 CFR part 50 or 52. Design certifications (and amendments thereto) are not generic rulemakings establishing a generally applicable standard with which all 10 CFR Parts 50 and 52 nuclear power plant licensees must comply. Design certifications (and amendments thereto) are Commission approvals of specific nuclear power plant designs by rulemaking. Furthermore, design certifications (and amendments thereto) are initiated by an applicant for rulemaking, rather than by the NRC. For these reasons, the NRC concludes that the Act does not apply to this proposed rule.

X. Finding of No Significant Environmental Impact: Availability

The Commission has determined under NEPA, and the Commission's regulations in Subpart A, "National Environmental Policy Act; Regulations Implementing Section 102(2)," of 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," that this proposed design certification rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement (EIS) is not required. The basis for this determination, as documented in the draft environmental assessment (EA), is that that the Commission has made a generic determination under 10 CFR 51.32(b)(2) that there is no significant environmental impact associated with the issuance of an amendment to a design certification.

This amendment to 10 CFR part 52 would not authorize the siting, construction, or operation of a facility using the AIA amendment to the U.S. ABWR design; it would only codify the AIA amendment to the U.S. ABWR design in a rule. The NRC will evaluate the environmental impacts and issue an EIS as appropriate under NEPA as part of the application for the construction and operation of a facility referencing the AIA amendment to the U.S. ABWR design certification rule.

In addition, as part of the draft EA for the AIA amendment to the U.S. ABWR design, the NRC reviewed STPNOC's evaluation of various design alternatives to prevent and mitigate severe accidents in Revision 0 of ABWR–LIC–09–621, "Applicant's Supplemental Environmental Report-Amendment to ABWR Standard Design Certification." According to 10 CFR 51.30(d), an EA for a design certification amendment is limited to the consideration of whether the design change which is the subject of the proposed amendment renders a severe accident mitigation design alternative (SAMDA) previously rejected in the earlier EA to become cost

beneficial, or results in the identification of new SAMDAs, in which case the costs and benefits of new SAMDAs and the bases for not incorporating new SAMDAs in the design certification must be addressed. Based upon review of STPNOC's evaluation, the Commission concludes that the proposed design changes (1) do not cause a SAMDA previously rejected in the environmental assessment for the original U.S. ABWR design certification to become cost-beneficial; and (2) do not result in the identification of any new SAMDAs that could become cost beneficial.

The Commission is requesting comment on the draft EA. As provided in 10 CFR 51.31(b), comments on the draft EA will be limited to the consideration of SAMDAs as required by 10 CFR 51.30(d). The Commission will prepare a final EA following the close of the comment period for the proposed standard design certification. If a final rule is issued, all environmental issues concerning SAMDAs associated with the information in the final EA and Revision 0 of ABWR–LIC–09–621, "Applicant's Supplemental Environmental Report-Amendment to ABWR Standard Design Certification," will be considered resolved for plants referencing the AIA amendment to the U.S. ABWR design whose site parameters are within those specified in Revision 1 of the technical support document for the U.S. ABWR, dated December 1994. The existing site parameters specified in the technical support document are not affected by this design certification amendment.

The draft EA, upon which the Commission's finding of no significant impact is based, and the STPNOC DCD are available for examination and copying at the NRC's Public Document Room (PDR), One White Flint North, 11555 Rockville Pike, Room O1–F21, Rockville, Maryland 20852.

XI. Paperwork Reduction Act Statement

This proposed rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget (OMB) for review and approval of the information collection requirements.

Type of submission, new or revision: Revision.

The title of the information collection: 10 CFR part 52, Advanced Boiling Water Reactor Aircraft Impact Design Certification Amendment.

The form number if applicable: N/A.

How often the collection is required: On occasion. Reports required under 10 CFR part 52, Appendix A, paragraph IV.A.4, are collected and evaluated once, when licensing action is sought on a combined license application referencing the U.S. ABWR design and the combined license applicant is not using the entity that was the original applicant for the design certification, or amendment, to supply the design for the license applicant's use.

Who will be required or asked to report: Combined license applicants.

An estimate of the number of annual responses: 2 (0 annual responses plus 2 recordkeepers).

The estimated number of annual respondents: 2.

An estimate of the total number of hours needed annually to complete the requirement or request: 6 hours (0 hours reporting and 6 hours recordkeeping).

Abstract: The NRC proposes to amend its regulations to certify an amendment to the U.S. ABWR standard plant design to comply with 10 CFR 50.150, "Aircraft Impact Assessment." This action will allow applicants or licensees intending to construct and operate a U.S. ABWR to comply with 10 CFR 50.150 by referencing the amended DCR.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule (or proposed policy statement) and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

A copy of the OMB clearance package may be viewed free of charge at the NRC's PDR, One White Flint North, 11555 Rockville Pike, Room O1–F21, Rockville, Maryland 20852. The OMB clearance package and rule are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html* for 60 days after the signature date of this notice.

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by February 22, 2011 to the Information Services Branch (T5–F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS.Resource@NRC.GOV* and to the Desk Officer, Christine Kymn, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0151), Office of Management and Budget, Washington, DC 20503. Comments on the proposed information collection may also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov,* Docket ID NRC–2010–0134. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. You may also e-mail comments to *Christine_J._Kymn@omb.eop.gov* or comment by telephone at 202–395–4638

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XII. Regulatory Analysis

The NRC has not prepared a regulatory analysis for this proposed rule. The NRC prepares regulatory analyses for rulemakings that establish generic regulatory requirements applicable to all licensees. Design certifications (and amendments thereto) are not generic rulemakings in the sense that design certifications (and amendments thereto) do not establish standards or requirements with which all licensees must comply. Rather, design certifications (and amendments thereto) are Commission approvals of specific nuclear power plant designs by rulemaking, which then may be voluntarily referenced by applicants for COLs. Furthermore, design certification rulemakings are initiated by an applicant for a design certification (or amendments thereto), rather than the NRC. Preparation of a regulatory analysis in this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC. For these reasons, the Commission concludes that preparation of a regulatory analysis is neither required nor appropriate.

XIII. Regulatory Flexibility Act Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule provides for certification of an

amendment to a nuclear power plant design. Neither the design certification amendment applicant, nor prospective nuclear power plant licensees who reference this design certification rule, fall within the scope of the definition of "small entities" presented in the Regulatory Flexibility Act, or the size standards established by the NRC (10 CFR 2.810). Thus, this rule does not fall within the purview of the Regulatory Flexibility Act.

XIV. Backfitting

The Commission has determined that this proposed rule does not constitute a backfit as defined in the backfit rule (10 CFR 50.109) because this design certification amendment does not impose new or changed requirements on existing 10 CFR part 50 licensees, nor does it impose new or changed requirements on existing DCRs in Appendices A through D of 10 CFR part 52. Therefore, a backfit analysis was not prepared for this rule.

The proposed rule does not constitute backfitting as defined in the backfit rule (10 CFR 50.109) with respect to either operating licenses under 10 CFR part 50 because there are no operating licenses referencing this design certification rule. The proposed rule does not constitute backfitting as defined in the backfit rule or otherwise impose requirements inconsistent with the applicable finality requirements under 10 CFR part 52 (10 CFR 52.63, 52.83 and 52.98) because: (i) There are no COLs issued by the NRC referencing this rule, and (ii) neither the backfit rule nor the finality provisions in 10 CFR part 52 protect COL applicants from changes in NRC requirements which may occur during the pendency of their application before the NRC.

The proposed rule is not inconsistent with the finality requirements in 10 CFR 52.63 as applied to COLs. The proposed rule would establish an option to the existing design certification rule which addresses the requirements of the AIA rule. A COL referencing the U.S. ABWR design certification rule may voluntarily choose to select the STPNOC option, or may choose to reference the U.S. ABWR design without selecting the STPNOC option.

The AIA rule itself mandated that the U.S. ABWR DCR be revised (either during the DCR's current term or no later than its renewal) to address the requirements of the AIA rule. The AIA rule may therefore be regarded as inconsistent with applicable finality provisions in 10 CFR part 52 and Section VI of the U.S. ABWR DCR. However, the NRC provided an administrative exemption from these finality requirements when the final AIA rule was issued. *See* 74 FR 28112; June 12, 2009, at 28143–45. Accordingly, the NRC has already addressed the backfitting implications of applying the AIA rule to the U.S. ABWR.

Because the proposed rule does not constitute backfitting and is not otherwise inconsistent with finality provisions in 10 CFR part 52, the NRC has not prepared a backfit analysis or documented evaluation for this rule.

List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Incorporation by reference, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 52.

PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

1. The authority citation for 10 CFR part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005), secs. 147 and 149 of the Atomic Energy Act.

2. In Appendix A to 10 CFR part 52:

a. Section I is revised;

b. Section II, paragraph A is revised;

c. Section III is revised;

d. Section IV, paragraph A.3, is revised and paragraph A.4 is added;

e. Section V, paragraph A is revised;

f. Section VI, paragraphs B and E are revised;

g. Section VIII, paragraph B.5.b is revised, paragraphs B.5.d, e, and f, are redesignated as paragraphs B.5.e, f, and g, respectively, and new paragraph B.5.d is added; and

h. Section X, paragraph A.1 is revised and paragraph A.4 is added.

The revisions and additions read as follows:

Appendix A to Part 52—Design Certification Rule for the U.S. Advanced Boiling Water Reactor

I. Introduction

Appendix A constitutes the standard design certification for the U.S. Advanced Boiling Water Reactor (ABWR) design, in accordance with 10 CFR part 52, subpart B. The applicant for the original certification of the U.S. ABWR design was GE Nuclear Energy (GE). The applicant for the amendment to the U.S. ABWR design to address the requirements in 10 CFR 50.150, "Aircraft impact assessment," (AIA rule) is the South Texas Project Nuclear Operating Company (STPNOC).

II. Definitions

A. *Generic design control document (generic DCD)* means either or both of the documents containing the Tier 1 and Tier 2 information and generic technical specifications that are incorporated by reference into this appendix.

* * * * *

III. Scope and Contents

A.1. Tier 1, Tier 2, and the generic technical specifications in the U.S. ABWR Design Control Document, GE Nuclear Energy, Revision 4 dated March 1997 (GE DCD), are approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the generic DCD may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy is available for examination and copying at the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland. Copies are also available for examination at the NRC Library located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, and the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

2. Tier 1 and Tier 2 information in the ABWR STP Aircraft Impact Assessment Amendment Design Control Document (Revision 3, dated September 23, 2010) (STPNOC DCD), is approved for incorporation by reference by the Director of the Office of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the generic DCD may be obtained from the Regulatory Affairs Manager, South Texas Project Nuclear Operating Company, P.O. Box 289, Wadsworth, Texas 77483. A copy of the generic DCD is also available for examination and copying at the NRC PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Copies are available for examination at the NRC Library, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852, telephone (301) 415–5610, e-mail *LIBRARY.RESOURCE@NRC.GOV.* The generic DCD can also be viewed on the Federal Rulemaking Web site *http://www.regulations.gov* by searching for documents filed under Docket ID NRC–2010–0134 or in the NRC's Electronic Reading

Room at *http://www.nrc.gov/reading-rm/adams.html* by searching under ADAMS Accession No. ML102870017. All approved material is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

B. An applicant or licensee referencing this appendix, in accordance with Section IV of this appendix, shall incorporate by reference and comply with the requirements of this appendix, including Tier 1, Tier 2, and the generic technical specifications except as otherwise provided in this appendix. An applicant or licensee referencing this appendix may reference either the GE DCD, or both the GE DCD and the STPNOC DCD. An applicant referencing this appendix shall indicate in its application and in all necessary supporting documentation which of these two options it is implementing.

Conceptual design information, as set forth in the generic DCD, and the "Technical Support Document for the ABWR" are not part of this appendix. Tier 2 references to the probabilistic risk assessment (PRA) in the ABWR standard safety analysis report do not incorporate the PRA into Tier 2.

C. If there is a conflict between Tier 1 and Tier 2 of a DCD, then Tier 1 controls.

D. If there is a conflict between the generic DCD and the application for design certification of the U.S. ABWR design, NUREG–1503, "Final Safety Evaluation Report related to the Certification of the Advanced Boiling Water Reactor Design" (ABWR FSER), and Supplement No. 1, or NUREG–XXXX "Final Safety Evaluation Report related to the Certification of the AIA Amendment to the ABWR Design" (AIA FSER), then the generic DCD controls.

E. If there is a conflict between the design as described in the GE DCD and a design matter which implements the STPNOC certified design option but is not specifically described in the STPNOC DCD, then the GE DCD controls.

F. Design activities for structures, systems, and components that are wholly outside the scope of this appendix may be performed using site characteristics, provided the design activities do not affect the DCD or conflict with the interface requirements.

IV. Additional Requirements and Restrictions

A. * * *

3. Include, in the plant-specific DCD, the sensitive unclassified non-safeguards information (including proprietary information) and safeguards information referenced in the GE DCD and the STPNOC DCD, as applicable.

4.a. Include, as part of its application, a demonstration that an entity other than GE Nuclear Energy is qualified to supply the U.S. ABWR certified design unless GE Nuclear Energy supplies the design for the applicant's use.

b. For an applicant referencing the STPNOC certified design option, include, as part of its application, a demonstration that an entity other than STPNOC and TANE acting together is qualified to supply the STPNOC certified design option, unless STPNOC and TANE acting together supply the design option for the applicant's use.

* * * * *

V. Applicable Regulations

A.1. Except as indicated in paragraph B of this section, the regulations that apply to the U.S. ABWR design as contained in the GE DCD are in 10 CFR Parts 20, 50, 73, and 100, codified as of May 2, 1997, that are applicable and technically relevant, as described in the FSER (NUREG–1503) and Supplement No. 1.

2. Except as indicated in paragraph B of this section, the regulations that apply to the U.S. ABWR design as contained in the STPNOC DCD are in 10 CFR Parts 50, and 52, codified as of [date final rule published in the **Federal Register**], that are applicable and technically relevant, as described in the FSER on the STPNOC amendment addressing the AIA rule (NUREG–XXXX).

* * * * *

VI. Issue Resolution

* * * * *

B. The Commission considers the following matters resolved within the meaning of 10 CFR 52.63(a)(5) in subsequent proceedings for issuance of a combined license, amendment of a combined license, or renewal of a combined license, proceedings held under 10 CFR 52.103, and enforcement proceedings involving plants referencing this appendix:

1. All nuclear safety issues, except for the generic technical specifications and other operational requirements, associated with the information in the ABWR FSER and Supplement No. 1, Tier 1, Tier 2 (including referenced information which the context indicates is intended as requirements), and the rulemaking record for the original certification of the U.S. ABWR design and all nuclear safety issues, except for other operational requirements associated with the information in the AIA FSER, Tier 1, Tier 2 (including referenced information which the context indicates is intended as requirements), and the rulemaking record for certification of the AIA amendment to the U.S. ABWR design;

2. All nuclear safety and safeguards issues associated with the referenced sensitive unclassified non-safeguards information (including proprietary information) and safeguards information which, in context, are intended as requirements in the GE DCD and the STPNOC DCD;

3. All generic changes to the DCD under and in compliance with the change processes in Sections VIII.A.1 and VIII.B.1 of this appendix;

4. All exemptions from the DCD under and in compliance with the change processes in Sections VIII.A.4 and VIII.B.4 of this appendix, but only for that plant;

5. All departures from the DCD that are approved by license amendment, but only for that plant;

6. Except as provided in paragraph VIII.B.5.f of this appendix, all departures from Tier 2 pursuant to and in compliance with the change processes in paragraph VIII.B.5 of this appendix that do not require prior NRC approval, but only for that plant;

7. All environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's final environmental assessment for the U.S. ABWR design and Revision 1 of the technical support document for the U.S. ABWR, dated December 1994, and for the NRC's final environmental assessment and Revision 0 of ABWR–LIC–09–621, "Applicant's Supplemental Environmental Report—Amendment to ABWR Standard Design Certification," for the AIA amendment to the U.S. ABWR design for plants referencing this appendix whose site parameters are within those specified in the technical support document.

* * * * *

E. The NRC will specify at an appropriate time the procedures to be used by an interested person who wishes to review sensitive, unclassified non-safeguards information (SUNSI) (including proprietary information[1]), or Safeguards Information (SGI) for the U.S. ABWR certified design (including the STPNOC option), for the purpose of participating in the hearing required by 10 CFR 52.85, the hearing provided under 10 CFR 52.103, or in any other proceeding relating to this appendix in which interested persons have a right to request an adjudicatory hearing.

* * * * *

VIII. Processes for Changes and Departures

* * * * *

B. * * *

5. * * *

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD or one affecting information required by 10 CFR 52.47(a)(28) to address 10 CFR 50.150, requires a license amendment if it would:

* * * * *

d. If an applicant or licensee proposes to depart from the information required by 10 CFR 52.47(a)(28) to be included in the FSAR for the standard design certification, then the applicant or licensee shall consider the effect of the changed feature or capability on the original assessment required by 10 CFR 50.150(a). The applicant or licensee must also document how the modified design features and functional capabilities continue to meet the assessment requirements in 10 CFR 50.150(a)(1) in accordance with Section X of this appendix.

* * * * *

X. Records and Reporting

A. * * *

1. The applicants for this appendix shall maintain a copy of the applicable generic DCD that includes all generic changes to Tier 1, Tier 2, and the generic technical specifications and other operational requirements. The applicants shall maintain

[1] Proprietary information includes trade secrets and commercial or financial information obtained from a person that are privileged or confidential (10 CFR 2.390 and 10 CFR part 9).

the sensitive unclassified non-safeguards information (including proprietary information) and safeguards information referenced in the applicable generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

* * * * *

4.a. The applicant for the amendment to the U.S. ABWR design to address the requirements in 10 CFR 50.150, "Aircraft impact assessment," shall maintain a copy of the aircraft impact assessment performed to comply with the requirements of 10 CFR 50.150(a) for the term of the certification (including any period of renewal).

b. An applicant or licensee who references this appendix to include both the GE DCD and the STPNOC DCD shall maintain a copy of the aircraft impact assessment performed to comply with the requirements of 10 CFR 50.150(a) throughout the pendency of the application and for the term of the license (including any period of renewal).

Dated at Rockville, Maryland this 11th day of January 2011.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2011–993 Filed 1–19–11; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0027; Directorate Identifier 2010–NM–127–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 777–200 and –300 Series Airplanes Equipped with Rolls-Royce RB211 Trent 800 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Model 777–200 and –300 series airplanes. This proposed AD would require repetitive inspections of all thrust reverser (T/R) structure and sealant for degradation, and related investigative and corrective actions if necessary. This proposed AD results from reports of thrust reverser events related to thermal damage of the thrust reverser inner wall. We are proposing this AD to detect and correct a degraded T/R inner wall panel, which could lead to failure of a T/R and adjacent components and their consequent separation from the airplane, which could result in a rejected takeoff (RTO) and cause asymmetric thrust and consequent loss of control of the airplane during reverse thrust operation. If a T/R inner wall overheats, separated components could cause structural damage to the airplane, damage to other airplanes, or possible injury to people on the ground.

DATES: We must receive comments on this proposed AD by March 7, 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 proposed 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 proposed AD, 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.

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:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0027; Directorate Identifier 2010–NM–127–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports of eleven events related to thermal damage of the thrust reverser (T/R) inner wall on Rolls Royce RB211 Trent 800 engines. The events have included air turnbacks, in-flight shutdowns, T/R inner wall panel sections and parts being separated from the airplane, collapse of the T/R inner wall panel, and engine fire loop fault messages. No hull loss or personal injury has occurred from these events. Boeing issued Alert Service Bulletin 777–78A0059, dated February 24, 2005; and Alert Service Bulletin 777–78–0060, dated February 24, 2005; to provide instructions for inspecting the T/R inner wall panel structure and sealing the insulation blankets to prevent hot under-cowl air from contact with the T/R inner wall panel. Since those service bulletins were released, there have been seven events on thrust reversers, four T/Rs on which those service bulletins had not been fully accomplished, and three on which those service bulletins had been fully accomplished. A separated T/R piece could result in a rejected takeoff and cause asymmetric thrust and consequent loss of control of the airplane during reverse thrust operation. If a thrust reverser inner wall overheats, separated components could cause structural damage to the airplane, damage to other airplanes, or injury to people on the ground.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010. This service bulletin describes procedures for doing actions specified in Work Packages 1 through 6 (as necessary) of the

Accomplishment Instructions. This service bulletin states that operators may choose between doing Work Package 2 (doing a full non-destructive test (NDT)), or Work Package 6 (doing a limited NDT with more restrictive repetitive intervals).

Work Package 1

Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, describes procedures for reviewing the airplane maintenance records to determine whether sealant was added; repetitive detailed inspections of all thrust reverser (T/R) inner wall insulation blanket edges, grommet holes, penetrations, and seams for sealant that is cracked, has gaps, is loose, or is missing; repetitive general visual inspections of click bond studs, blanket studs, and temporary fasteners; replacement of sealant if necessary; and related investigative and corrective actions if necessary. The related investigative actions include:

- Measuring the distance between the overlapped blanket face sheets adjacent to the damaged or missing sealant, or measuring the distance between the inner wall and the insulation blanket adjacent to the damaged or missing sealant
- Doing an NDT and general visual inspection for thermal degradation of the exposed T/R inner wall panel area within 12 inches of cracks, gaps, or loose or missing sealant
- Doing an NDT of an uncovered compression pad if it is within 12 inches of the crack, gap, loose, or missing sealant
- Doing a general visual inspection for areas of thermal degradation
- Doing an NDT of the T/R inner wall panel where the fitting was installed
- Doing a detailed inspection of the T/R panel wall inner bolt holes for elongation
- Doing a general visual inspection and NDT inspection for thermal degradation of the inner wall panel area where a damaged click bond stud, blanket stud, and temporary fastener is loose, damaged, or missing
- Doing an NDT (eddy current conductivity test) of the number 1 upper, or numbers 1 and 2 lower, compression pad fittings if they are exposed by blanket removal and within 12 inches of the loose, damaged, or missing click bond studs, blanket studs, or temporary fasteners
- Doing a Barcol hardness test of the area of thermal degradation
- Doing a general visual inspection of bushings for migration or looseness

The corrective actions include:

- Replacing damaged or missing sealant
- Repairing or replacing T/R inner wall panel areas
- Contacting Boeing for repair instructions and doing the repair
- Installing compression pad fittings
- Installing replacement click bonds, blanket studs, or temporary fasteners
- Installing the removed replacement blankets and fittings
- Removing the bushing and repairing the inner wall panel bolt hole

Work Package 2

Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, describes procedures for either a repetitive full inner wall panel NDT of each T/R half and repetitive general visual inspections for areas of thermal degradation, or a partial inner wall panel NDT, and related investigative and corrective actions. The related investigative actions include an NDT of the area of different color, and a Barcol hardness inspection of the inner wall panel for areas of thermal degradation. The corrective actions are repairing or replacing unsatisfactory T/R inner wall panel areas, installing insulation blankets, and contacting Boeing for repair instructions and doing the repair. This service bulletin states that Work Package 6 may be done as an alternative to Work Package 2, provided that the shorter interval for the repetitive inspections specified in Work Package 6 are followed.

Work Package 3

Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, describes procedures for repetitive detailed inspections of the powered door opening system (PDOS) lug bushings on the upper number 1 compression pad fittings for hole elongation, deformation, and contact with the PDOS actuator, and related investigative and corrective actions. Related investigative actions include a detailed inspection of the PDOS lug. Corrective actions include replacing unserviceable upper number 1 compression pad fittings and replacing unserviceable bushings with serviceable parts, and installing PDOS actuator rods and sealant.

Work Package 4

Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, describes procedures for repetitive NDTs of the number 1 upper and numbers 1 and 2 lower compression pad fittings, and related investigative and corrective actions. The related investigative actions include doing an NDT of the T/R inner wall panel, a general visual inspection for areas of thermal degradation, a detailed inspection of the T/R inner wall panel bolt holes for elongation, a Barcol hardness test of the area, and a general visual inspection of the bushing for migration or looseness. Corrective actions include repairing the T/R inner wall panel with a serviceable panel, installing removed installation blankets, installing serviceable compression pad fittings, contacting Boeing for repair instructions and doing the repair, replacing the T/R inner wall panel with a new or serviceable T/R inner wall panel, and removing bushings and repairing the inner wall panel bolt hole.

Work Package 5

Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, describes procedures for repetitive general visual inspections of the perforated side of the T/R wall aft of the intermediate pressure compressor 8th stage (IP8) duct and high pressure compressor 3rd stage (HP3) bleed port exits for a color that is different from that of the general area, and related investigative and corrective actions. The related investigative action is an NDT inspection of discolored areas for delamination and disbonding on the perforated side of the inner wall. The corrective actions are contacting Boeing for repair instructions and doing the repair.

Work Package 6

Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, describes procedures for a limited area NDT inspection of the inner wall panel of each T/R half for delaminating and disbonding, a general visual inspection for areas of thermal degradation, and related investigative and corrective actions. Related investigative actions include a Barcol hardness test of the area. Corrective actions include repairing or replacing the T/R inner wall panel with a new or serviceable one. Work Package 6 may be done as an option to Work Package 2 provided that the shorter repeat inspection intervals specified in Work Package 2 are followed.

Compliance Times

The compliance times for Work Package 1 are as follows. The compliance time for the initial inspections and replacement of sealant (if necessary) is within 1,500 flight hours after the date on the original issue of the service bulletin. The interval for the repetitive inspections is 1,500 flight hours.

The compliance times for doing the initial and repetitive NDT inspections on the T/R wall depend on which work packages are done—either the full NDT option (Work Packages 2 and 5) or limited NDT option (Work Packages 5 and 6). For the initial full NDT and limited NDT options, the compliance time is between 600 and 2,000 flight cycles, depending on the number of total airplane flight cycles and whether a previous inspection has been conducted. The interval for the repetitive inspections for the full NDT is 2,000 flight cycles. The interval for the repetitive inspections for the limited NDT is 700 flight cycles.

The compliance times for Work Package 3 are as follows. The compliance time for the detailed inspection of the PDOS lug bushings on the upper number 1 compression pad fittings ranges from within 600 to 1,700 flight cycles after the date on the original issue of the service bulletin. The interval for the repetitive inspections is 2,000 flight cycles.

The compliance times for Work Package 4 are as follows. The compliance time for the initial NDT inspection of the number 1 upper, and number 1 and 2 lower, compression pad fittings are within 2,000 flight cycles after the date on the original issue of this service bulletin. The interval for the repetitive inspections is 2,000 flight cycles.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and Service Information."

Differences Between the Proposed AD and Service Information

Although Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, specifies that operators may contact the manufacturer for disposition of certain repair conditions, this proposed AD would require operators to repair those conditions using a method approved by the FAA.

Interim Action

We consider this proposed AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

Costs of Compliance

We estimate that this proposed AD would affect 54 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Records check	1	$85	$85	54	$4,590
Inspections	73	85	6,205	54	335,070

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2011–0027; Directorate Identifier 2010–NM–127–AD.

Comments Due Date

(a) We must receive comments by March 7, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 777–200 and -300 series airplanes, certificated in any category, equipped with Rolls-Royce RB211 Trent 800

engines; as identified in Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010.

Subject

(d) Air Transport Association (ATA) of America Code 78: Engine exhaust.

Unsafe Condition

(e) This AD results from reports of thrust reverser events related to thermal damage of the thrust reverser (T/R) inner wall. The Federal Aviation Administration is issuing this AD to detect and correct a degraded T/R inner wall panel, which could lead to failure of a T/R and adjacent components and their consequent separation from the airplane, which could result in a rejected takeoff (RTO) and cause asymmetric thrust and consequent loss of control of the airplane during reverse thrust operation. If a T/R inner wall overheats, separated components could cause structural damage to the airplane, damage to other airplanes, or possible injury to people on the ground.

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.

Records Review, Inspections, and Related Investigative and Corrective Actions

(g) Except as required by paragraphs (h), (i), (j), and (k) of this AD, at the applicable times in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010 ("this service bulletin"), review the airplane maintenance records to determine whether sealant was added, do the actions specified in paragraphs (g)(1), (g)(2), (g)(3), (g)(4), and (g)(5) of this AD, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of this service bulletin, except as required by paragraph (l) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the inspections required by paragraphs (g)(1), (g)(2), (g)(3), (g)(4), and (g)(5) of this AD thereafter at the applicable intervals specified in paragraph 1.E., "Compliance," of the service bulletin.

(1) Do a detailed inspection of all T/R inner wall insulation blanket edges, grommet holes, penetrations, and seams for sealant that is cracked, has gaps, is loose, or is missing; do a general visual inspection of click bond studs, blanket studs, and temporary fasteners; and replace sealant as applicable; in accordance with Work Package 1 of the Accomplishment Instructions of this service bulletin.

(2) Do the actions required by paragraph (g)(2)(i) or (g)(2)(ii) of this AD.

(i) Do a full inner wall panel non-destructive test (NDT) for delamination and disbonding of each T/R half, and do a general visual inspection for areas of thermal degradation, in accordance with Work Package 2 of the Accomplishment Instructions of this service bulletin.

(ii) Do a limited area NDT of the inner wall panel of each T/R half for delamination and disbonding, and do a general visual inspection for areas of thermal degradation, in accordance with Work Package 6 of the Accomplishment Instructions of this service bulletin.

(3) Do a general visual inspection of the T/R perforated wall aft of the intermediate pressure compressor 8th stage (IP8) and the high pressure compressor 3rd stage (HP3) bleed port exits for a color that is different from that of the general area, in accordance with Work Package 5 of the Accomplishment Instructions of this service bulletin.

(4) Do a detailed inspection of the powered door opening system (PDOS) lug bushings on the upper number 1 compression pad fittings for hole elongation, deformation, and contact with the PDOS actuator, in accordance with Work Package 3 of the Accomplishment Instructions of this service bulletin.

(5) Do an NDT of the number 1 upper and numbers 1 and 2 lower compression pad fittings, in accordance with Work Package 4 of the Accomplishment Instructions of this service bulletin.

Exceptions to the Service Bulletin

(h) Where Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, specifies a compliance time after the date on the original issue of that service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(i) Where paragraph 1.E., "Compliance," in Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, specifies a compliance time of "2,000 flight cycles after the date of the operator's own inspections," for doing Work Packages 2 and 5, or Work Packages 2 and 6, this AD requires compliance within 2,000 flight cycles after the date of the operator's own inspections or within 12 months after the effective date of this AD, whichever occurs later.

(j) Where the Condition columns in Table 2 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, refer to "All airplanes, each T/R half" that has or has not "been inspected before the date on this service bulletin," this AD applies to all airplanes, each T/R half that has or has not been inspected before the effective date of this AD.

(k) Where the Condition columns in the Tables of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, refer to total flight cycles, this AD applies to the airplanes with the specified total flight cycles as of the effective date of this AD.

(l) Where Boeing Alert Service Bulletin 777–78A0065, Revision 2, dated May 6, 2010, specifies to contact Boeing for appropriate action: Before further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. 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.

Credit for Actions Accomplished in Accordance With Previous Service Information

(m) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 777–78A0065, dated June 23, 2008; or Revision 1, dated January 29, 2009; are acceptable for compliance with the corresponding requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, Seattle 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 Aircraft Certification Office, 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) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

Issued in Renton, Washington, on January 12, 2011.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–1121 Filed 1–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0042; Directorate Identifier 2009–NM–010–AD]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aerosystems Model SAAB 340A (SAAB/SF340A) and SAAB 340B Airplanes Modified in Accordance With Supplemental Type Certificate (STC) ST00224WI–D, ST00146WI–D, or SA984GL–D

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain Saab AB, Saab Aerosystems Model SAAB 340A (SAAB/SF340A) and SAAB 340B airplanes. The first supplemental NPRM would have required inspecting the fuselage surface for corrosion and cracking behind the external adapter plate of the antennae installation, and repair if necessary. The first supplemental NPRM resulted from a report of a crack found behind the external adapter plate of the antennae during inspection. Similar cracking was found on two additional airplanes, and

extensive corrosion was found on one airplane. This action revises the first supplemental NPRM by correcting an STC number, which would expand the applicability of the first supplemental NPRM. We are proposing this second supplemental NPRM to detect and correct corrosion and cracking behind the external adapter plate of the antennae of certain damage-tolerant structure, which could result in reduced structural integrity and consequent rapid depressurization of the airplane.

DATES: We must receive comments on this supplemental NPRM by March 7, 2011.

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, 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.

FOR FURTHER INFORMATION CONTACT: William Griffith, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4116; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0042; Directorate Identifier 2009–NM–010–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We issued a supplemental notice of proposed rulemaking (NPRM) (the "first supplemental NPRM") to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Saab AB, Saab Aerosystems Model SAAB 340A (SAAB/SF340A) and SAAB 340B airplanes. That first supplemental NPRM was published in the **Federal Register** on August 23, 2010 (75 FR 51696). That first supplemental NPRM proposed to require inspecting the fuselage surface for corrosion and cracking behind the external adapter plate of the antennae installation, and repair if necessary.

Actions Since First Supplemental NPRM Was Issued

Since we issued the first supplemental NPRM, we have determined that STC number SA00224WI–D, identified in the applicability of the first supplemental NPRM, is an incorrect STC number; the correct number is ST00224WI–D. We have corrected this error, which expands the airplanes affected by the first supplemental NPRM.

Comments

We gave the public the opportunity to comment on the first supplemental NPRM. We received no comments on that NPRM or on the determination of the cost to the public.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

We are proposing this second supplemental NPRM because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs. The change described above expands the scope of the first supplemental NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this second supplemental NPRM.

Proposed Requirements of the Supplemental NPRM

This second supplemental NPRM would retain all the requirements in the first supplemental NPRM.

Costs of Compliance

We estimate that this proposed AD would affect 201 airplanes of U.S. registry. The proposed inspection would take about 4 work hours per airplane, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $68,340, or $340 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

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

For the reasons discussed above, I certify this proposed regulation:

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

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

(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.

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, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Saab AB, Saab Aerosystems: Docket No. FAA–2010–0042; Directorate Identifier 2009–NM–010–AD.

Comments Due Date

(a) We must receive comments by March 7, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Saab AB, Saab Aerosystems airplanes, certificated in any category, identified in paragraphs (c)(1) and (c)(2) of this AD, that have been modified in accordance with Supplemental Type Certificate (STC) ST00224WI–D, ST00146WI–D, or SA984GL–D.

(1) Model SAAB 340A (SAAB/SF340A) airplanes, serial numbers 004 through 159 inclusive.

(2) Model SAAB 340B airplanes, serial numbers 160 through 459 inclusive.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 53: Fuselage.

Unsafe Condition

(e) This AD results from a report of a crack found behind the external adapter plate of the antennae during inspection. Similar cracking was found on two additional airplanes, and extensive corrosion was found on one airplane. The Federal Aviation Administration is issuing this AD to detect and correct corrosion and cracking behind the external adapter plate of the antennae of certain damage-tolerant structure, which could result in reduced structural integrity and consequent rapid depressurization of the airplane.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified.

Inspection/Corrective Actions

(g) Within 600 flight cycles after the effective date of this AD: Remove the external adapter plate of the antennae installation and do a general visual inspection of the fuselage surface for corrosion and cracking behind the external adapter plate of the antennae installation. If any corrosion or cracking is found, repair before further flight. If no corrosion or cracking is found, before further flight, ensure that proper corrosion protection has been applied before reinstalling the adapter plate. Do all the actions required by this paragraph in accordance with a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA.

Note 1: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Reporting Requirement

(h) At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD: Submit a report of the positive findings of the inspections required by paragraph (g) of this AD. Send the report to the Manager, Wichita ACO. The report must contain, at a minimum, the inspection results, a description of any discrepancies found, the airplane serial number, and the number of flight cycles and flight hours on the airplane since installation of the STC. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(3) 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.

Special Flight Permit

(i) Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), may be issued to operate the airplane to a location where the requirements of this AD can be accomplished, but concurrence by the Manager, Wichita ACO, FAA, is required prior to issuance of the special flight permit.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Wichita ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: William Griffith, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4116; fax (316) 946–4107.

(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, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington on January 12, 2011.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–1118 Filed 1–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0026; Directorate Identifier 2010–NM–104–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 777–200 and –300 Series Airplanes Equipped With Pratt and Whitney Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Model 777–200 and –300 series airplanes. This proposed AD would require repetitive inspections for

hydraulic fluid contamination of the interior of the strut disconnect assembly; repetitive inspections for discrepancies of the interior of the strut disconnect assembly, if necessary; repetitive inspections of the exterior of the strut disconnect assembly for cracks, if necessary; and corrective action if necessary. This proposed AD also provides an optional terminating action for the inspections. This proposed AD results from reports of system disconnect boxes that have been contaminated with hydraulic fluid and, in one incident, led to subsequent cracking of titanium parts in the system disconnect assembly. We are proposing this AD to detect and correct hydraulic fluid contamination, which can cause cracking of titanium parts in the system disconnect assembly, resulting in compromise of the engine firewall. A cracked firewall can allow fire in the engine area to enter the strut and can lead to an uncontained engine strut fire if flammable fluid is present. Cracking of the disconnect box may also reduce the effectiveness of the fire extinguishing system in the engine compartment and could contribute to an uncontained engine fire. In addition, a cracked disconnect box can leak flammable fluids into the engine core, which can initiate an engine fire, and lead to one or both fire conditions discussed above.

DATES: We must receive comments on this proposed AD by March 7, 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 proposed 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 proposed AD, 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.

FOR FURTHER INFORMATION CONTACT: Kevin Nguyen, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6501; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0026; Directorate Identifier 2010–NM–104–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports of system disconnect boxes that have been contaminated with hydraulic fluid. One operator has found cracks in the system disconnect assembly bulkheads and lower skin panel. Subsequent analysis at Boeing found hydrogen enbrittlement of the system disconnect assembly bulkheads and lower skin panel. The system disconnect assembly is made from titanium and is located near the hot engine core of the engine where temperatures can exceed 270 degrees Fahrenheit. The presence of hydraulic fluid and temperature above 270 degrees Fahrenheit can result in hydrogen embrittlement of the titanium system disconnect assembly. Hydrogen embrittlement combined with a high sonic vibration environment can result in cracking of the system disconnect assembly. The system disconnect assembly is a box where hydraulic, fuel, and electrical connections are made between the engine and the strut. This box acts as a firewall between the engine compartment and the strut. The engine compartment has a fire extinguishing system while the strut does not. The strut is considered a flammable leakage zone where flammable fluids may be present. These fluids are subsequently drained from the strut and system disconnect box. A cracked firewall can allow fire in the engine area to enter the strut and can lead to an uncontained engine strut fire if flammable fluid is present. Cracking of the disconnect box may also reduce the effectiveness of the fire extinguishing system in the engine compartment and could contribute to an uncontained engine fire. In addition, a cracked disconnect box can leak flammable fluids into the engine core, which can initiate an engine fire, and lead to one or both fire conditions discussed above.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 777–54A0024, Revision 1, dated November 4, 2010. This service bulletin describes procedures for doing repetitive general visual inspections for hydraulic fluid contamination of the interior of the strut disconnect assembly; repetitive detailed inspections for discrepancies (*e.g.,* hydraulic fluid coking, heat discoloration, cracks, and etching or pitting) of the interior of the strut disconnect assembly, if certain conditions are found; repetitive detailed inspections of the exterior of the strut disconnect assembly for cracks; and corrective action, if certain conditions are found. The corrective action is replacing the titanium system disconnect assembly with an Inconel system disconnect assembly. If accomplished, the replacement will eliminate the potential for hydrogen embrittlement and subsequent cracking, and would eliminate the need for the inspections of the titanium strut disconnect assembly.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or

develop in other products of these same type designs. This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 53 airplanes of U.S. registry. We also estimate that it would take about 48 work-hours per product to comply with this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $122,617 per product. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $6,714,941, or $122,697 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2011–0026; Directorate Identifier 2010–NM–104–AD.

Comments Due Date

(a) We must receive comments by March 7, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 777–200 and –300 series airplanes, certificated in any category; equipped with Pratt and Whitney engines; as identified in Boeing Alert Service Bulletin 777–54A0024, Revision 1, dated November 4, 2010.

Subject

(d) Air Transport Association (ATA) of America Code 54: Nacelles/Pylons.

Unsafe Condition

(e) This AD results from reports of system disconnect boxes that have been contaminated with hydraulic fluid, in which one case a crack was found. The Federal Aviation Administration is issuing this AD to detect and correct hydraulic fluid contamination, which can cause cracking of titanium parts in the system disconnect assembly, resulting in compromise of the engine firewall. A cracked firewall can allow fire in the engine area to enter the strut and can lead to an uncontained engine strut fire if flammable fluid is present. Cracking of the disconnect box may also reduce the effectiveness of the fire extinguishing system in the engine compartment and could contribute to an uncontained engine fire. In addition, a cracked disconnect box can leak flammable fluids into the engine core, which can initiate an engine fire and lead to one or both fire conditions discussed above.

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.

Inspections and Corrective Actions

(g) Within 12 months after the effective date of this AD: Do a general visual inspection for hydraulic fluid contamination of the interior of the strut disconnect assembly, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–54A0024, Revision 1, dated November 4, 2010.

(1) For airplanes on which no hydraulic fluid contamination is found (Condition 1): Repeat the general visual inspection required by paragraph (g) of this AD thereafter at intervals not to exceed 6,000 flight cycles or 750 days, whichever occurs first.

(2) For airplanes on which hydraulic fluid contamination is found (Condition 2): Before further flight, do a detailed inspection for discrepancies (e.g., hydraulic fluid coking, heat discoloration, cracks, and etching or pitting) of the interior of the strut disconnect assembly, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–54A0024, Revision 1, dated November 4, 2010.

(i) For airplanes on which no discrepancy is found during the inspection required by paragraph (g)(2) of this AD (Condition 2A): Repeat the detailed inspection required by paragraph (g)(2) of this AD thereafter at intervals not to exceed 6,000 flight cycles or 750 days, whichever occurs first.

(ii) For airplanes on which hydraulic fluid coking or heat discoloration is found but no cracking, etching, or pitting is found during the inspection required by paragraph (g)(2) of this AD (Condition 2B): Do the actions required by paragraph (g)(2)(ii)(A) and (g)(2)(ii)(B) of this AD.

(A) Within 300 flight cycles after doing the inspection required by paragraph (g)(2) of this AD: Do a detailed inspection of the exterior of the strut disconnect assembly for cracks, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–54A0024, Revision 1, dated November 4, 2010; and repeat the detailed inspection thereafter at intervals not to exceed 300 flight cycles.

(B) Within 6,000 flight cycles or 750 days after hydraulic fluid coking and/or heat discoloration was found during the inspection required by paragraph (g)(2) of this AD, whichever occurs first: Replace the titanium system disconnect assembly with an Inconel system, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–54A0024, Revision 1, dated November 4, 2010.

(h) For airplanes on which any crack, etching, or pitting is found during any inspection required by paragraph (g)(2) or (g)(2)(ii)(A) of this AD (Condition 3): Before further flight, replace the titanium system disconnect assembly with an Inconel system, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–54A0024, Revision 1, dated November 4, 2010.

Optional Terminating Action

(i) Replacing the titanium system disconnect assembly with an Inconel system

disconnect assembly in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–54A0024, Revision 1, dated November 4, 2010, terminates the actions required by this AD.

Credit for Actions Accomplished in Accordance With Previous Service Information

(j) Actions accomplished before the effective date of this AD according to Boeing Alert Service Bulletin 777–54A0024, dated April 1, 2010, are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

(k)(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: Kevin Nguyen, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6501; fax (425) 917–6590. Information may be e-mailed to: *9–ANM–Seattle-ACO–AMOC–Requests@faa.gov*.

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

Issued in Renton, Washington, on January 12, 2011.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–1119 Filed 1–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1209; Airspace Docket No. 10–ANM–10]

Proposed Amendment of Class E Airspace; West Yellowstone, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Yellowstone Airport, West Yellowstone, MT, to accommodate aircraft using the Instrument Landing System (ILS) Localizer (LOC) standard instrument approach procedures at Yellowstone Airport, West Yellowstone, MT. The FAA is proposing this action to enhance the safety and management of aircraft operations at Yellowstone Airport.

DATES: Comments must be received on or before March 7, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2010–1209; Airspace Docket No. 10–ANM–10, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA 2010–1209 and Airspace Docket No. 10–ANM–10) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2010–1209 and Airspace Docket No. 10–ANM–10". The postcard will be date/time stamped and returned to the commenter.

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

Availability of 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 the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Yellowstone Airport, West Yellowstone, MT, to accommodate new ILS LOC standard instrument approach procedures at Yellowstone Airport, West Yellowstone, MT. This action would enhance the safety and management of aircraft operations at Yellowstone Airport.

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

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated

impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Yellowstone Airport, West Yellowstone, MT.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM MT E5 West Yellowstone, MT [Amended]

West Yellowstone, Yellowstone Airport, MT (Lat. 44°41′18″ N., long. 111°07′04″ W.)

That airspace extending upward from 700 feet above the surface within 4.3 miles west and 8.3 miles east of the 026° and 206° bearings of the Yellowstone Airport extending from 8.3 miles northeast to 23.3 miles southwest of the Yellowstone Airport; that airspace extending upward from 1,200 feet above the surface within 6.6 miles west and 11 miles east of the 209° bearing from lat. 44°34′32″ N., long. 111°11′51″ W. extending to 36.2 miles southwest, and within 5 miles north and 4.3 miles south of the 304° bearing from lat. 44°34′32″ N., long. 111°11′51″ W. extending to the east edge of V–343; that airspace extending upward from 10,700 feet MSL within a 25.3-mile radius of lat. 44°34′32″ N., long. 111°11′51″ W. extending clockwise from the 081° bearing from lat. 44°34′32″ N., long. 111°11′51″ W. to 4.3 miles east of the 236° bearing from lat. 44°34′32″ N., long. 111°11′51″; W.; and within 4.3 miles each side of the 236° bearing from lat. 44°34′32″ N., long. 111°11′51″ W. extending to 43.5 miles southwest; that airspace extending upward from 10,700 feet MSL within 9 miles south and 5 miles north of the 304° bearing from lat. 44°34′32″ N., long. 111°11′51″ W. extending to the east edge of V–343; that airspace extending upward from 12,000 feet MSL within a 30.5-mile radius of lat. 44°34′32″ N., long. 111°11′51″ W. extending clockwise from the 026° bearing from lat. 44°34′32″ N., long. 111°11′51″ W. to the 081° bearing from lat. 44°34′32″ N., long. 111°11′51″ W.; that airspace extending upward from 12,500 feet MSL within 4.3 miles each side of the 293°, 329° and 043° bearing from lat. 45°00′19″ N., long. 110°53′49″ W. extending to 25.16 miles west to 30.57 miles northwest to 54.24 miles north, and within 4.3 miles each side of the 312° bearing from lat. 44°31′10″ N., long. 111°14′03″ W. extending to 25.20 miles northwest, excluding those portions that overlie the east edge of V–343, and south edge of V–2 and V–86; that airspace extending upward from 13,000 feet MSL within a 30.5-mile radius of lat. 44°34′32″ N., long. 111°11′51″ W.; extending clockwise from the 313° bearing to the 026° bearing from lat. 44°34′32″ N., long. 111°11′51″ W., excluding those portions that overlie V–298 and V–343.

Issued in Seattle, Washington, on January 10, 2011.

Robert Henry,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–1076 Filed 1–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

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

Proposed Amendment of Class E Airspace; Taylor, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Taylor Airport, Taylor, AZ. Controlled airspace is necessary to accommodate aircraft using the CAMBO One Departure Area Navigation (RNAV) out of Taylor Airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at Taylor Airport, Taylor, AZ.

DATES: Comments must be received on or before March 7, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2010–1189; Airspace Docket No. 10–AWP–19, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA 2010–1189 and Airspace Docket No. 10–AWP–19) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2010–1189 and Airspace Docket No. 10–AWP–19". The postcard will be date/time stamped and returned to the commenter.

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

Availability of 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* the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

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

The Proposal

The FAA is proposing an amendment to title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace extending upward from 700 feet or more above the surface at Taylor Airport, Taylor, AZ, to accommodate aircraft using the CAMBO One Departure RNAV at Taylor Airport. This action would enhance the safety and management of IFR operations at the airport.

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

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Taylor Airport, Taylor, AZ.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AWP AZ E5 Taylor, AZ [Modified]

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

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

Issued in Seattle, Washington, on January 10, 2011.

Robert Henry,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–1079 Filed 1–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1233; Airspace Docket No. 10–AWP–21]

Proposed Establishment of Class E Airspace; Kahului, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Kahului Airport, Kahului, HI. Controlled airspace is necessary to accommodate aircraft using the Instrument Landing System (ILS) standard instrument approach procedures at Kahului Airport, Kahului, HI. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before March 7, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE.,

Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2010–1233; Airspace Docket No. 10–AWP–21, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA 2010–1233 and Airspace Docket No. 10–AWP–21) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2010–1233 and Airspace Docket No. 10–AWP–21". The postcard will be date/time stamped and returned to the commenter.

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

Availability of 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* the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace designated as surface areas at Kahului Airport, Kahului, HI, to accommodate new standard instrument approach procedures at Kahului Airport. This action would enhance the safety and management of aircraft operations at Kahului Airport, Kahului, HI.

Class E airspace designations are published in paragraph 6002, of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Kahului Airport, Kahului, HI.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002. Class E airspace Designated as Surface Areas.

* * * * *

AWP HI E2 Kahului, HI [New] Kahului Airport, HI

(Lat. 20°53'55" N., long. 156°25'50" W.)

That airspace extending upward from the surface within a 5-mile radius of the Kahului Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory, Pacific Chart Supplement.

Issued in Seattle, Washington, on *January 10, 2011.*

Robert Henry,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–1082 Filed 1–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 4

[Docket No. TTB–2011–0002; Notice No. 116]

RIN 1513–AA42

Proposed Addition of New Grape Variety Names for American Wines

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to amend its regulations by adding a number of new names to the list of grape variety names approved for use in designating American wines. In addition, TTB proposes to include separate entries for synonyms of existing entries so that readers can more readily find them and to correct one existing entry.

DATES: TTB must receive written comments on or before March 21, 2011.

ADDRESSES: You may send comments on this notice to one of the following addresses:

- *http://www.regulations.gov* (via the online comment form for this notice as posted within Docket No. TTB–2011–0002 at "Regulations.gov," the Federal e-rulemaking portal);
- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200E, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, selected supporting materials, and any comments TTB receives about this proposal within Docket No. TTB–2011–0002 at *http://www.regulations.gov.* A direct link to this docket is posted on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 116. You also may view copies of this notice, all supporting materials, and any comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division, P.O. Box 18152, Roanoke, VA 24014; telephone 540–344–9333.

SUPPLEMENTARY INFORMATION:

Background

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Use of Grape Variety Names on Wine Labels

Part 4 of the TTB regulations (27 CFR part 4) sets forth the standards promulgated under the FAA Act for the labeling and advertising of wine. Section 4.23 of the TTB regulations (27 CFR 4.23) sets forth rules for varietal (grape type) labeling. Paragraph (a) of that section sets forth the general rule that the names of one or more grape varieties may be used as the type designation of a grape wine only if the wine is labeled with an appellation of origin as defined in § 4.25. Under paragraphs (b) and (c), a wine bottler may use the name of a single grape variety on a label as the type designation of a wine if not less than 75 percent of the wine (or 51 percent in certain limited circumstances) is derived from grapes of that variety grown in the labeled appellation of origin area. Under paragraph (d), a bottler may use two or more grape variety names as the type designation of a wine if all the grapes used to make the wine are of the labeled varieties and if the percentage of the wine derived from each grape variety is shown on the label (and with additional rules in the case of multicounty and multistate appellations of origin). Paragraph (e) of § 4.23 provides that only a grape variety name approved by the TTB Administrator may be used as a type designation for an American wine and states that a list of approved grape variety names appears in subpart J of part 4.

Within subpart J of part 4, the list of prime grape variety names and their synonyms approved for use as type designations for American wines appears in § 4.91 (27 CFR 4.91). Alternative grape variety names temporarily authorized for use are listed in § 4.92 (27 CFR 4.92). Finally, § 4.93 (27 CFR 4.93) sets forth rules for the approval of grape variety names.

Approval of New Grape Variety Names

Section 4.93 provides that any interested person may petition the Administrator for the approval of a grape variety name and that the petition should provide evidence of the following:

- That the new grape variety is accepted;
- That the name for identifying the grape variety is valid;
- That the variety is used or will be used in winemaking; and
- That the variety is grown and used in the United States.

Section 4.93 further provides that documentation submitted with the petition may include:

- A reference to the publication of the name of the variety in a scientific or professional journal of horticulture or a published report by a professional, scientific, or winegrowers' organization;
- A reference to a plant patent, if patented; and
- Information pertaining to the commercial potential of the variety, such as the acreage planted and its location or market studies.

Section 4.93 also places certain eligibility restrictions on the approval of grape variety names. TTB will not approve a name:

- If it has previously been used for a different grape variety;
- If it contains a term or name found to be misleading under § 4.39 (27 CFR 4.39); or
- If it contains the term "Riesling."

Typically, if TTB determines that the evidence submitted with a petition supports approval of the new grape variety name, TTB will send a letter of approval to the petitioner advising the petitioner that TTB will propose to add the grape variety name to the list of approved grape variety names in § 4.91 at a later date. After one or more approvals have been issued, a notice of proposed rulemaking will be prepared for publication in the **Federal Register** proposing to add the name(s) to the § 4.91 list, with opportunity for public

comment. In the event that one or more comments or other information demonstrate the inappropriateness of an approval action, TTB will determine not to add the grape variety name in question to the list and will advise the original petitioner that the name is no longer approved.

Since the last revision of the list in § 4.91, TTB has received and approved a number of petitions for new grape variety names. TTB is proposing in this notice to add a number of grape variety names to the list of names in § 4.91 to reflect those approvals. The evidence that the petitioners submitted in support of each name—and that formed the basis for the TTB approval—is summarized below. TTB is also requesting comments on three petitioned-for grape names that TTB did not approve by letter. The petitions for these names—Canaiolo Nero, Moscato Greco, and Princess—are also discussed below. In addition, TTB has received a petition requesting that two grape variety names currently listed in § 4.91 as separate varieties—Petite Sirah and Durif—be recognized as synonyms. TTB is requesting comments on this petition. This petition is discussed below under the listing "Petite Sirah," as that name is more widely used in the United States than "Durif."

Grape Name Petitions

Auxerrois

Adelsheim Vineyard, Newberg, Oregon, petitioned TTB to add "Auxerrois" to the list of approved grape variety names. Auxerrois is a white *Vitis vinifera* grape variety widely grown in the Alsace region of France. The petitioner submitted documentation showing that Oregon State University imported Auxerrois clones into the United States and had them released from quarantine in 1977. According to the petitioner, these clones were the source for the Auxerrois currently planted in Oregon and elsewhere in the United States. Adelsheim Vineyard reports having produced a varietal Auxerrois wine from its 2003 vintage. TTB is aware of at least one other winery producing a varietal Auxerrois wine. Some of the published references to Auxerrois note that the name is sometimes used in the Cahors region of France as a synonym for the Malbec variety, but the viticultural experts whom TTB consulted agreed that the name correctly applies only to the white variety described in the petition. Therefore, based on this evidence, TTB proposes to add Auxerrois to the list of grape variety names in § 4.91.

Biancolella

Avanguardia Wines LLC, Nevada City, California, petitioned TTB to add "Biancolella" to the list of approved grape variety names. A white Italian *Vitis vinifera* variety, Biancolella is grown on the islands of Ischia and Capri and in the Campania region on the southern Italian mainland. In Italy, it is an authorized component of Ischia Bianco Superiore (Denominazione di Origine Controllata (DOC), a category in Italy's wine designation system). The petitioner submitted published references to Biancolella and documented having obtained vines from Foundation Plant Services (FPS) at the University of California at Davis (UC Davis). The variety is available from FPS and at least one commercial nursery in California. Based on the evidence submitted by the petitioner, TTB proposes to add Biancolella to the list of grape variety names in § 4.91.

Black Monukka

Rotta Winery, Templeton, California, petitioned TTB to add "Black Monukka," a black *Vitis vinifera* variety, to the list of approved grape variety names. Although the variety is usually used for table grapes or for raisins, the petitioner reported having produced a dessert wine from Black Monukka grapes since 2001. As evidence of the grape's acceptance and usage in California, the petitioner submitted two statistical tables issued by the California Department of Food and Agriculture. The first table, from the 2005 California Grape Crush Report, shows that 468.9 tons of Black Monukka grapes were crushed in California that year. The second table, from the 2005 California Grape Acreage Report, shows that 253 acres were planted to Black Monukka grapevines in California in 2004. Based on this evidence, TTB proposes to add Black Monukka to the list of grape variety names in § 4.91.

Blaufränkisch

Santa Lucia Winery, Inc., Templeton, California, petitioned TTB to add the name "Blaufränkisch" to § 4.91 as a synonym for the currently listed name "Limberger" and its synonym "Lemberger." According to "The Oxford Companion to Wine" (Jancis Robinson, ed., Oxford University Press, 2d ed., 1999, p. 82), "Blaufränkisch is the Austrian name for the middle European black variety the Germans call Limberger and growers in Washington State call Lemberger."

The petitioner submitted numerous published references to the name, "Blaufränkisch," to demonstrate its validity and wide use among U.S. consumers. The references included copies of the 2000 and 2001 California Grape Crush Reports issued by the California Department of Food and Agriculture that listed the variety as Blaufränkisch, rather than as Lemberger or Limberger. The petitioner also submitted entries from the "Vitis International Variety Catalogue" and the "European Vitis Database," which both list Blaufränkisch as the grape variety's prime name and list Limberger and Lemberger as synonyms.

The petitioner states that the name "Blaufränkisch" will be less misleading and more appealing to U.S. consumers than the already approved names "Limberger" and "Lemberger," which, the petitioner contends, the consumer associates with "the infamous, offensive-smelling cheese." TTB notes that even though one synonym for the grape variety has already been approved, the Winegrape Advisory Committee, the panel of experts whose report was the basis for the establishment of §§ 4.91–4.93, recommended adding up to two synonyms for each grape variety where appropriate. *See* Notice No. 749, 57 FR 40381, September 3, 1992. The evidence shows that "Blaufränkisch" is a valid name commonly used in the United States for this grape variety; hence, TTB believes the approval of the name is warranted, but welcomes comments on the issue. Based on the submitted evidence, TTB proposes to add Blaufränkisch to the list of grape variety names in § 4.91 as a synonym to Limberger and Lemberger.

Brianna

Acquaviva Winery, Batavia, Illinois, petitioned TTB to add "Brianna" to the list of approved grape variety names. Brianna is a white hybrid grape variety developed by grape breeder Elmer Swenson. According to the petitioner it planted 429 Brianna vines in 2006 and produced wine from Brianna grapes in 2008. According to the petition, this grape variety is available from commercial nurseries in New York and Minnesota, and is widely planted across the Upper Midwest. The petitioner notes that wineries in Nebraska and Iowa are producing wine made from Brianna grapes. The Web sites of the University of South Dakota, Iowa State University, and the University of Nebraska-Lincoln describe the Brianna grape variety as growing well in their respective States. Based on this evidence, TTB proposes to add Brianna to the list of grape variety names in § 4.91.

Cabernet Diane

Lucian Dressel of Davis Viticultural Research, Carrollton, Illinois, petitioned TTB to add "Cabernet Diane" to the list of approved grape variety names. Cabernet Diane is a red variety bred by the petitioner from a cross of Cabernet Sauvignon and Norton made in 2000. Although Cabernet Diane has the same parentage as Crimson Cabernet (*see* below), the petition states that the variety ripens later than Crimson Cabernet and that its wine is darker and more intense. The petitioner has applied for a patent for Cabernet Diane. According to the petitioner, 7 growers in 6 States grow about 16 acres of the variety and the Mary Michelle Winery of Carrollton, Illinois, has made wine from Cabernet Diane since 2006. Based on this evidence, TTB proposes to add Cabernet Diane to the list of grape variety names in § 4.91.

Cabernet Doré

Lucian Dressel of Davis Viticultural Research, Carrollton, Illinois, also petitioned TTB to add "Cabernet Doré" to the list of approved grape variety names. Cabernet Doré is a white variety bred by the petitioner from a cross of Cabernet Sauvignon and Norton made in 2000. The petitioner has applied for a patent for Cabernet Doré and also has trademarked the name. According to the petitioner, 5 growers in 5 States grow about 18 acres of the variety and the Mary Michelle Winery has made wine from Cabernet Doré grapes since 2006. Based on this evidence, TTB proposes to add Cabernet Doré to the list of grape variety names in § 4.91.

Canaiolo/Canaiolo Nero

Acorn Winery, Healdsburg, California, petitioned TTB to add "Canaiolo" and its synonym, "Canaiolo Nero," to the list of approved grape variety names. Canaiolo is a black *Vitis vinifera* grape variety with origins in central Italy. In Italy, it is an authorized component of Chianti (DOC) and Vino Nobile di Montepulciano (DOC).

According to the petitioner, Canaiolo has been grown in California for years, albeit on a small scale. Acorn Winery has grown Canaiolo since 1992 from budwood obtained from the National Germplasm Repository, located at the University of California in Davis. The winery has made wine from this variety and has blended it into Sangiovese, as is generally done in Italy. The petitioner notes that other California growers of Sangiovese have contacted Acorn Winery and requested Canaiolo budwood.

The petitioner claims that both proposed names, "Canaiolo" and "Canaiolo Nero," are widely used in Italy and elsewhere. To support this claim, the petitioner submitted several published references to the variety that use both names. Additionally, the petitioner noted that both names have appeared on labels of Italian wines sold in the United States. TTB approved the name "Canaiolo" by letter, but did not approve "Canaiolo Nero" because there was not as much evidence for that form of the name. However, TTB welcomes comments on whether "Canaiolo Nero" should also be approved for use on American wine labels. Because the evidence submitted shows that both names are used by and are known to U.S. consumers, TTB proposes to add Canaiolo and its synonym, Canaiolo Nero, to the list of grape variety names in § 4.91.

Carignan

David Coffaro Winery, Geyserville, California, petitioned TTB to add the name "Carignan" to the list of approved grape variety names as a synonym for the currently approved grape variety name "Carignane." This red *Vitis vinifera* variety is widely planted in Southern France under the name "Carignan," but when it was brought to California the name acquired a final "e." The petitioner submitted several published references that refer to this variety by the name "Carignan" and indicated that the grape is called Carignane in California. The evidence shows that the name "Carignan" is a valid, widely used name for this grape variety; hence, TTB proposes to add Carignan to the list of grape variety names in § 4.91.

Corot noir

Dr. Bruce Reisch, Professor, Department of Horticultural Sciences, New York State Agricultural Experiment Station, Cornell University, petitioned TTB to add "Corot noir" to the list of approved grape variety names. Corot noir is a red hybrid variety developed at Cornell from a cross between Seyve Villard 18–307 grapes and Steuben grapes. According to a Cornell University bulletin, this variety is moderately winter hardy and produces wines free of the hybrid aromas typical of many other red hybrids. Corot noir vines are currently available at commercial vineyards, and virus-tested cuttings may be obtained from FPS, UC Davis. In addition, TTB is aware of wineries in New York and Virginia making wine from Corot noir. Based on the above evidence, TTB proposes to add Corot noir to the list of grape variety names in § 4.91.

Crimson Cabernet

Lucian Dressel of Davis Viticultural Research, Carrollton, Illinois, petitioned TTB to add "Crimson Cabernet" to the list of approved grape variety names. Crimson Cabernet is a red variety bred by the petitioner from a cross of Cabernet Sauvignon and Norton made in 2000. Although Crimson Cabernet has the same parentage as Cabernet Diane (*see* above), the petition states that the variety ripens earlier than Cabernet Diane and its wine is lighter in color and less intense. The petitioner has applied for a patent for Crimson Cabernet and has trademarked the name. According to the petitioner, 16 growers in 11 States grow about 33 acres of the variety, and the Mary Michelle Winery, Carrollton, Illinois, has made wine from Crimson Cabernet since 2006. Based on this evidence, TTB proposes to add Crimson Cabernet to the list of grape variety names in § 4.91.

Erbaluce

Avanguardia Wines, Nevada City, California, petitioned TTB to add "Erbaluce" to the list of approved grape variety names. Erbaluce is a white *Vitis vinifera* variety grown in the Piedmont region of northwestern Italy. In Italy, it is authorized for use in a single varietal Erbaluce (DOC). The petitioner submitted published references to Erbaluce and documented having obtained Erbaluce vines from FPS, UC Davis. The variety is available from FPS and at least one commercial nursery in California. Based on the petitioner's evidence, TTB proposes to add Erbaluce to the list of grape variety names in § 4.91.

Favorite

Chateau Z Vineyard, Monroe, Virginia, petitioned TTB to add "Favorite" to the list of approved grape variety names. Favorite, a hybrid red wine variety, was developed in Texas by John Niederauer around 1938. The National Germplasm Repository, located at the University of California in Davis, maintains this variety in its collection. According to evidence submitted by the petitioner, the variety is currently grown and used for winemaking in South Carolina and Texas. The winery states that it grows Favorite and produced wine from it in 2007. Based on the petition evidence, TTB proposes to add Favorite to the list of grape variety names in § 4.91.

Forastera

Avanguardia Wines petitioned TTB to add "Forastera" to the list of approved grape variety names. Forastera is a white *Vitis vinifera* variety indigenous to the

island of Ischia, near Naples, Italy. In Italy, it is one of the authorized varieties for use in Ischia Bianco Superiore (DOC). The petitioner has made wine from Forastera grapes grown on vines obtained from FPS, UC Davis. The variety is available from FPS and at least one commercial nursery in California. Based on the petitioner's evidence, TTB proposes to add Forastera to the list of grape variety names in § 4.91.

Freedom

Capello Winery, Manteca, California, petitioned TTB to add "Freedom" to the list of approved grape variety names. The most common commercial use of the Freedom variety is as a rootstock. Other grape varieties are grafted onto its roots because of its resistance to grape pests, specifically phylloxera and rootknot nematodes. Freedom was introduced in 1974 from a cross of the 1613 and Dodge Ridge grape varieties. The petitioner notes that while a rootstock variety doesn't usually produce grapes, Capello Winery harvested 162 tons of Freedom grapes on 100 acres for the vintage year 2001. The winery fermented these grapes into 35,000 gallons of red wine and bottled almost 15,000 cases of wine. As evidence of the grape's acceptance and name validity, the petitioner submitted four research articles published by UC Davis referencing the Freedom variety. Freedom and its use as a rootstock are also mentioned in the "Oxford Companion to Wine" (Robinson, p. 595). According to the VIVC, 13 viticultural institutions in 9 countries are holding Freedom in their collections. Freedom is a recognized variety, and the petitioner has produced Freedom wine; consequently, TTB proposes to add Freedom to the list of grape variety names in § 4.91.

Frontenac

Peter Hemstad, research viticulturalist at the University of Minnesota, petitioned TTB to add "Frontenac" to the list of approved grape variety names. Frontenac, a red variety developed by the university's grape breeding program, is from a cross of the *Vitis riparia* # 89 variety and the Landot # 4511 variety. According to the petitioner, the variety is very cold hardy, productive, disease resistant, and thus suitable for cold climates. The petitioner states that Frontenac has been extensively planted throughout the upper Midwest, noting that a 2000 census conducted by the Minnesota Grape Growers Association found over 10,000 Frontenac vines growing in Minnesota. Included with the petition were letters from growers and wineries in Minnesota, Iowa, and Indiana that were successful in growing and using the Frontenac grape for winemaking. The variety is also widely available for sale at commercial vineyards. Based on the above evidence, TTB proposes to add Frontenac to the list of grape variety names in § 4.91.

Frontenac gris

Peter Hemstad of the University of Minnesota also petitioned TTB to add "Frontenac gris" to the list of approved grape variety names. A naturally occurring gray mutation of the Frontenac variety described above, Frontenac gris was found growing in the university's experimental vineyard in 1992. Although it is a new variety, the petitioner notes that 11 nurseries in 6 States are licensed to propagate Frontenac gris, and sales of 18,336 vines were reported in 2005. Two Minnesota vineyards that wrote to TTB in support of the petition reported having successfully grown the Frontenac gris variety and attested that some commercial wineries are bottling wine made from the Frontenac gris variety. Based on the above evidence, TTB proposes to add Frontenac gris to the list of grape variety names in § 4.91.

Garnacha

Bokisch Vineyards and Winery, Victor, California, petitioned TTB to add "Garnacha" to the list of approved grape variety names as a synonym for the currently listed name "Grenache." According to "The Oxford Companion to Wine" (Robinson, p. 300), "Garnacha is the Spanish, and therefore original, name for the grape known in France and elsewhere as Grenache." The petitioners state that the U.S. wine industry has accepted and has used the name Garnacha. The National Grape Registry maintained by UC Davis lists Garnacha as a common synonym for the Grenache noir grape. TTB also received a petition for the name "Grenache noir" (*see* discussion below). Based on the submitted evidence, TTB proposes to add the name Garnacha to the list of grape variety names in § 4.91 to be identified with its synonyms, Grenache and Grenache noir.

Garnacha blanca

Bokisch Vineyards and Winery petitioned TTB to add "Garnacha blanca" to the list of approved grape variety names. Garnacha blanca, a white *Vitis vinifera* grape, originated in Spain. TTB also received a petition for "Grenache blanc," the French name for this grape (*see* discussion below). The petitioner submitted a number of published references to Garnacha blanca, and stated that it and several other California wineries are producing wine from the variety. At the time of the petition, the winery planned to bottle 100 gallons of wine labeled as Garnacha blanca. Based on the submitted evidence, TTB proposes to add the name Garnacha blanca to the list of grape variety names in § 4.91 to be identified with its synonym Grenache blanc.

Geneva Red 7

Stone House Vineyard, Mooers, New York, petitioned TTB to add "Geneva Red 7" to the list of approved grape variety names. Geneva Red 7 is a red hybrid grape variety developed by Cornell University. According to a Cornell University bulletin, this variety is highly productive and very winter hardy. The variety is listed on UC Davis's National Grape Registry and is commercially available from at least three nurseries. Geneva Red 7 is also known by the name "GR 7," which is listed as the grape variety's prime name in the National Grape Registry. TTB is not proposing to add the name "GR 7" to its list of approved grape variety names because TTB does not believe consumers would recognize that name as a grape variety name. However, TTB welcomes comments on this issue. Based on the above evidence, TTB proposes to add Geneva Red 7 to the list of grape variety names in § 4.91.

Graciano

Bokisch Vineyards and Winery petitioned TTB to add "Graciano" to the list of approved grape variety names. Graciano is a black *Vitis vinifera* variety thought to have originated in the Rioja region of Spain. The petitioner, who submitted a number of published references to the variety, states that it and at least three other California wineries are making wine from Graciano grapes. Also, TTB is aware of a Virginia winery producing wine from Graciano grapes. Based on the above evidence, TTB proposes to add Graciano to the list of grape variety names in § 4.91.

Grenache blanc

Tablas Creek Vineyard, Paso Robles, California, petitioned TTB to add "Grenache blanc" to the list of approved grape variety names. Grenache blanc, a white *Vitis vinifera* grape variety, originated in Spain, but is commonly associated with the Rhône Valley of France. TTB also received a petition for "Garnacha blanca," the Spanish name for this grape variety (*see* discussion above). A red version of the grape variety is already listed in § 4.91 as "Grenache." The petitioner submitted numerous published references to

books, periodicals, and Internet sites to establish the acceptance and validity of Grenache blanc. Tablas Creek Vineyard imported Grenache blanc into the New York State Agricultural Experiment Station, Geneva, New York, in 1992. After indexing, the variety was declared virus free and shipped bare root to the petitioner in February 1995. Tablas Creek Vineyard started planting Grenache blanc in 1996, and by the time of the petition had planted 4.73 acres of the variety. The petitioner reports the vineyard has supplied Grenache blanc vines and budwood to four other California growers, including the development vineyard at UC Davis. Based on the evidence presented by the petitioner, TTB proposes to add Grenache blanc to the list of grape variety names in § 4.91 to be identified with its synonym Garnacha blanca.

Grenache Noir

The Wine Institute, a trade association of California wineries, petitioned TTB to add the name "Grenache noir" to the list of approved grape variety names as a synonym for the currently listed "Grenache." The petitioner submitted numerous published references to the name Grenache noir, many of them using the name interchangeably with Grenache. Those references included nursery catalogs, wine reference books, and the California Grape Crush Report. FPS, UC Davis, identifies the variety as Grenache noir in its list of registered grape selections. The National Grape Registry maintained by UC Davis lists Grenache noir as the variety's prime name and lists Garnacha and Grenache as common synonyms. If Grenache noir and Garnacha (*see* above) are approved, three names for one variety will appear in § 4.91. TTB believes that the evidence warrants the approval of Grenache noir and Garnacha, but TTB welcomes comments on the issue. Based on the above evidence, TTB proposes to add the name "Grenache noir" to the list of grape variety names in § 4.91 to be identified with its synonyms "Grenacha" and "Grenache."

Grüner Veltliner

Reustle Vineyards & Winery LLC, Umpqua, Oregon, petitioned TTB to add "Grüner Veltliner" to the list of approved grape variety names. Grüner Veltliner is a well-documented, white *Vitis vinifera* variety. Although the most widely grown grape in Austria, it is relatively new to the United States. The petitioner, who produced 70 cases of Grüner Veltliner wine in vintage year 2005, states that other wineries in Oregon and Washington are also growing the variety. Grüner Veltliner vines are available from a number of commercial vineyards in the United States. Based on the above evidence, TTB proposes to add Grüner Veltliner to the list of grape variety names in § 4.91.

Interlaken

Sue Gorton, Cougar Creek Wine, Fall City, Washington, petitioned TTB to add "Interlaken" to the list of approved grape variety names. Interlaken, a white hybrid grape variety, is most often used for table grapes or for raisins, but is sometimes used to produce a white wine. The petitioner submitted a number of references to the variety from academic and nursery Web sites as evidence of the name's acceptance and validity. She also noted that, prior to the establishment of her winery, her Interlaken wine won the Best of Show award for homemade wines at the Evergreen State Fair in Monroe, Washington. The above evidence satisfies the provisions of § 4.93, and TTB proposes to add Interlaken to the list of grape variety names in § 4.91.

La Crescent

Peter Hemstad of the University of Minnesota petitioned TTB to add the name "La Crescent" to the list of approved grape variety names. La Crescent is a white hybrid variety that the university's grape breeding program developed. According to the petitioner, 12 nurseries in 6 States are licensed to propagate the variety. He further reports that 22,678 vines were sold in 2005, or enough for about 35 acres. Two Minnesota vineyards wrote to TTB in support of the petition, claiming to have successfully grown La Crescent grapes and attesting that some commercial wineries are bottling wine made from the variety. Based on this evidence, TTB proposes to add La Crescent to the list of grape variety names in § 4.91.

Lagrein

Piedra Creek Winery, San Luis Obispo, California, petitioned TTB to add "Lagrein" to the list of approved grape variety names. Lagrein is a red *Vitis vinifera* variety that originated in Italy. As evidence of the variety's acceptance and use in California, the petitioner submitted a table from the 2003 Final Grape Crush Report issued by the California Department of Food and Agriculture. The table, entitled "Tons of Grapes Crushed by California Processors," shows that 314.1 tons of Lagrein grapes were crushed in California that year. Lagrein vines may be obtained from FPS at UC Davis and from commercial nurseries. Based on this evidence, TTB proposes to add Lagrein to the list of grape variety names in § 4.91.

Louise Swenson

The Minnesota Grape Growers Association petitioned TTB to add "Louise Swenson," a white hybrid grape variety, to the list of approved grape variety names. This grape, developed by Elmer Swenson, is a cross between E.S. 2–3–17 grapes and Kay Gray grapes. Like other grapes that Mr. Swenson developed, this variety was bred to withstand the harsh winters of the upper Midwest. The petitioner submitted evidence that the variety shows little or no winter injury even in temperatures reaching minus 40 degrees Fahrenheit. The petitioner further states that Louise Swenson is grown in several upper Midwestern States and in New York. Included with the petition were letters from four Minnesota growers and wineries claiming to have successfully grown and/or used Louise Swenson grapes for winemaking. Based on the above evidence, TTB proposes to add Louise Swenson to the list of grape variety names in § 4.91.

Lucie Kuhlmann

Chateau Z Vineyard, Monroe, Virginia, petitioned TTB to add "Lucie Kuhlmann" to the list of approved grape variety names. Lucie Kuhlmann, a French red wine hybrid, was bred by Eugene Kuhlmann in Alsace in the early 20th century. The National Germplasm Repository, located in Geneva, New York, maintains this variety in its collection and distributes cuttings. The petitioner, a grower of Lucie Kuhlmann, reports producing wine from the variety in 2006 and 2007. According to evidence submitted by the petitioner, the variety is also grown and used for winemaking in Colorado. Although a majority of reference sources use the name "Lucie Kuhlmann" for this variety, one source (USDA, ARS, National Genetic Resources Program) identifies it by the name "Kuhlmann 149–3." TTB is not proposing to include Kuhlmann 149–3 in the list of grape variety names because it believes that Lucie Kuhlmann is used more frequently; however, TTB welcomes comments on this issue. Based on the above, TTB proposes to add Lucie Kuhlmann to the list of grape variety names in § 4.91.

Mammolo

Acorn Winery, Healdsburg, California, petitioned TTB to add "Mammolo" to the list of approved grape variety names. Mammolo is a red *Vitis vinifera* grape variety that has long been grown in central Italy. In Italy, it is an authorized component of Chianti (DOC). According

to the petitioner, Mammolo has been grown for decades in California, though on a small scale. Acorn Winery has grown Mammolo since 1992 from budwood obtained from the National Germplasm Repository, located at the University of California in Davis. The winery has made wine from that variety and blended it with its Sangiovese wine, as is generally done in Italy. The petitioner notes that other California growers of Sangiovese have contacted Acorn Winery and requested Mammolo budwood. Based on the above evidence, TTB proposes to add Mammolo to the list of grape variety names in § 4.91.

The petitioner also requested the approval of the synonym "Mammolo Toscano." Toscano refers to the Tuscany region of Italy where the variety is commonly grown. Based on the submitted evidence, TTB does not believe that Mammolo Toscano is in common enough usage to warrant its approval for the designation of American wines, but TTB welcomes comments on the issue.

Marquette

Peter Hemstad of the University of Minnesota petitioned TTB to add the name "Marquette" to the list of approved grape variety names. Marquette, a red hybrid developed by the University of Minnesota grape breeding program, was introduced in 2006 and has been granted Patent # 19579. According to the petitioner, 12 nurseries in 5 States are licensed to propagate the variety. He further reports that 125,776 vines were sold in 2006–8, or enough for roughly 193 acres of vine plantings. Based on this evidence, TTB proposes to add Marquette to the list of grape variety names in § 4.91.

Monastrell

Bokisch Vineyards and Winery, Victor, California, petitioned TTB to add "Monastrell" to the list of approved grape variety names as a synonym for the currently listed names "Mourvèdre" and "Mataro." The petitioner submitted a number of published references that note that Monastrell is the Spanish name for this grape variety. The variety, in fact, originated in Spain where it is the second-most-planted red grape. The National Grape Registry maintained by UC Davis lists Monastrell as the variety's prime name and lists Mourvèdre and Mataro as common synonyms. At the time of the petition, the petitioner stated it planned to bottle 120 gallons of 2007 and 2008 Monastrell wine. If Monastrell is approved, three names for this variety will appear in § 4.91. TTB believes that the evidence warrants the approval of Monastrell, but TTB welcomes comments on the issue. Based on the above evidence, TTB proposes to add Monastrell to the list of grape variety names in § 4.91, to be identified with its synonyms Mourvèdre and Mataro.

Montepulciano

Avanguardia Wines petitioned TTB to add "Montepulciano" to the list of approved grape variety names. Montepulciano is a red *Vitis vinifera* variety widely planted in the Abruzzi region of Italy. The petitioner submitted published references to the Montepulciano grape and documented having obtained the vines of that grape from FPS, UC Davis. The variety is also available from at least three commercial nurseries in California. The petitioner reports having made wine from Montepulciano grapes and having blended it with Sangiovese wine. Based on the above evidence, TTB proposes to add Montepulciano to the list of grape variety names in § 4.91.

Moscato greco

Edna Valley Vineyard, San Luis Obispo, California, petitioned TTB to add the name "Moscato greco" to the list of approved grape variety names as a synonym for the currently listed "Malvasia bianca" variety. As evidence, the petitioner submitted a letter in which Dr. Carole Meredith of the Viticulture and Enology Department at UC Davis discusses DNA research into the identity of Malvasia bianca grown in California. According to Dr. Meredith, it has been known for years that the Malvasia bianca grown in California is not the same as the most common types of Malvasia bianca grown in Italy. The DNA profile of Malvasia bianca vines from both FPS and a large commercial California vineyard was analyzed by UC Davis. The DNA profile of all the analyzed vines matched that of Moscato greco, a rare, Muscat-flavored variety from the Piedmont region of Italy. That grape, which according to Dr. Meredith has no official correct name in Italy, is also commonly called Malvasia greca and Malvasia bianca di Piemonte. Dr. Meredith stated that the variety had a definite muscat taste.

TTB contacted Dr. Meredith directly about this letter and asked if Moscato greco and Malvasia bianca can accurately be called synonyms. She stated that the names are not synonymous in Italy because there the name "Malvasia bianca" is used for several different varieties. However, the DNA evidence from California vines indicates that California Malvasia bianca is indeed Moscato greco. For this reason, Dr. Meredith stated it is accurate to consider them synonymous when applied to California grapes; however, the name "Moscato greco" could be considered a more specific name that will better identify Muscat grapes for the consumer. She stated that the name "Malvasia bianca" should be retained because it has long been used in California to identify this variety. In her opinion, winemakers should therefore have the option of using either name.

TTB did not approve this petition by letter, believing that this was an issue warranting public comment. TTB is therefore requesting comments on whether Moscato greco should be listed as a synonym for Malvasia bianca because of the long usage of the latter name in California, or if the Malvasia bianca should be changed to "California Malvasia bianca." TTB is also requesting comments on whether, alternatively, Moscato greco should be listed as a separate variety.

Negrara

Avanguardia Wines petitioned TTB to add the name "Negrara" to the list of approved grape variety names. Negrara is a red *Vitis vinifera* variety from the Veneto region of Italy. In Italy, it is one of the authorized components for use in Valpolicella (DOC). The petitioner submitted published references to Negrara and documented having obtained the vines for Negrara from FPS, UC Davis. The petitioner reports making wine from Negrara grapes and blending it with Sangiovese wine. Based on the petitioner's evidence, TTB proposes to add Negrara to the list of grape variety names in § 4.91.

Negro Amaro

Chiarito Vineyard, Ukiah, California, petitioned TTB to add "Negro Amaro" to the list of approved grape variety names. Negro Amaro is a red *Vitis vinifera* variety that originated in the Apulia region of Italy. To support the grape's consumer acceptance and use in California, the petitioner submitted a table from the Final Grape Crush Report for 2003 issued by the California Department of Food and Agriculture. The table shows that 0.6 and 2.4 tons of Negro Amaro grapes were crushed in the State in 2003 and 2002, respectively. The petitioner also submitted letters from two viticultural experts attesting that the vines from which Chiarito Vineyard obtained its Negro Amaro grapes have been determined to be true to type. In addition, the petitioner submitted evidence that at least two other California wineries are making wine from Negro Amaro grapes. Based on the petitioner's evidence, TTB

proposes to add Negro Amaro to the list of grape variety names in § 4.91.

Nero d'Avola

Chiarito Vineyard also petitioned TTB to add "Nero d'Avola" to the list of approved grape variety names. Nero d'Avola is a red *Vitis vinifera* variety originally from Sicily, now also grown in California. As part of the petition, the petitioner submitted letters from two viticultural experts attesting that they have determined that the vines from which Chiarito Vineyard obtained its grapes are true to type. In addition, the petitioner submitted evidence that at least two other California wineries are making wine from Nero d'Avola grapes. Based on the above evidence, TTB proposes to add Nero d'Avola to the list of grape variety names in § 4.91.

Noiret

Dr. Bruce Reisch, Professor, Department of Horticultural Sciences, New York State Agricultural Experiment Station, Cornell University, petitioned to add "Noiret," a red hybrid variety, to the list of approved grape variety names. The Noiret variety was developed at Cornell from a cross made in 1973 between NY65.0467.08 (NY33277 x Chancellor) grapes and Steuben grapes. According to a Cornell bulletin, this variety is moderately winter hardy, and produces wines that have good tannin structure and that are free of the hybrid aromas typical of many other red hybrid grapes. Noiret vines are currently available at commercial vineyards, and virus-tested cuttings may be obtained from FPS, UC Davis. In addition, the petitioner stated that wineries in New York, Pennsylvania, Indiana, and elsewhere are making varietal wines from Noiret grapes. Based on the above evidence, TTB proposes to add Noiret to the list of grape variety names in § 4.91.

Peloursin

The David Coffaro Winery petitioned TTB to add "Peloursin" to the list of approved grape variety names. Peloursin is a red *Vitis vinifera* variety of French origin that has long been grown in California, though often misidentified as Petite Sirah. In a study conducted by UC Davis in the 1990's, DNA analysis of commercial vineyards in California found that some vines labeled as "Petite Sirah" were in fact the Peloursin grape variety. (*See* "The Identity and Parentage of the Variety Known in California as Petite Sirah," by Carole P. Meredith, John E. Bowers, Summaira Riaz, Vanessa Handley, Elizabeth B. Bandman, and Gerald S. Dangl, Department of Viticulture and Enology, University of California, Davis, American Journal of Enology and Viticulture, vol. 50, no. 3, 1999.) Using the same DNA analysis, UC Davis identified grapevines from the petitioner's vineyard as Peloursin. The petitioner reported having produced several wines from Peloursin grapes, and would like to label his wine with the Peloursin name. Based on the petitioner's evidence, TTB proposes to add Peloursin to the list of grape variety names in § 4.91.

Petit Bouschet

Acorn Winery, Healdsburg, California, petitioned TTB to add "Petit Bouschet" to the list of approved grape variety names. Petit Bouschet, a red *Vitis vinifera* variety, was created in France in 1824 by Louis Bouschet as a cross of Aramon grapes and Teinturier du Cher grapes. The petition included several pieces of evidence showing international acceptance of this grape and its name. According to historical references that the petitioner cited, the Petit Bouschet variety has been grown in California since the 1880's. George Husmann, influential in California's early winegrape industry, wrote in 1895 that Petit Bouschet was "especially cultivated [in California] because it contains a great amount of color and tannin, which makes it valuable for blending" ("American Grape Growing and Winemaking," 1921, p. 201). The petitioner states that Petit Bouschet's popularity was eclipsed by its progeny, Alicante Bouschet, produced in 1865 as a cross of Petit Bouschet grapes and Grenache grapes. When Alicante Bouschet became available in California and demand exceeded supply, nurseries sold it mixed with Petit Bouschet. As a result, California Petit Bouschet is often found in vineyards mixed with Alicante Bouschet vines. The petitioner states that while Petit Bouschet is not usually bottled as a varietal wine, it continues to be blended into many California wines. Petit Bouschet vines are also available at FPS, UC Davis, and at commercial vineyards. Based on the petitioner's evidence, TTB proposes to add Petit Bouschet to the list of grape variety names in § 4.91.

Petit Manseng

Chrysalis Vineyards, Middleburg, Virginia, petitioned TTB to add "Petit Manseng," a white *Vitis vinifera* grape with origins in southwestern France, to the list of approved grape variety names. As evidence of the acceptance of this grape and its name, the petitioner submitted numerous published references to the Petit Manseng grape variety. The petitioner also submitted letters from two professors at Virginia Polytechnic Institute and State University, attesting that Petit Manseng is grown in Virginia. In 1998, Chrysalis Vineyards planted Petit Manseng cuttings obtained from a commercial nursery in New York and has since bottled and sold wine made from these grapes. The petitioner reports having received numerous requests for Petit Manseng cuttings from growers in Virginia and other States. Based on the petitioner's submitted evidence, TTB proposes to add Petit Manseng to the list of grape variety names in § 4.91.

Petite Sirah (Durif)

P.S. I Love You, Inc. (PSILY), a self-described Petite Sirah advocacy organization based in California, petitioned TTB to recognize the grape variety names "Petite Sirah" and "Durif" as synonyms. Both names are currently listed in § 4.91 as separate grape varieties.

As evidence that the two names refer to the same grape, the petitioner submitted an article concerning DNA research on California Petite Sirah vines conducted by Dr. Carole Meredith and others ("The Identity and Parentage of the Variety Known in California as Petite Sirah," Meredith *et al.*). After comparing California Petite Sirah plants to French Durif plants, Dr. Meredith concluded that the majority of vines labeled "Petite Sirah" were genetically identical to Durif. DNA marker analysis of 13 Petite Sirah vines from the UC Davis private collection identified 9 of the vines as Durif. DNA testing of 53 commercial Petite Sirah vines from 26 private vineyards identified 49 of these vines as Durif. The testing found the remaining vines to be Peloursin (*see* above), Syrah, or Pinot Noir. Dr. Meredith attributed the misidentification of those three grape vines to decades-old labeling and planting errors. PSILY also submitted a June 3, 2009, letter from Dr. Meredith supporting its current petition.

To demonstrate that this scientific research is widely accepted, the petitioner cited a number of nurseries that use the names Petite Sirah and Durif synonymously. The petitioner also noted that two wine-related Web sites, Professional Friends of Wine (*http://www.winepros.org*) and Appellation America (*http://wine.appellationamerica.com*), refer to the two names as synonyms. The National Grape Registry maintained by UC Davis also lists Petite Sirah and Durif as synonyms.

The petitioner also included a letter from Dr. Deborah Golino, Director of Foundation Plant Services (FPS), UC Davis, regarding FPS' naming

conventions for Petite Sirah. Because of historical confusion about the use of the name "Petite Sirah," FPS uses the name "Durif" to identify and distinguish Petite Sirah/Durif vines from Peloursin vines that were earlier mistakenly labeled "Petite Sirah." Because § 4.91 currently does not recognize Petite Sirah and Durif as synonyms, vineyards purchasing vines labeled as "Durif" from FPS are unable to market them as "Petite Sirah," the name more widely recognized in the United States.

TTB's predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF), previously proposed recognizing Petite Sirah and Durif as synonyms in Notice No. 941 published in the **Federal Register** (67 FR 17312) on April 10, 2002. In support of this proposal, Notice No. 941 cited Dr. Carole Meredith's DNA research, discussed above. In Notice No. 941, ATF also proposed to recognize the names "Zinfandel" and "Primitivo" as synonyms, also based on Dr. Meredith's research.

ATF received one supporting comment and one neutral comment in response to the Petite Sirah/Durif proposal in Notice No. 941. However, because of the length of time that has elapsed since publication of Notice No. 941, TTB has determined that further public comment on this proposal would be appropriate.

Based on the above-described evidence, TTB proposes to recognize Petite Sirah and Durif as synonymous names in § 4.91.

Piquepoul Blanc (Picpoul)

Tablas Creek Vineyards petitioned TTB to add "Piquepoul Blanc" and its synonym "Picpoul" to the list of approved grape variety names. Piquepoul Blanc is a white *Vitis vinifera* variety associated with the Rhône Valley of France. In France, it is one of the varieties authorized for use in Châteauneuf-du-Pape (Appellation d'origine contrôlée, (AOC), a category in France's wine designation system). As evidence of the grape's acceptance and name validity, the petitioner submitted numerous published references to the names "Piquepoul Blanc" and "Picpoul" from books, periodicals, and Internet sites. In 1995, Tablas Creek Vineyards imported Piquepoul Blanc vines into the New York State Agricultural Station, Geneva, New York. After indexing, the vines were declared virus free and shipped bare root to the petitioner in February 1998. In 2000, Tablas Creek started planting Piquepoul Blanc, and by the time of the petition had planted one-half acre of the variety. The petitioner reports having supplied Piquepoul Blanc budwood and vines to three other California growers, including the development vineyard at UC Davis. Based on the evidence that the petitioner presented and because both names are used extensively in the references that the petitioner submitted, TTB proposes to add both Piquepoul Blanc and Picpoul to the list of grape variety names in § 4.91.

Prairie Star

The Minnesota Grape Growers Association petitioned TTB to add "Prairie Star" to the list of approved grape variety names. Prairie Star, a white hybrid variety, was developed by Elmer Swenson as a cross between E.S. 2–7–13 grapes and E.S. 2–8–1 grapes. The petitioner provided evidence that the variety is very winter hardy and suffers little damage in all but the harshest winters (minus 40 degrees Fahrenheit and below). The petitioner further states that Prairie Star is grown in several upper Midwestern States and in New York. Additionally, letters from four Minnesota growers and wineries claiming success in growing and/or using Prairie Star in winemaking were included with the petition. Based on the above evidence, TTB proposes to add Prairie Star to the list of grape variety names in § 4.91.

Princess

Clayhouse Vineyard, Paso Robles, California, petitioned TTB to add "Princess" to the list of approved grape variety names. Princess is a white *Vitis vinifera* grape developed by the USDA Agricultural Research Service in Fresno, California. Although it was originally named "Melissa," the name was changed to Princess because a grocery chain had previously trademarked the name Melissa. The variety is available from a number of commercial nurseries and, according to the 2007 California Grape Crush Report, 2,651.7 tons of Princess grapes were crushed in California in 2007. Although this grape is most frequently used as a table grape, the petitioner used it to produce about 1,875 gallons of wine in 2007.

Although TTB believes that the petition contains sufficient evidence under § 4.93 for us to approve the name "Princess," TTB opted to propose adding the name to the list of grape variety names through rulemaking action rather than to approve it by letter due to potential conflicts with existing certificates of label approval (COLAs). An electronic search of TTB's COLAs online database for the word "Princess" produced 67 results, and TTB found five current COLAs that use the word "Princess" on a wine label as part of a fanciful name. These fanciful names are: "Brut Princess Cruises" on a domestic champagne; "Princess Foch" on a red wine; "Princess Peach" on a flavored wine; "Little Princess" on a white wine; and "The Princess" on a domestic champagne. These labels do not also contain grape varietal designations. The use of a grape variety name in a brand name may be misleading and prohibited under § 4.39. If the name Princess is approved as a grape varietal name, these labels may be misleading. Because of this potentially adverse impact on current labels, TTB believes that the label holders should be given an opportunity to comment on this proposal prior to any administrative action that would add the grape variety to the list of approved names in § 4.91.

Reliance

OOVVDA Winery in Springfield, Missouri, petitioned TTB to add "Reliance" to the list of approved grape variety names. Reliance, a cross of Ontario and Suffolk Red grapes, is a red grape developed at the University of Arkansas in 1984. The petitioner states that it made and sold Reliance wine in 2005 and 2006. According to UC Davis's National Grape Registry, this variety is commercially available at four nurseries in New York and Arkansas. Also, TTB is aware of at least one other winery selling a wine made from Reliance grapes. Based on this evidence, TTB proposes to add Reliance to the list of grape variety names in § 4.91.

Rondinella

Avanguardia Wines petitioned TTB to add "Rondinella" to the list of approved grape variety names. Rondinella is a red *Vitis vinifera* variety grown mainly in the Veneto region of Italy. In Italy, it is one of the varieties authorized for use in Valpolicella (DOC). The petitioner submitted published references to the Rondinella grape and documented having obtained Rondinella vines from FPS, UC Davis. The petitioner claims having made wine from Rondinella grapes. Based on the above evidence, TTB proposes to add Rondinella to the list of grape variety names in § 4.91.

Sabrevois

The Minnesota Grape Growers Association petitioned TTB to add "Sabrevois" to the list of approved grape variety names. A red hybrid variety, Sabrevois was developed by Elmer Swenson as a cross between E.S. 283 grapes and E.S. 193 grapes. The petitioner submitted evidence that the variety is very winter hardy and suffers little damage in all but the harshest winters (minus 31 degrees Fahrenheit). The petitioner further states that

Sabrevois is grown in several upper Midwestern States and in New York. Letters from four Minnesota growers and wineries claiming success in growing and/or using Sabrevois in winemaking were included with the petition. Based on the above evidence, TTB proposes to add Sabrevois to the list of grape variety names in § 4.91.

Sagrantino

Witch Creek Winery, Carlsbad, California, petitioned TTB to add "Sagrantino" to the list of approved grape variety names. Sagrantino is a red *Vitis vinifera* grape from the Umbria region of Italy, where it is most prominently used in Sagrantino di Montefalco (DOC). However, a limited amount of Sagrantino is also grown in the U.S. Recent DNA testing by UC Davis found that a vine in the FPS collection originally labeled as "Sangiovese" is actually Sagrantino. In addition, the petitioner states that it and eight other U.S. wineries are growing and/or producing wine from Sagrantino. Based on the above evidence, TTB proposes to add Sagrantino to the list of grape variety names in § 4.91.

St. Pepin

The Minnesota Grape Growers Association petitioned TTB to add "St. Pepin" to the list of approved grape variety names. A white hybrid variety, St. Pepin was developed by Elmer Swenson as a cross between E.S. 114 grapes and Seyval grapes. The petitioner submitted evidence that the variety can withstand temperatures to minus 25 °F, and thus is suitable for use in many northern growing regions. The petitioner states that St. Pepin is grown in several upper Midwestern States and in New York. Letters from five growers and wineries from Minnesota and Iowa claiming success in growing and/or using St. Pepin in winemaking were included with the petition. Based on the above evidence, TTB proposes to add St. Pepin to the list of grape variety names in § 4.91.

St. Vincent

Lucian Dressel of Carrollton, Illinois, and Scott Toedebusch of Augusta, Missouri, submitted a petition to add "St. Vincent" to the list of approved grape variety names. St. Vincent is a red hybrid variety that originated in Missouri in the 1970s from what is believed to be a chance crossing in Mr. Dressel's vineyard in Augusta, Missouri. The petitioners note that St. Vincent is winter hardy and produces wine that resembles Pinot Noir, which they believe is one of its parents. The petitioners state that St. Vincent has become a standard grape in Missouri, and they submitted evidence showing that it is grown and used for winemaking in several Midwestern and Northeastern States. Based on this evidence, TTB proposes to add St. Vincent to the list of grape variety names in § 4.91.

Sauvignon gris

Chimney Rock Winery, Napa, California, petitioned TTB to add "Sauvignon gris" to the list of approved grape variety names. Sauvignon gris is a pink-skinned mutation of the Sauvignon blanc grape. The petitioner submitted a report from FPS, UC Davis, stating that two professors of viticulture have identified three selections of Sauvignon gris at FPS. The report also states that FPS has sold Sauvignon gris propagation materials to 13 commercial nurseries and vineyards. Based on the above evidence, TTB proposes to add Sauvignon gris to the list of grape variety names in § 4.91.

Valiant

Philip Favreau of Mooers, New York, petitioned TTB to add "Valiant" to the list of approved grape variety names. Valiant, a hybrid variety, was developed at South Dakota State University. A crossing of the Fredonia grape variety and the Wild Montana grape variety, it is reportedly cold hardy to temperatures of minus 70 degrees Fahrenheit. Valiant vines are available at commercial nurseries, and wineries in several Northern and Midwestern States are producing wine from the variety. Based on this evidence, TTB proposes to add Valiant to the list of grape variety names in § 4.91.

Valvin Muscat

Dr. Bruce Reisch, Professor, Department of Horticultural Sciences, New York State Agricultural Experiment Station, Cornell University, petitioned TTB to add "Valvin Muscat" to the list of approved grape variety names. Valvin Muscat, a white hybrid variety developed at Cornell University, resulted from a crossing made in 1962 between Couderc 299–35 grapes (known as "Muscat du Moulin") and Muscat Ottonel grapes. A Cornell bulletin states that this variety is more winter hardy and disease resistant than muscat grapes that are pure *Vitis vinifera.* Valvin Muscat vines are currently available at commercial vineyards, and virus-tested cuttings are available at FPS, UC Davis. In addition, the petitioner stated that wineries in New York, Pennsylvania, Indiana, and elsewhere are making varietal wines from Valvin Muscat. Based on the above evidence, TTB proposes to add Valvin Muscat to the list of grape variety names in § 4.91.

Vergennes

Arbor Hill Grapery/Winery, Naples, New York, petitioned TTB to add "Vergennes" to the list of approved grape variety names. Vergennes, a *Vitis labrusca* grape variety, was developed in Vergennes, Vermont, in 1874. A red grape, it is used to produce a white wine. The petitioner documented that the variety has been grown commercially in New York for at least 100 years. In addition, the petitioner reports having made and sold Vergennes wine for 3 years with good consumer acceptance. Based on the petitioner's evidence, TTB proposes to add Vergennes to the list of grape variety names in § 4.91.

Vermentino

Santa Lucia Winery, Inc., petitioned TTB to add "Vermentino" to the list of approved grape variety names. Vermentino is a white *Vitis vinifera* grape commonly associated with Italy, particularly the island of Sardinia, and with the French island of Corsica. As evidence of the grape's consumer acceptance and name validity in the United States, the petitioner submitted numerous published references to Vermentino, including retailers' price lists, wine reviews, restaurant wine lists, magazine articles, and excerpts from wine reference books. As evidence of the grape's usage in California, the petitioners submitted a report published in 2002 by the Paso Robles Vintners and Growers Association stating that 1.77 acres of Vermentino was being grown in the Paso Robles area. Santa Lucia Winery planted its Vermentino in 1997 using vines purchased from Tablas Creek Vineyard, Paso Robles, and made wine from its first harvest in 2001. The petitioner included a letter from Tablas Creek Winery stating that three other California wineries purchased Vermentino vines from the winery between 2000 and 2002. Based on the above evidence, TTB proposes to add Vermentino to the list of grape variety names in § 4.91.

Wine King

Chateau Z Vineyard, Monroe, Virginia, petitioned TTB to add "Wine King" to the list of approved grape variety names. Wine King, a hybrid red wine variety, was developed in Texas in 1898 by Thomas Volnay Munson. The National Germplasm Repository located in Geneva, New York, maintains this variety in its collection and distributes cuttings. The petitioner, a grower of Wine King, reports producing wine from

the variety in 2006 and 2007. The winery further states that it has shipped cuttings of the variety to three other wineries in Virginia and Kentucky. Based on the petition evidence, TTB proposes to add Wine King to the list of grape variety names in § 4.91.

Zinthiana

Lucian Dressel of Davis Viticultural Research, Carrollton, Illinois, petitioned TTB to add "Zinthiana" to the list of approved grape variety names. Zinthiana is a red variety bred by the petitioner from a cross of Zinfandel and Norton (Cynthiana) made in 2000. The petitioner has applied for a patent for Zinthiana and has trademarked the name. According to the petitioner, 5 growers in 5 States grow about 13 acres of the variety. The Mary Michelle Winery in Carrollton, Illinois, has made wine from Zinthiana since 2006. Two other wineries plan to make wine from the variety in 2009, according to the petitioner. Based on this evidence, TTB proposes to add Zinthiana to the list of grape variety names in § 4.91.

Zweigelt

Mokelumne Glen Vineyards, Lodi, California, petitioned TTB to add "Zweigelt" to the list of approved grape variety names. Zweigelt was developed in Austria in 1922 as a cross of St. Laurent and Blaufränkisch, and is now Austria's most widely planted red grape. The petitioner, who obtained its Zweigelt vines from a Virginia nursery, has grown the variety since 2001. The petitioner states it has sold wine made from the grape and plans to expand its use of it. The petitioner reports that a local nursery is presently sold out of Zweigelt vines and that other American vineyards are also growing the variety. Based on the above evidence, TTB proposes to add Zweigelt to the list of grape variety names in § 4.91.

Structure of Grape List

The § 4.91 list is currently structured as a list of prime grape names. Where a synonym is specified for a grape varietal, the synonym appears in parenthesis after the prime grape name. In most cases, the synonym does not have its own listing. For example, the name "Black Malvoisie" is only listed in § 4.91 as a synonym after the variety's prime name, "Cinsaut." If the reader does not know that "Black Malvoisie" is a synonym for "Cinsaut," the reader may have difficulty determining if "Black Malvoisie" is an approved grape variety name. TTB believes that the current structure poses challenges for the reader in identifying approved names. Moreover, it may suggest that synonyms are in some way not as valid as grape names as the prime names when, in fact, every name in § 4.91, whether a prime name or a synonym, is equally acceptable for use as a type designation on an American wine label.

Because no distinction should exist between prime names and synonyms for the purposes of labeling, TTB proposes to eliminate the word "prime" from the heading of § 4.91, as well as from the second sentence of the introductory text of that section, and list each synonym as if it were a prime name. As a result, § 4.91 would simply set forth a list of grape names that have been approved as type designations for American wines, followed, in parentheses, by the approved synonyms for that name.

Technical Correction

Finally, TTB has become aware of a technical error in § 4.91, that is, the grape variety name "Agawam" is currently misspelled as "Agwam." TTB proposes to correct this error in this document. TTB also proposes to allow the use of the spelling "Agwam" for a period of one year after publication of a final rule so that anyone holding a COLA with the misspelling has sufficient time to obtain new labels. This allowance appears as a new paragraph (d) to proposed 27 CFR 4.92. If this proposal is adopted as a final rule, at the end of the one year period, holders of approved "Agwam" labels must discontinue their use as their certificates of label approval will be revoked by operation of the final rule (*see* 27 CFR 13.51 and 13.72(a)(2)). TTB believes the one year period will provide such label holders with adequate time to use up their supply of previously approved "Agwam" labels.

Public Participation

Comments Sought

TTB requests comments from members of the public, particularly any person whose use of an approved label might be impacted by final approval of the grape variety names that are the subject of this proposed rule, for example, label holders with brands that include any of these names, such as "Princess." TTB is interested in comments that might bring into question whether an added grape name is accurate and appropriate for the designation of American wines. TTB is also interested in comments concerning the grape names discussed above that TTB did not approve by letter: Canaiolo Nero, Mammolo Toscano (as a synonym for Mammolo), Moscato Greco, and Princess, as well as TTB's proposal to recognize as synonyms two names currently on the list in § 4.91, Petit Sirah and Durif. TTB also invites comments on whether it is still necessary to distinguish between prime names and synonyms for purposes of grape variety names for American wine. Finally, TTB invites comment on any other issue raised by this notice of proposed rulemaking, including, but not limited to, the proposed technical correction of the grape variety name "Agawam" and the proposed one year use-up period from the publication of the final rule for any existing labels that use the name "Agwam". Please support your comment with specific information about the grape varietal name in question, as appropriate.

Submitting Comments

You may submit comments on this notice by using one of the following three methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form linked to this notice in Docket No. TTB–2011–0002 on "Regulations.gov," the Federal e-rulemaking portal, at *http://www.regulations.gov.* A link to the docket is available under Notice No. 116 on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml.* Supplemental files may be attached to comments submitted via Regulations.gov. For information on how to use Regulations.gov, click on the site's Help or FAQ tabs.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.
- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 116 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments and considers all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via Regulations.gov, please include the entity's name in the "Organization" blank of the comment form. If you

comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or that is inappropriate for public disclosure.

Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, TTB will post, and the public may view, copies of this notice, selected supporting materials, and any electronic or mailed comments received about this proposal. A direct link to the Regulations.gov docket containing this notice and the posted comments received on it is available on the TTB Web site at *http://www.ttb.gov/wine/wine-rulemaking.shtml* under Notice No. 116. You may also reach the docket containing this notice and the posted comments received on it through the Regulations.gov search page at *http://www.regulations.gov.* All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. TTB may omit voluminous attachments or material that it considers unsuitable for posting.

You and other members of the public may view copies of this notice, all related petitions, maps and other supporting materials, and any electronic or mailed comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies for 20 cents per 8.5 x 11-inch page. Contact TTB's information specialist at the above address or by telephone at 202–453–2270 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this proposed rule will not have a significant economic impact on a substantial number of small entities. The decision of a grape grower to petition for a grape variety name approval, or the decision of a wine bottler to use an approved name on a label, is entirely at the discretion of the grower or bottler. This regulation does not impose any new reporting, recordkeeping, or other administrative requirements. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

Jennifer Berry of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

List of Subjects in 27 CFR Part 4

Administrative practice and procedure, Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

Proposed Amendments to the Regulations

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR part 4 as set forth below:

PART 4—LABELING AND ADVERTISING OF WINE

1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

2. Section 4.91 is amended:

a. By removing the word "prime" from the section heading and from the second sentence of the introductory text; and

b. By adding the word "variety" to the second sentence of the introductory text after the second use of "grape," and

c. In the list of grape variety names following the introductory text, by removing the entries for "Agwam," "Carignane," "Durif," "Grenache," "Limberger (Lemberger)," "Malvasia bianca," and "Petite Sirah" and by adding new entries in alphabetical order to read as follows:

§ 4.91 List of approved names.

* * * * *

Agawam

* * * * *

Auxerrois

* * * * *

Biancolella

* * * * *

Black Malvoisie (Cinsaut)
Black Monukka
Black Muscat (Muscat Hamburg)

* * * * *

Blaufränkish (Lemberger, Limberger)

* * * * *

Brianna

* * * * *

Cabernet Diane
Cabernet Doré

* * * * *

Canaiolo (Canaiolo Nero)
Canaiolo Nero (Canaiolo)

* * * * *

Carignan (Carignane)
Carignane (Carignan)

* * * * *

Corot noir

* * * * *

Crimson Cabernet

* * * * *

Durif (Petite Sirah)

* * * * *

Erbaluce
Favorite

* * * * *

Forastera

* * * * *

Freedom

* * * * *

French Colombard (Colombard)
Frontenac
Frontenac gris

* * * * *

Fumé blanc (Sauvignon blanc)

* * * * *

Garnacha (Grenache, Grenache noir)
Garnacha blanca (Grenache blanc)

* * * * *

Geneva Red 7

* * * * *

Graciano

* * * * *

Grenache (Garnacha, Grenache noir)
Grenache blanc (Garnacha blanca)
Grenache noir (Garnacha, Grenache)

* * * * *

Grüner Veltliner

* * * * *

Interlaken

* * * * *

Island Belle (Campbell Early)

* * * * *

La Crescent

* * * * *

Lagrein

* * * * *

Lemberger (Blaufränkish, Limberger)

* * * * *

Limberger (Blaufränkisch, Lemberger)
Louise Swenson
Lucie Kuhlmann

* * * * *

Malvasia bianca (Moscato greco)
Mammolo

* * * * *

Marquette

* * * * *

Mataro (Monastrell, Mourvèdre)

* * * * *

Melon (Melon de Bourgogne)
* * * * *
Monastrell (Mataro, Mourvèdre)
* * * * *
Montepulciano
* * * * *
Moscato greco (Malvasia bianca)
Mourvèdre (Mataro, Monastrell)
* * * * *
Muscat Canelli (Muscat blanc)
* * * * *
Negrara
* * * * *
Negro Amaro
Nero d'Avola
* * * * *
Noiret
* * * * *
Peloursin
Petit Bouschet
Petit Manseng
* * * * *
Petite Sirah (Durif)
* * * * *
Picpoul (Piquepoul blanc)
* * * * *
Pinot Grigio (Pinot gris)
* * * * *
Pinot Meunier (Meunier)
* * * * *
Piquepoul blanc (Picpoul)
Prairie Star
* * * * *
Princess
* * * * *
Refosco (Mondeuse)
* * * * *
Reliance
* * * * *
Rkatsiteli (Rkatziteli)
* * * * *
Rondinella
* * * * *
Sabrevois
* * * * *
Sagrantino
* * * * *
St. Pepin
St. Vincent
* * * * *
Sauvignon gris
* * * * *
Seyval blanc (Seyval)
Shiraz (Syrah)
* * * * *
Trebbiano (Ugni blanc)
* * * * *
Valdepeñas (Tempranillo)
* * * * *
Valiant
Valvin Muscat
* * * * *
Vergennes
Vermentino
* * * * *
Vignoles (Ravat 51)
* * * * *
White Riesling (Riesling)
Wine King
* * * * *
Zinthiana
Zweigelt

3. Section 4.92 is amended by adding paragraph (d) to read as follows:

§ 4.92 Alternative names permitted for temporary use.

* * * * *

(d) Wines bottled prior to *[date one year after publication of the final rule in the* ***Federal Register****]*.

Alternative Name/Prime Name

Agwam—Agawam

Signed: October 8, 2010.

John J. Manfreda,

Administrator.

Approved: December 3, 2010.

Timothy E. Skud,

Deputy Assistant Secretary, Tax, Trade, and Tariff Policy.

[FR Doc. 2011–1134 Filed 1–19–11; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 5

[Docket No. TTB–2010–0008; Notice No. 111]

RIN 1513–AB79

Disclosure of Cochineal Extract and Carmine in the Labeling of Wines, Distilled Spirits, and Malt Beverages

Correction

In proposed rule document 2010–27733 beginning on page 67669 in the issue of Wednesday, November 3, 2010, make the following correction:

§ 5.32 [Corrected]

On page 67672, in the third column, in § 5.32(b)(6), in the eighth line, "February 1, 2011" should read [DATE 90 DAYS AFTER DATE FINAL RULE IS PUBLISHED IN THE FEDERAL REGISTER].

[FR Doc. C1–2010–27733 Filed 1–19–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 19, 24, 25, 26, 40, 41, and 70

[Docket No. TTB–2011–0001; Notice No. 115; Re: T.D. TTB–89; T.D. ATF–365; T.D. TTB–41; ATF Notice No. 813 and TTB Notice No. 56]

RIN 1513–AB43

Time for Payment of Certain Excise Taxes, and Quarterly Excise Tax Payments for Small Alcohol Excise Taxpayers

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Elsewhere in this issue of the **Federal Register**, the Alcohol and Tobacco Tax and Trade Bureau is issuing a temporary rule to implement certain changes made to the Internal Revenue Code of 1986 by the Uruguay Round Agreement Act of 1994 and by the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. The temporary rule updates and reissues regulations pertaining to the semimonthly payments of excise tax on distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes, and also reissues temporary regulations regarding quarterly payment of excise tax for small alcohol excise taxpayers. The text of the regulations in the temporary rule published elsewhere in this issue of the **Federal Register** serves as the text of the proposed regulations.

DATES: Comments must be received on or before March 21, 2011.

ADDRESSES: You may send comments on this notice to one of the following addresses:

- *http://www.regulations.gov* (via the online comment form for this notice as posted within Docket No. TTB–2011–0001 at "Regulations.gov," the Federal e-rulemaking portal);
- *Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or
- *Hand Delivery/Courier in Lieu of Mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200E, Washington, DC 20005.

See the **Public Participation** section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, any comments received, and the related

temporary rule at *http://www.regulations.gov.* A direct link to the appropriate Regulations.gov docket is also available under Notice No. 115 on the TTB Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml.* You also may view copies of these documents by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: For questions concerning tax payment procedures and quarterly filing procedures, contact Jackie Feinauer, National Revenue Center, Alcohol and Tobacco Tax and Trade Bureau (513–684–3442); for questions concerning this document, contact Kara Fontaine, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau (202–453–2103 or *Kara.Fontaine@ttb.gov*).

SUPPLEMENTARY INFORMATION:

Background

In the Rules and Regulations section of this issue of the **Federal Register**, we are issuing a temporary rule reissuing and updating regulatory amendments to implement certain provisions of the Uruguay Round Agreement Act of 1994 (URA) (Pub. L. 103–465, 108 Stat. 4809), and the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA) (Pub. L. 109–59, 119 Stat. 1144). The reissued temporary rule updates and reissues Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations pertaining to the semimonthly payments of Federal excise tax on distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes. The temporary rule also reissues temporary regulations regarding quarterly payment of excise tax for small alcohol excise taxpayers. The regulations contained in the temporary rule and proposed in this document replace temporary regulations issued under T.D. ATF–365 and T.D. TTB–41, which were originally published in 1995 and 2006, respectively.

The temporary regulations involve amendments to parts 19, 24, 25, 26, 40, 41, and 70 of the TTB regulations (27 CFR parts 19, 24, 25, 26, 40, 41, and 70). The text of the temporary regulations serves as the text of these proposed regulations. The preamble to the temporary regulations explains the proposed regulations.

Public Participation

Comments Invited

We invite comments from interested members of the public on this proposed rulemaking. Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 115 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals.

Submitting Comments

You may submit comments on this notice by one of the following three methods:

- *Federal e-Rulemaking Portal:* You may electronically submit comments on this notice through "Regulations.gov," the Federal e-rulemaking portal. A direct link to the Regulations.gov docket containing this notice, Docket No. TTB–2011–0001, and its related comment submission form is available on the TTB Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml* under Notice No. 115. You may also reach this notice and its related comment form via the Regulations.gov search page at *http://www.regulations.gov.* Supplemental files may be attached to comments submitted via Regulations.gov. For information on how to use Regulations.gov, visit the site and click on the "Help" or "FAQ" tabs."
- *Mail:* You may send written comments to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.
- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200E, Washington, DC 20005.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via *http://www.regulations.gov,* please enter the entity's name in the "Organization" blank of the comment form. If you comment via mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, we will post, and you may view, copies of this notice, any electronic or mailed comments we receive about this proposal, and the related temporary rule. A direct link to the Regulations.gov docket containing this notice and the comments received on this proposal is available on the TTB Web site at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml* under Notice No. 115. You may also reach the relevant docket through the Regulations.gov search page at *http://www.regulations.gov.*

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. We may omit voluminous attachments or material that we consider unsuitable for posting.

You also may view copies of this notice, any electronic or mailed comments we receive about this proposal, and the related temporary rule by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our information specialist at the above address or by telephone at 202–453–2270 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act, Paperwork Reduction Act, and Executive Order 12866

Since the regulatory text proposed in this notice of proposed rulemaking is identical to that contained in the companion temporary rule published elsewhere in this issue of the **Federal Register**, the analysis contained in the preamble of the temporary rule concerning the Regulatory Flexibility Act, the Paperwork Reduction Act, the inapplicability of prior notice and comment, and Executive Order 12866 also apply to this proposed rule.

Drafting Information

Kara Fontaine of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

List of Subjects

27 CFR Part 19

Caribbean Basin Initiative, Claims, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Surety bonds, Vinegar, Virgin Islands, Warehouses.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Vinegar, Warehouses, Wine.

27 CFR Part 25

Beer, Claims, Electronic funds transfers, Excise taxes, Exports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds.

27 CFR Part 26

Alcohol and alcoholic beverages, Caribbean Basin Initiative, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 40

Cigars and cigarettes, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Tobacco.

27 CFR Part 41

Cigars and cigarettes, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Virgin Islands, Warehouses.

27 CFR Part 70

Administrative practice and procedure, Claims, Excise taxes, Freedom of Information, Law enforcement, Penalties, Surety bonds.

Proposed Amendments to the Regulations

For the reasons discussed in the preamble, we propose to amend 27 CFR, chapter I, parts 19, 24, 25, 26, 40, 41, and 70 as follows:

PART 19—DISTILLED SPIRITS PLANTS

1. The authority citation for part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5101, 5121, 5122–5124, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

2. [The proposed amendatory instructions and the proposed regulatory text for part 19 are the same as the amendatory instructions and the amendatory regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**.]

PART 24—WINE

3. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5121, 5122–5124, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

4. [The proposed amendatory instructions and the proposed regulatory text for part 24 are the same as the amendatory instructions and the amendatory regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**.]

PART 25—BEER

5. The authority citation for part 25 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5121, 5122–5124, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

6. [The proposed amendatory instructions and the proposed regulatory text for part 25 are the same as the amendatory instructions and the amendatory regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**.]

PART 26—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

7. The authority citation for part 26 continues to read as follows:

Authority: 19 U.S.C. 81c: 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5111–5114, 5121, 5122–5124, 5131, 5132, 5207, 5232, 5271, 5275, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205: 31 U.S.C. 9301, 9303, 9304, 9306.

8. [The proposed amendatory instructions and the proposed regulatory text for part 26 are the same as the amendatory instructions and the amendatory regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**.]

PART 40—MANUFACTURE OF TOBACCO PRODUCTS, CIGARETTE PAPERS AND TUBES, AND PROCESSED TOBACCO

9. The authority citation for part 40 is revised to read as follows:

Authority: 26 U.S.C. 448, 5701, 5703–5705, 5711–5713, 5721–5723, 5731–5734, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

10. [The proposed amendatory instructions and the proposed regulatory text for part 40 are the same as the amendatory instructions and the amendatory regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**.]

PART 41—IMPORTATION OF TOBACCO PRODUCTS, CIGARETTE PAPERS AND TUBES, AND PROCESSED TOBACCO

11. The authority citation for part 41 continues to read as follows:

Authority: 26 U.S.C. 5701–5705, 5708, 5712, 5713, 5721–5723, 5741, 5754, 5761–5763, 6301, 6302, 6313, 6402, 6404, 7101, 7212, 7342, 7606, 7651, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

12. [The proposed amendatory instructions and the proposed regulatory text for part 41 are the same as the amendatory instructions and the amendatory regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**.]

PART 70—PROCEDURE AND ADMINISTRATION

13. The authority citation for part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552: 26 U.S.C. 4181, 4182, 5123, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656–6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

14. [The proposed amendatory instructions and the proposed regulatory text for part 70 are the same as the amendatory instructions and the amendatory regulatory text set forth in the temporary rule on this subject published in the Rules and Regulations section of this issue of the **Federal Register**.]

Signed: June 2, 2010.

Mary G. Ryan,

Acting Administrator.

Approved: August 18, 2010.

Timothy E. Skud,

Deputy Assistant Secretary, Tax, Trade, and Tariff Policy.

[FR Doc. 2011–1144 Filed 1–19–11; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2005–0031; FRL–9255–2]

RIN 2060–AQ46

Standards of Performance for Fossil-Fuel-Fired, Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the new source performance standards for electric utility steam generating units and industrial-commercial-institutional steam generating units. This action would amend the testing requirements for owners/operators of steam generating units that elect to install particulate matter continuous emission monitoring systems. It would also amend the opacity monitoring requirements for owners/operators of affected facilities subject to an opacity standard that are exempt from the requirement to install a continuous opacity monitoring system. In addition, this action would correct several editorial errors identified from previous rulemakings.

DATES: Written comments must be received on or before February 22, 2011, unless a public hearing is requested by January 31, 2011. If a timely hearing request is submitted, the public hearing will be held on February 4, 2011 and we must receive written comments on or before March 7, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0031, by one of the following methods:

- *http://www.regulations.gov:* Follow the instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov,* or *fellner.christian@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* EPA Docket Center (EPA/DC), Environmental Protection Agency, *Mailcode:* 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* In person or by courier, deliver comments to: EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are accepted only during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2005–0031. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov index.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Public Hearing: If a public hearing is requested, it will be held at 10 a.m. at the EPA Facility Complex in Research Triangle Park, North Carolina, or at an alternate site nearby. Contact Mr. Christian Fellner at 919–541–4003 to request a hearing, to request to speak at a public hearing, to determine if a hearing will be held, or to determine the hearing location.

FOR FURTHER INFORMATION CONTACT: Mr. Christian Fellner, Energy Strategies Group, Sector Policies and Programs Division (D243–01), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–4003, FAX number (919) 541–5450, electronic mail (e-mail) address: *fellner.christian@epa.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Why is EPA issuing this proposed rule?
II. Does this action apply to me?
III. Where can I get a copy of this document?
IV. Why are we amending the rule?
V. What amendments are we making to the rule?

VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. Why is EPA issuing this proposed rule?

In the "Rules and Regulations" section of this **Federal Register**, we have also published for the new source performance standards for electric utility steam generating units and industrial-commercial-institutional steam generating units a direct final action amending the rule with the identical regulatory language proposed by this action because we view these amendments as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment by February 22, 2011, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the amendments in the direct final rule or certain amendments in the direct final rule and those amendments will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, *please see* the information provided in the **ADDRESSES** section of this document.

II. Does this action apply to me?

The regulated categories and entities potentially affected by this proposed rule include, but are not limited to, the following:

Category	NAICS [1]	Examples of regulated entities
Industry	221112	Fossil fuel-fired electric utility steam generating units.
Federal Government	22112	Fossil fuel-fired electric utility steam generating units owned by the Federal Government.
State/local/tribal government	22112	Fossil fuel-fired electric utility steam generating units owned by municipalities.
	921150	Fossil fuel-fired electric utility steam generating units located in Indian Country.
Any industrial, commercial, or institutional facility using a steam generating unit as defined in 60.40b or 60.40c.	211	Extractors of crude petroleum and natural gas.
	321	Manufacturers of lumber and wood products.
	322	Pulp and paper mills.
	325	Chemical manufacturers.
	324	Petroleum refiners and manufacturers of coal products.
	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.
	331	Steel works, blast furnaces.
	332	Electroplating, plating, polishing, anodizing, and coloring.
	336	Manufacturers of motor vehicle parts and accessories.
	221	Electric, gas, and sanitary services.
	622	Health services.
	611	Educational Services.

[1] North American Industry Classification System (NAICS) code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed rule. To determine whether your facility is regulated by this proposed rule, you should examine the applicability criteria in § 60.40, § 60.40Da, § 60.40b, or § 60.40c of 40 CFR part 60. If you have any questions regarding the applicability of this proposed rule to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

III. Where can I get a copy of this document?

In addition to the docket, an electronic copy of this proposed action will be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

IV. Why are we amending the rule?

On January 28, 2009, EPA promulgated amendments to the performance standards for steam generating units to add compliance, recordkeeping, and reporting requirements for owners and operators of certain affected facilities. Subsequently, EPA received a petition for reconsideration which it granted. The petitioner that submitted the petition for reconsideration also filed a petition for review with the United States Court of Appeals for the District of Columbia Circuit. In this action, EPA is proposing to amend specific provisions in the performance standards for steam generating units to resolve specific issues and questions raised in the petition for review, but not in the petition for reconsideration, and to address one issue raised in the petition for reconsideration.

V. What amendments are we making to the rule?

For a detailed description of the proposed amendments, see the information provided in the direct final rule published in the Rules and Regulations section of this **Federal Register**.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is, therefore, exempt from review under the 12866. EPA has concluded that the amendments EPA is proposing would not change the costs or benefits of this proposed rule.

B. Paperwork Reduction Act

This action would not impose any new information collection burden. These proposed amendments would result in no changes to the information collection requirements of the existing standards of performance and would have no impact on the information collection estimate of projected cost and hour burden made and approved by the Office of Management and Budget (OMB) during the development of the existing standards of performance. Therefore, the information collection requests would not been amended. However, OMB has previously approved the information collection requirements contained in the existing standards of performance (40 CFR part 60, subparts D, Da, Db, and Dc) under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.,* at the time the standards were promulgated on June 11, 1979 (40 CFR part 60, subpart Da, 44 FR 33580), November 25, 1986 (40 CFR part 60, subpart Db, 51 FR 42768), and September 12, 1990 (40 CFR part 60, subpart Dc, 55 FR 37674). OMB assigned OMB control numbers 2060–0023 (ICR 1053.07) for 40 CFR part 60, subpart Da, 2060–0072 (ICR 1088.10) for 40 CFR part 60, subpart Db, 2060–0202 (ICR 1564.06) for 40 CFR part 60, subpart Dc. OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of these proposed amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action would not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This proposed rule would reduce testing requirements for owner/operators of affected facilities using PM CEMS and would allow reduced opacity monitoring for owner/operators of natural gas-fired affected facilities. We have therefore concluded that today's proposed rule will relieve regulatory burden for all affected small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This proposed rule contains no Federal mandates that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, the proposed amendments are not subject to the requirements of section 202 or 205 of the Unfunded Mandates Reform Act (UMRA).

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments because the burden is small and the regulation does not unfairly apply to small governments.

E. Executive Order 13132: Federalism

The proposed amendments do not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. These amendments would not impose substantial direct compliance costs on State or local governments, and they would not preempt State law. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

These proposed amendments do not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). These proposed amendments would not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to the proposed amendments.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health and safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

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

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d)(15 U.S.C. 272 note) directs us to use voluntary consensus standards in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical

standards (*e.g.,* material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This action does not involve any new technical standards or the incorporation by reference of existing technical standards. Therefore, the consideration of voluntary consensus standards is not relevant to this action.

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

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

EPA lacks the discretionary authority to address environmental justice in this proposed rulemaking. New source performance standards are technology-based standards intended to promote use of the best air pollution control technologies, taking into account the cost of such technology and any other non-air quality, health, and environmental impact and energy requirements at a broad national level.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 7, 2011.

Lisa P. Jackson,

Administrator.

[FR Doc. 2011–1009 Filed 1–19–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1171]

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 April 20, 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–1171, 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:

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 Hoke County, North Carolina					
North Carolina	Unincorporated Areas of Hoke County.	Lumber River	At the Robeson and Scotland County boundary.	+205	+203
	.....	.....	Approximately 0.5 mile upstream of the Quewhiffle Creek confluence.	+256	+257

* 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 Hoke County

Maps are available for inspection at the Hoke County Planning Office, 423 East Central Avenue, Raeford, NC 28376.

Unincorporated Areas of Robeson County, North Carolina					
North Carolina	Unincorporated Areas of Robeson County.	Lumber River	Approximately 1.2 miles upstream of the Scotland County boundary.	+190	+191
	.....	.....	At the Hoke and Scotland County boundary.	+205	+203

* 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 Robeson County

Maps are available for inspection at the Robeson County Department of Building Safety and Code Enforcement, 415 Country Club Drive, Lumberton, NC 28360.

Unincorporated Areas of Nowata County, Oklahoma					
Oklahoma	Unincorporated Areas of Nowata County.	Southwest Tributary	At the downstream side of E0230 Road	None	+687
	.....	.....	Approximately 0.4 mile upstream of E0230 Road.	None	+696

* 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.

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

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 Nowata County

Maps are available for inspection at the Nowata County Office, 2219 North Maple Street, Nowata, OK 74048

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	
Sebastian County, Arkansas, and Incorporated Areas				
Massard Creek	Approximately 155 feet upstream of Rogers Avenue	+407	+406	City of Fort Smith, Unincorporated Areas of Sebastian County.
	Approximately 720 feet upstream of State Highway 255 (Zero Street).	None	+420	
Mill Creek	Approximately 200 feet downstream of South 28th Street.	+478	+477	City of Fort Smith.
	Approximately 1.05 miles upstream of Jenny Lind Road.	None	+521	
No Name Creek	Approximately 0.33 mile upstream of the Sunnymede Creek confluence.	+408	+409	City of Fort Smith.
	Approximately 185 feet downstream of the No Name Creek Tributary confluence.	+455	+456	
No Name Creek Tributary	At the No Name Creek confluence	+457	+456	City of Fort Smith.
	Approximately 970 feet upstream of South 46th Street.	None	+518	
Spivey Creek	At the Massard Creek confluence	+414	+411	City of Fort Smith, Unincorporated Areas of Sebastian County.
	Approximately 0.44 mile upstream of Industrial Drive	None	+477	

* 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 Fort Smith

Maps are available for inspection at the Engineering Department, 623 Garrison Avenue, Suite 409, Fort Smith, AR 72901.

Unincorporated Areas of Sebastian County

Maps are available for inspection at the Sebastian County Courthouse, 35 South 6th Street, Fort Smith, AR 72901.

El Dorado County, California, and Incorporated Areas				
Bijou Creek	Approximately 100 feet upstream of the Lake Tahoe confluence.	+6,232	+6,234	City of South Lake Tahoe.
	Approximately 550 feet upstream of Pioneer Trail	+6,325	+6,347	

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	
Trout Creek	Approximately 1,750 feet upstream of the Lake Tahoe confluence.	+6,235	+6,234	City of South Lake Tahoe, Unincorporated Areas of El Dorado County.
	Approximately 1,580 feet downstream of Martin Avenue.	+6,252	+6,251	
Upper Truckee River	Approximately 1,400 feet downstream of Lake Tahoe Boulevard.	+6,240	+6,241	City of South Lake Tahoe, Unincorporated Areas of El Dorado County.
	Approximately 1.44 miles upstream of Lake Tahoe Boulevard.	+6,250	+6,251	

* 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 South Lake Tahoe

Maps are available for inspection at 1900 Lake Tahoe Boulevard, South Lake Tahoe, CA 96150.

Unincorporated Areas of El Dorado County

Maps are available for inspection at 2850 Fairlane Court, Placerville, CA 95667.

Putnam County, Indiana, and Incorporated Areas

Big Walnut Creek	Approximately 845 feet downstream of Oakalla Covered Bridge.	None	+656	Unincorporated Areas of Putnam County.
	Approximately 845 feet upstream of Houck Road (North County Road 25 East).	None	+692	

* 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 Putnam County

Maps are available for inspection at the Putnam County Planning and Zoning Department, Annex Building, 209 West Liberty Street, Room 3, Greencastle, IN 46135.

Clark County, Kentucky, and Incorporated Areas

Boone Creek (backwater effects from Kentucky River).	From the Kentucky River confluence to approximately 1.2 miles upstream of the Kentucky River confluence.	None	+590	Unincorporated Areas of Clark County.
Bull Run (backwater effects from Kentucky River).	From the Kentucky River confluence to approximately 0.8 mile upstream of the Kentucky River confluence.	None	+603	Unincorporated Areas of Clark County.
Cotton Creek (backwater effects from Kentucky River).	From the Upper Howard Creek confluence to approximately 0.6 mile upstream of the Upper Howard Creek confluence.	None	+602	Unincorporated Areas of Clark County.
Dumford Hollow (backwater effects from Kentucky River).	From the Kentucky River Tributary 1 confluence to approximately 1,352 feet upstream of the Kentucky River Tributary 1 confluence.	None	+604	Unincorporated Areas of Clark County.
Fourmile Creek (backwater effects from Kentucky River).	From the Kentucky River confluence to approximately 1.4 miles upstream of the Kentucky River confluence.	None	+597	Unincorporated Areas of Clark 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	
Indian Creek (backwater effects from Kentucky River).	From the Kentucky River confluence to approximately 0.5 mile upstream of the Kentucky River confluence.	None	+600	Unincorporated Areas of Clark County.
Jouett Creek (backwater effects from Kentucky River).	From the Kentucky River confluence to approximately 0.5 mile upstream of the Kentucky River confluence.	None	+591	Unincorporated Areas of Clark County.
Kentucky River	At the Boone Creek confluence	None	+590	Unincorporated Areas of Clark County.
	At the Red River confluence	None	+604	
Kentucky River Tributary 1 (backwater effects from Kentucky River).	From the Kentucky River confluence to approximately 0.5 mile upstream of the Kentucky River confluence.	None	+604	Unincorporated Areas of Clark County.
Lower Howard Creek	Approximately 3.4 miles upstream of Reservoir Lane	+853	+852	City of Winchester, Unincorporated Areas of Clark County.
	Approximately 273 feet upstream of Colby Road	+962	+961	
Lower Howard Creek (backwater effects from Kentucky River).	From the Kentucky River confluence to approximately 1 mile upstream of the Kentucky River confluence.	None	+592	Unincorporated Areas of Clark County.
Lower Howard Creek Tributary H7 (backwater effects from Lower Howard Creek).	From the Lower Howard Creek confluence to approximately 712 feet upstream of the Lower Howard Creek confluence.	+890	+891	Unincorporated Areas of Clark County.
Red River (overflow effects from Kentucky River).	At the Kentucky River confluence	None	+604	Unincorporated Areas of Clark County.
	Approximately 1.2 miles upstream of Irving Road	None	+605	
Strodes Creek	Approximately 317 feet upstream of the Hancock Creek confluence.	+873	+870	City of Winchester, Unincorporated Areas of Clark County.
	Approximately 0.9 miles upstream of Pioneer Drive	+953	+952	
Strodes Creek Tributary S1	From the Strodes Creek confluence to approximately 1,554 feet upstream of the Strodes Creek confluence.	+924	+928	City of Winchester, Unincorporated Areas of Clark County.
Strodes Creek Tributary S2 (backwater effects from Strodes Creek).	From the Strodes Creek Tributary S1 confluence to approximately 540 feet upstream of the Strodes Creek Tributary S1 confluence.	+927	+928	City of Winchester, Unincorporated Areas of Clark County.
Strodes Creek Tributary S5 (backwater effects from Strodes Creek).	From the Strodes Creek confluence to approximately 1,385 feet upstream of the Strodes Creek confluence.	+921	+926	City of Winchester, Unincorporated Areas of Clark County.
Twomile Creek (backwater effects from Kentucky River).	From the Kentucky River confluence to approximately 0.8 mile upstream of the Kentucky River confluence.	None	+596	Unincorporated Areas of Clark County.
Upper Howard Creek (backwater effects from Kentucky River).	From the Kentucky River confluence to approximately 1.9 miles upstream of the Kentucky River confluence.	None	+602	Unincorporated Areas of Clark County.
Upper Howard Creek Tributary 3 (backwater effects from Kentucky River).	From the Upper Howard Creek confluence to approximately 1,559 feet upstream of the Upper Howard Creek confluence.	None	+602	Unincorporated Areas of Clark 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 Winchester

Maps are available for inspection at City Hall, 32 Wall Street, Winchester, KY 40392.

Unincorporated Areas of Clark County.

Maps are available for inspection at the Clark County Courthouse, 34 South Main Street, Winchester, KY 40391.

Mercer County, Ohio, and Incorporated Areas

Beaver Creek (Lower)	Approximately 1,400 feet downstream of Meyer Road	None	+861	City of Celina.

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	
	At the downstream side of the Grand Lake Dam	None	+861	
Beaver Creek (Upper)	Approximately 850 feet downstream of State Route 219.	+872	+873	Unincorporated Areas of Mercer County, Village of Montezuma.
	At the downstream side of Casselia Montezuma Road.	None	+876	
Grand Lake Saint Mary's	Entire shoreline within community	None	+872	City of Celina.
Saint Mary's River	At the Van Wert County boundary	None	+797	Unincorporated Areas of Mercer County, Village of Mendon, Village of Rockford.
	At the Auglaize County boundary	None	+814	
Wabash River	Approximately 0.72 mile downstream of State Route 49.	None	+922	Unincorporated Areas of Mercer County, Village of Fort Recovery.
	Approximately 0.88 mile upstream of North First Street.	None	+928	

* 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 Celina
Maps are available for inspection at 426 West Market Street, Celina, OH 45822

Unincorporated Areas of Mercer County
Maps are available for inspection at the Mercer County Central Service Building, 220 West Livingston Street, Room A201, Celina, OH 45822.

Village of Fort Recovery
Maps are available for inspection at 201 South Main Street, Fort Recovery, OH 45846.

Village of Mendon
Maps are available for inspection at 102 South Main Street, Mendon, OH 45862.

Village of Montezuma
Maps are available for inspection at 69 West Main Street, Montezuma, OH 45866.

Village of Rockford
Maps are available for inspection at 151 East Columbia Street, Rockford, OH 45882.

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

Dated: January 11, 2011.

Edward L. Connor,

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

[FR Doc. 2011–1061 Filed 1–19–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–B–1060]

Proposed Flood Elevation Determinations for Cumberland County, ME (All Jurisdictions)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing its notice of proposed rulemaking concerning proposed flood elevation determinations for Cumberland County, Maine (All Jurisdictions).

DATES: *Effective Date:* The notice of proposed rulemaking is withdrawn on January 20, 2011.

ADDRESSES: The docket for this withdrawn rulemaking is available for inspection or copying at 500 C St., SW., Washington, DC 20472.

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: On August 9, 2010, FEMA published a proposed rulemaking at 75 FR 47751, proposing flood elevation determinations along multiple flooding sources in Cumberland County, Maine. FEMA is withdrawing the proposed rulemaking in order to convert the Cumberland County flood study to FEMA's Risk Mapping, Assessment, and Planning (Risk MAP) Program as requested by several communities in the county.

Authority: 42 U.S.C. 4104; 44 CFR 67.4.

Dated: January 11, 2011.

Edward L. Connor,

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

[FR Doc. 2011–1125 Filed 1–19–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–B–1066]

Proposed Flood Elevation Determinations for York County, Maine (All Jurisdictions)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing its notice of proposed rulemaking concerning proposed flood elevation determinations for York County, Maine (All Jurisdictions).

DATES: As of January 20, 2011, the notice of proposed rulemaking published August 18, 2010, at 75 FR 50955 is withdrawn.

ADDRESSES: The docket for this withdrawn rulemaking is available for inspection or copying at 500 C St., SW., Washington, DC 20472

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: On August 18, 2010, FEMA published a proposed rulemaking at 75 FR 50955, proposing flood elevation determinations along multiple flooding sources in York County, Maine. FEMA is withdrawing the proposed rulemaking in order to convert the York County flood study to FEMA's Risk Mapping, Assessment, and Planning (Risk MAP) Program as requested by several communities in the county.

Authority: 42 U.S.C. 4104; 44 CFR 67.4.

Dated: January 11, 2011.

Edward L. Connor,

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

[FR Doc. 2011–1129 Filed 1–19–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 0907151138–1011–02]

RIN 0648–AY03

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would implement measures to address overfishing of Caribbean queen conch in the U.S. Caribbean. If promulgated, this rule would extend the queen conch seasonal closure from 3 months to 5 months, and prohibit fishing for and possession of queen conch in or from the Caribbean exclusive economic zone (EEZ) east of 64°34′ W. longitude, which includes Lang Bank east of St. Croix, U.S. Virgin Islands (USVI), when harvest and possession of queen conch is prohibited in St. Croix territorial waters as a result of a territorial quota closure. The intended effects of this proposed rule are to prevent additional fishing pressure on queen conch in the U.S. Caribbean, and to improve enforcement of regulations affecting the queen conch resource by improving compatibility among Federal and territorial regulations.

DATES: Written comments must be received on or before February 22, 2011.

ADDRESSES: You may submit comments on the proposed rule identified by 0648–AY03, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Britni Tokotch, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

Copies of the regulatory amendment, which includes an Environmental Assessment (EA), an initial regulatory flexibility analysis (IRFA), a regulatory impact review, and a fishery impact statement may be obtained from Britni Tokotch, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701 or may be downloaded from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Britni Tokotch, 727–824–5305.

SUPPLEMENTARY INFORMATION: The Caribbean queen conch fishery is managed under the Fishery Management Plan for Queen Conch Resources of Puerto Rico and the USVI (FMP). The FMP was prepared by the Caribbean Fishery Management Council (Council), and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

Amendment 1 to the FMP (70 FR 62073, Oct. 28, 2005), prohibited fishing for and possession of Caribbean queen

conch in or from the Caribbean EEZ, except during October through June in the area east of 64°34′ W. longitude, which includes Lang Bank east of St. Croix, USVI (this area will subsequently be referred to as Lang Bank). Amendment 1 was intended to reduce fishing mortality and help rebuild the overfished stock of Caribbean queen conch.

According to the NMFS Report on the Status of the U.S. Fisheries for 2008, Caribbean queen conch continues to be overfished and is undergoing overfishing. Additional management measures are therefore needed to prevent additional fishing pressure on the queen conch resource.

In June 2008, the USVI implemented several measures to address overfishing of queen conch, including setting an annual quota of 50,000 lb (28,680 kg) for St. Croix, an annual quota of 50,000 lb (28,680 kg) for St. Thomas and St. John, and closing the fishery seasonally from June 1 through October 31 each year. In April 2009, the St. Croix quota was determined to be reached, and territorial waters off St. Croix were closed to queen conch fishing beginning May 1, 2009. In a letter to the Council dated April 21, 2009, the USVI government requested the Council implement a compatible quota closure for queen conch through an emergency rule that would prohibit the harvest and possession of queen conch in or from the EEZ when St. Croix closes territorial waters to queen conch fishing.

The Council and NMFS have evaluated this request and have determined that an emergency rule to end overfishing of queen conch is not warranted at this time. The available data for queen conch landings does not distinguish between harvest obtained from Federal vs. territorial waters; therefore, it is not clear whether these management measures would actually end overfishing of the queen conch resource. Instead, the Council and NMFS acted to implement a compatible seasonal closure and compatible quota closure for queen conch through a regulatory amendment and this rulemaking. These measures would prevent additional fishing pressure from occurring, until additional landings data are available to determine if these measures would end overfishing. Additionally, these measures would aid in enforcement efforts because when territorial waters close, Federal waters would close as well.

Provisions Contained in This Proposed Rule

The USVI seasonal closure is a 5-month closure, from June 1 through October 31 each year. To be compatible with this territorial seasonal closure, this rule would extend the current 3-month (July 1 through September 30) closure in Federal waters at Lang Bank to a 5-month closure, from June 1 through October 31 each year.

This rule would also implement a compatible queen conch harvest quota closure for Federal waters. Under this rule, when the USVI closes territorial waters off St. Croix to the harvest and possession of queen conch, NMFS would concurrently close the queen conch harvest in Lang Bank. NMFS would notify the public of the closure by filing a notice with the Office of the Federal Register. During the closure, fishing for or possession of Caribbean queen conch on board a fishing vessel, in or from Lang Bank would be prohibited. Closure of Lang Bank would be in effect until the next fishing season for territorial waters opens November 1, each year.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the regulatory amendment, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from the Council (*see* **ADDRESSES**).

The purpose of this proposed rule is to relieve fishing pressure on queen conch and enhance enforcement of regulatory measures to protect queen conch by prohibiting fishing for and possession of queen conch in or from Lang Bank, when harvest of queen conch is prohibited in St. Croix territorial waters as a result of a either quota or seasonal closure. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

No duplicative, overlapping, or conflicting Federal rules have been identified.

This proposed rule, if adopted, would directly apply to and may directly affect commercial fishermen and for-hire vessels in St. Croix that harvest queen conch. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S., including commercial fish harvesters and for-hire operations. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For for-hire vessels, the other qualifiers apply and the revenues threshold is $7.0 million (NAICS code 713990, recreational industries).

All commercial fishermen who may be affected by this proposed rule are determined, for the purpose of this analysis, to be small entities. Federal permits are not required to fish in the U.S. Caribbean. The USVI, however, requires a commercial fishing permit to harvest marine species for commercial purposes. In 2008, there were 383 permitted fishermen in the USVI, of which 223 were in St. Croix and 160 were in St. Thomas and St. John. The ex-vessel value of total harvests by USVI fishermen in 2008 was approximately $8.8 million, or approximately $23,000 per fisherman. This estimate is substantially lower than the SBA small entity threshold. Comparable values for just St. Croix fishermen are not available. However, if all revenues for the USVI are attributed to St. Croix fishermen, the appropriate average revenue per entity would be only approximately $39,000. Even this value, as an extreme upper bound for average revenues for St. Croix fishermen, is significantly lower than the SBA threshold.

The number of for-hire dive operations in the USVI is unknown. However, 27 for-hire vessels were identified in the USVI in 2000. Information on the economic profile of these vessels is not available. However, for-hire vessels have been determined to be small business entities in all Federal fishery-related regulatory actions to date in the Gulf of Mexico and South Atlantic. Therefore, all for-hire businesses that may be affected by this proposed rule are determined, for the purpose of this analysis, to be small business entities.

This proposed rule would not establish any new reporting, recordkeeping, or other compliance requirements.

It is unknown whether this proposed rule, if adopted, would have any direct

adverse economic effect on any small entities. Available queen conch harvest data do not distinguish between queen conch harvested from territorial waters and from Lang Bank. Incompatible Federal and St. Croix territorial water seasonal closures only began in 2008, and the first quota closure of St. Croix territorial waters occurred in 2009. It is unknown whether landings, originating from Lang Bank, continued after closure of the territorial waters in these years, or whether the territorial closure resulted in fishermen ceasing harvest activity in Lang Bank. If the territorial possession prohibition resulted in fishermen stopping all harvest activity, including activity that historically occurred in the Lang Bank, then the proposed rule would not have any direct effect on harvest activity or associated revenues from Lang Bank, because no such harvest activity would be expected to continue to occur. As a result, the only direct effect of the proposed action on fishery participants would be the benefits of regulatory simplicity.

If, however, harvest activity in Lang Bank continues during the period when the territorial waters closed, this proposed rule would result in a reduction in the short-term revenues associated with these harvests. As previously stated, available data do not allow quantification of any harvests from Lang Bank that may be affected. In general, however, because queen conch are distributed in habitats where water depth is less than 100 fathoms (183 m), and the majority of the benthos at that depth around St. Croix is located in territorial waters, it is assumed that the majority of queen conch in the USVI are harvested from territorial waters. As a result, any reduction in harvests, and associated revenues, from Lang Bank that might occur as a result of compatible closures is expected to be minimal. However, because of the absence of location-specific harvest data, public comment is solicited on the validity of these conclusions.

Only one alternative to the proposed rule was considered. This alternative, the no action alternative (status quo), would not implement compatible closures and, as a result, would not achieve the Council's objectives.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: January 13, 2011.

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 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.32, paragraph (b)(1)(iv) is revised to read as follows:

§ 622.32 Prohibited and limited harvest species.

* * * * *

(b) * * *

(1) * * *

(iv) No person may fish for, or possess on board a fishing vessel, a Caribbean queen conch in or from the Caribbean EEZ, in the area east of 64°34′ W. longitude which includes Lang Bank east of St. Croix, U.S. Virgin Islands, except during November 1 through May 31.

* * * * *

3. In § 622.33, paragraph (d) is added to read as follows:

§ 622.33 Caribbean EEZ seasonal and/or area closures.

* * * * *

(d) *Queen conch closure in the Caribbean EEZ.* (1) Pursuant to the procedures and criteria established in the FMP for Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands, when the U.S. Virgin Islands closes territorial waters off St. Croix to the harvest and possession of queen conch, the Regional Administrator will concurrently close the Caribbean EEZ, in the area east of 64°34′ W. longitude which includes Lang Bank, east of St. Croix, U.S. Virgin Islands, by filing a notification of closure with the Office of the Federal Register. Closure of the adjacent EEZ will be effective until the next fishing season for territorial waters opens November 1.

(2) During the closure, as specified in paragraph (c)(1) of this section, no person may fish for or possess on board a fishing vessel, a Caribbean queen conch, in or from the Caribbean EEZ, in the area east of 64°34′ W. longitude which includes Lang Bank, east of St. Croix, U.S. Virgin Islands.

[FR Doc. 2011–1182 Filed 1–19–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 76, No. 13

Thursday, January 20, 2011

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

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Renewal of the Advisory Committee on Biotechnology and 21st Century Agriculture

AGENCY: Office of the Under Secretary, Research, Education, and Economics, USDA.

ACTION: Notice.

SUMMARY: The Secretary of Agriculture intends to renew the Advisory Committee on Biotechnology and 21st Century Agriculture (AC21) for a 2-year period.

FOR FURTHER INFORMATION CONTACT: Questions should be addressed to Michael Schechtman, Designated Federal Official, telephone (202) 720–3817; fax (202) 690–4265; e-mail *michael.schechtman@ars.usda.gov.*

SUPPLEMENTARY INFORMATION:

Advisory Committee Purpose: USDA supports the responsible development and application of biotechnology within the global food and agricultural system. Biotechnology intersects many of the policies, programs and functions of USDA. The charge for the AC21 is two-fold: To examine the long-term impacts of biotechnology on the U.S. food and agriculture system and USDA; and to provide guidance to USDA on pressing individual issues, identified by the Office of the Secretary, related to the application of biotechnology in agriculture. The AC21 will meet in Washington, DC, up to four (4) times per year.

Catherine Woteki,

Under Secretary for Research, Education, Economics.

[FR Doc. 2011–1203 Filed 1–18–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request Form FNS–798 and FNS–798A, WIC Financial Management and Participation Report With Addendum

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections.

DATES: Written comments on this notice must be received on or before March 21, 2011.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of 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. Comments may be sent to: Debra Whitford, Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 520, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Joan Carroll at 703–305–2196 or via e-mail to *Joan.Carroll@fns.usda.gov.*

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 3101 Park Center Drive, Alexandria, Virginia 22302, Room 518.

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instructions should be directed to: Joan Carroll, (703) 305–2729.

SUPPLEMENTARY INFORMATION:

Title: WIC Financial Management and Participation Report with Addendum.

OMB Number: 0584–0045.

Form Number: FNS 798 and FNS 798A.

Expiration Date: 09–30–2011.

Type of Request: Revision of a Currently Approved Collection Form.

Abstract: Section 17(f)(4) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(4)) provides that "State agencies shall submit monthly financial reports and participation data to the Secretary" (*See also* 7 CFR 246.25(b)(1)). The WIC Financial Management and Participation Report with Addendum (FNS–798 and FNS–798A) are the forms State agencies complete to comply with this requirement. FNS and State agencies use the reported information for program monitoring, funds management, budget projections, monitoring caseload, policy development, and responding to requests from Congress and interested parties.

In addition, nonentitlement programs, such as the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), are required to conduct an annual closeout and reconciliation of grants. Departmental regulations at 7 CFR 3016.23(b) require that "[a] grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Federal Financial Report (SF–425)." WIC Program regulations at 7 CFR 246.17(b)(2) instruct State agencies to "submit to FNS, within 120 days after the end of the fiscal year, final fiscal year closeout reports." The final WIC Financial Management and Participation Report (FNS–798) submitted for the year with its addendum (FNS–798A) are used as a substitute for the SF–425, because they maintain the integrity of WIC's two grant components (food and nutrition services and administration (NSA)) as well as the four NSA grant components (program management, client services,

nutrition education, and breastfeeding promotion and support).

The proposed revision of the WIC Financial Management and Participation Report (FNS–798) and its addendum (FNS–798A) will modify the format for reporting unliquidated NSA obligations. The current FNS–798 requires unliquidated NSA obligations to be reported in the columns corresponding to the 12 months of the fiscal year in which the obligations are incurred. These obligation amounts are then revised downward as outlays and deobligations are made. WIC State agencies have determined reporting downward adjustments for outlays and deobligations is more laborious when reported by obligation month rather than as an adjustment to a cumulative amount. Therefore, the proposed revision will return to a prior format to allow WIC State agencies to report unliquidated NSA obligations as a cumulative year-to-date total.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3.35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total annual burden on respondents was previously 4,523 hours. This revision does not change the total annual burden of 190 hours.

Affected Public: State, Local and Tribal Agencies: Respondent Type: Directors or Administrators of WIC state agencies.

Estimated Number of Respondents: 90 respondents.

Estimated Number of Responses per Respondent: 15.

Estimated Total Annual Burden on Respondents: 4,523 hours.

Dated: January 12, 2011.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. 2011–1131 Filed 1–19–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2010–0045]

Codex Alimentarius Commission: Meeting of the Codex Committee on Food Additives

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services, are sponsoring a public meeting on February 22, 2011. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 43rd Session of the Codex Committee on Food Additives (CCFA) of the Codex Alimentarius Commission (Codex), which will be held in Xiamen (Fujian Province), China, March 14–18, 2011. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 43rd Session of the CCFA and to address items on the agenda.

DATES: The public meeting is scheduled for Tuesday, February 22, 2011, from 10 a.m. to 1 p.m.

ADDRESSES: The public meeting will be held in The Auditorium (1A003), FDA, Harvey Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740.

Documents related to the 43rd Session of the CCFA will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.*

Dennis Keefe, U.S. Delegate to the 43rd Session of the CCFA, and FDA invite U.S. interested parties to submit their comments electronically to the following e-mail address: *cfsan-ccfa@fda.hhs.gov.*

Registration: Attendees may register electronically at the same e-mail address provided above by February 18, 2011. Early registration is encouraged because it will expedite entry into the building and its parking area. If you require parking, please include the vehicle make and tag number when you register. Because the meeting will be held in a Federal building, you should also bring photo identification and plan for adequate time to pass through security screening systems. Attendees who are not able to attend the meeting in-person but wish to participate may do so by phone. Those wishing to participate by phone should request the call-in number and conference code when they register for the meeting.

FOR FURTHER INFORMATION ABOUT THE 43RD SESSION OF THE CCFA CONTACT: Dennis M. Keefe, PhD, Director, Senior Science and Policy Staff, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition (CFSAN)/FDA, HFS–205, 5100 Paint Branch Parkway, College Park, MD 20740, Telephone: (301) 436–1200, Fax: (301) 436–2972, e-mail: *dennis.keefe@fda.hhs.gov.*

FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT: Jannavi R. Srinivasan, PhD, Chemistry Reviewer, Division of Biotech and GRAS Notice Review, Office of Food Additive Safety, CFSAN/FDA, HFS–255, 5100 Paint Branch Parkway, College Park, MD 20740, Telephone: (301) 436–1199, Fax: (301) 436–2965, e-mail: *jannavi.srinivasan@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The CCFA establishes or endorses permitted maximum levels for individual additives; prepares priority lists of food additives for risk assessment by the Joint FAO/WHO Expert Committee on Food Additives (JECFA); assigns functional classes to individual food additives; recommends specifications of identity and purity for food additives for adoption by Codex; considers methods of analysis for the determination of additives in food; and considers and elaborates standards or codes for related subjects, such as labeling of food additives when sold as such.

The Committee is hosted by China.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 43rd Session of the CCFA will be discussed during the public meeting:

- Matters referred by Codex and other Codex committees and task forces.
- Matters of interest arising from FAO/WHO and from the 73rd Meeting of the JECFA.
- Endorsement and revision of maximum levels for food additives and processing aids in Codex standards.
- Discussion paper on food additive provisions in the *Standard for infant formulas and formula for special medical purposes* (CODEX STAN 72–1981).
- Discussion paper on the alignment of the food additive provisions of the standards for meat products and

relevant provisions of the General Standard for Food Additives (GSFA).

- Draft and proposed draft food additive provisions of the GSFA.
- Proposed draft food additives provisions (new and revised).
- Comments and information on several food additives (replies to CL 2010/7–FA, Part B and CL 2010/39–FA).
- Provisions for aluminum-containing food additives.
- Proposed draft revision of the food category system (food categories 5.1, 5.2 and 5.4) (N07–2010).
- Revision of the name and descriptors of food category 16.0.
- Discussion paper on use of Note 161.
- Discussion paper on the revision of Section 4 "Carry-over of food additives into food" of the Preamble of the GSFA.
- Proposed draft revision of the Codex *Standard for Food Grade Salt* (CODEX STAN 150–1985) (N08–2010).
- Proposals for changes and addition to the International Numbering System for Food Additives.
- Specifications for the identity and purity of food additives arising from the 73rd JECFA.
- Proposals for additions and changes to the priority list of food additives proposed for evaluation by the JECFA (replies to CL 2010/10–FA).
- Discussion paper on mechanisms for re-evaluation of substances by the JECFA.
- Discussion paper on development of a database on processing aids.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access copies of these documents (*see* **ADDRESSES**).

Public Meeting

At the February 22, 2011, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 43rd Session of the CCFA, Dr. Dennis Keefe (*see* **ADDRESSES**). Written comments should state that they relate to activities of the 43rd session of the CCFA.

USDA Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, *etc.*) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The Update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.*

Options range from recalls, export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on January 12, 2011.

Karen Stuck,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2011–1145 Filed 1–19–11; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2010–0044]

Codex Alimentarius Commission: Meeting of the Codex Committee on Pesticide Residues

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Office of Pesticide Programs, U.S. Environmental Protection Agency (EPA), are sponsoring a public meeting on February 24, 2011. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 43rd Session of the Codex Committee on Pesticide Residues (CCPR) of the Codex Alimentarius Commission (Codex), which will be held in Beijing, P.R. China April 4–9, 2011. The Under Secretary for Food Safety and the EPA recognize the importance of providing interested parties the opportunity to obtain background information on the 43rd Session of the CCPR and to address items on the agenda.

DATES: The public meeting is scheduled for February 24, 2011, from 1 p.m. to 3 p.m.

ADDRESSES: The public meeting will be held at EPA, One Potomac Yard, Room S–7100, 2777 South Crystal Drive, Arlington, VA 22202.

Documents related to the 43rd Session of the CCPR will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.*

Lois Rossi, U.S. Delegate to the 43rd Session of the CCPR and the EPA, invites U.S. interested parties to submit their comments electronically to the following e-mail address: *Rossi.Lois@epamail.epa.gov.*

Call in Number:

If you wish to participate in the public meeting for the 43rd Session of the CCPR by conference call, please use the following call in number and participant code listed below.

Call in Number (United States): 1–866–299–3188

Call in Number (International): 1–706–758–1822

Participant code: 7033056463#

For Further Information About the 43rd Session of the CCPR Contact: Lois

Rossi, Director of Registration Division, Office of Pesticide Programs, EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Phone: (703) 305–5447, Fax: (703) 305–6920, E-mail: *Rossi.Lois@epamail.epa.gov.*

For Further Information About the Public Meeting Contact: Doreen Chen-Moulec, U.S. Codex Office, 1400 Independence Avenue, SW., Room 4861, Washington, DC 20250. Phone: (202) 205–7760, Fax: (202) 720–3157, E-mail: *Doreen.Chen-Moulec@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The CCPR is responsible for establishing maximum limits for pesticide residues in specific food items or in groups of food; establishing maximum limits for pesticide residues in certain animal feeding stuffs moving in international trade where this is justified for reasons of protection of human health; preparing priority lists of pesticides for evaluation by the Joint FAO/WHO Meeting on Pesticide Residues (JMPR); considering methods of sampling and analysis for the determination of pesticide residues in food and feed; considering other matters in relation to the safety of food and feed containing pesticide residues; and establishing maximum limits for environmental and industrial contaminants showing chemical or other similarity to pesticides, in specific food items or groups of food.

The Committee is hosted by China.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 43rd Session of the CCPR will be discussed during the public meeting:

- Matters Referred to the Committee by Codex and Codex Committees
- Report on Items of General Consideration by the 2010 JMPR
- Report on the 2010 JMPR Response to Specific Concerns Raised by the CCPR
- Draft and Proposed Draft Maximum Residue Limits (MRL) for Pesticides in Foods and Feeds at Steps 7 and 4
- Discussion Paper on the Application of Proportionality in Selecting Data for MRL Estimation
- Draft Revision of the Codex Classification of Foods and Animal Feeds at Step 7: *Tree Nuts, Herbs and Spices*
- Proposed Draft Revision of the Codex Classification of Foods and Animal Feeds at Step 4: *Assorted Tropical and Sub-Tropical Fruits-Edible Peel; Assorted Tropical and Subtropical Fruits-Inedible Peel; Leafy Vegetables (including Brassica Leafy Vegetables); and Brassica (Cole or Cabbage) Vegetables, Cabbage, Head and Flowerhead Cabbages*
- Draft Principles and Guidance for the Selection of Representative Commodities for the Extrapolation of MRL for Pesticides for Commodity Groups at Step 7
- Proposed Draft Annexes to the Draft Principles and Guidance for the Selection of Representative Commodities for the Extrapolation of MRL for Pesticides for Commodity Groups at Step 4
- Discussion Paper on the Guidance to Facilitate the Establishment of MRL for Pesticides for Minor Use and Specialty Crops
- Proposed Draft Revision of the Guidelines on the Estimation of Uncertainty of Results for the Determination of Pesticide Residues at Step 4
- Discussion Paper on How To Address Methods of Analysis for Pesticide Residues by the CCPR
- Revision of the Risk Analysis Principles Applied by the CCPR
- Establishment of Codex Priority Lists of Pesticides
- Consideration of the Status of Codex MRL for Lindane
- Discussion Paper on JMPR Resource Issues in the Provision of Scientific Advice to the CCPR
- Assessment of MRL for Pesticides in Tea

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access copies of these documents (*see* **ADDRESSES**).

Public Meeting

At the February 24, 2011, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 43rd session of the CCPR, Lois Rossi (*see* **ADDRESSES**). Written comments should state that they relate to activities of the 43rd session of the CCPR.

USDA Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, *etc.*) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The Update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.*

Options range from recalls, export information, regulations, directives, and notices. Customers can add or delete

subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on January 12, 2011.

Karen Stuck,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2011–1143 Filed 1–19–11; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2010–0043]

Codex Alimentarius Commission: Meeting of the Codex Committee on Methods of Analysis and Sampling

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition (CFSAN), are sponsoring a public meeting on February 9, 2011. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 32nd session of the Codex Committee on Methods of Analysis and Sampling (CCMAS) of the Codex Alimentarius Commission (Codex), which will be held in Budapest, Hungary March 7–11, 2011. The Under Secretary for Food Safety and the FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 32nd session of the CCMAS and to address items on the agenda.

DATES: The public meeting is scheduled for February 9, 2011, from 11 a.m. to 12:30 p.m.

ADDRESSES: The public meeting will be held at FDA, Harvey Wiley Building, Room 2B047, 5100 Paint Branch Parkway, College Park, MD 20740. Documents related to the 32nd session of the CCMAS will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.*

Gregory Diachenko, U.S. Delegate to the 32nd session of the CCMAS, and the FDA, invites U.S. interested parties to submit their comments electronically to the following e-mail address: *Gregory.Diachenko@fda.hhs.gov.*

Call In Number:

If you wish to participate in the public meeting for the 32nd session of the CCMAS by conference call, please use the following call in number and participant code listed below.

Call in Number: 1–866–859–5767.

Participant code: 2225276.

FOR FURTHER INFORMATION ABOUT THE 32ND SESSION OF THE CCMAS CONTACT: Gregory Diachenko, PhD, Director, Division of Product Manufacture and Use Office of Premarket Approval, CFSAN, FDA, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, *Phone:* (301) 436–2387, *Fax:* (301) 436–2364, *E-mail: Gregory.Diachenko@fda.hhs.gov.*

FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT: Marie Maratos, U.S. Codex Office, 1400 Independence Avenue, SW., Room 4861, Washington, DC 20250. *Phone:* (202) 690–4795, *Fax:* (202) 412–7901, *E-mail: Marie.Maratos@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The CCMAS is responsible for defining the criteria appropriate to Codex Methods of Analysis and Sampling; serving as a coordinating body for Codex with other international groups working in methods of analysis and sampling and quality assurance systems for laboratories; specifying the basis of final recommendations submitted to it by other bodies; considering, amending, and endorsing, methods of analysis and sampling proposed by Codex (Commodity) Committees, except that methods of analysis and sampling for residues of pesticides or veterinary drugs in food, the assessment of microbiological quality and safety in food, and the assessment of specifications for food additives, do not fall within the terms of reference of this Committee; elaborating sampling plans and procedures; considering specific sampling and analysis problems submitted to it by Codex or any of its Committees; and defining procedures, protocols, guidelines or related texts for the assessment of food laboratory proficiency, as well as quality assurance systems for laboratories.

The Committee is hosted by Hungary.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 32nd session of the CCMAS will be discussed during the public meeting:

- Matters Referred to the Committee by the Codex and Other Codex Committees
- Draft Revised Guidelines on Measurement Uncertainty
- Endorsement of Methods of Analysis Provisions in Codex Standards
- Guidance on Procedures for Conformity Assessment and Resolution of Disputes
- Use of Proprietary Methods in Codex Standards
- Report of an Inter-Agency Meeting on Methods of Analysis

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access copies of these documents (*see* **ADDRESSES**).

Public Meeting

At the February 9, 2011, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 32nd session of the CCMAS, Greg Diachenko (*see* **ADDRESSES**). Written comments should state that they relate to activities of the 32nd session of the CCMAS.

USDA Nondiscrimination Statement

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Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, *etc.*) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

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Additional Public Notification

Public awareness of all segments of rulemaking and policy development is

important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The Update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls, export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on January 12, 2011.

Karen Stuck,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2011–1147 Filed 1–19–11; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Qualified Products List for Engine Driven Pumps

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection, Qualified Products List for Engine Driven Pumps.

DATES: Comments must be received in writing on or before March 21, 2011 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Victoria (Tory) Henderson, Branch Director, Equipment and Chemicals, Forest Service, USDA, National Interagency Fire Center, 3833 S. Development Avenue, Boise, Idaho 83705. Comments also may be submitted via e-mail to: *thenderson@fs.fed.us.*

The public may inspect comments received at the National Interagency Fire Center (NIFC), Jack Wilson Building, Boise, ID during normal business hours. Visitors are encouraged to call ahead to 208–387–5512 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Ralph Gonzales or Sam Wu, San Dimas Technology and Development Center, 909–599–1267. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Qualified Products List for Engine Driven Pumps.

OMB Number: 0596–New.

Expiration Date of Approval: Not applicable.

Type of Request: New.

Abstract: The Forest Service needs to have available adequate types and quantities of self-contained engine driven pumps to accomplish fire management activities safely, efficiently, and effectively. To accomplish this objective, the Agency needs to evaluate and pre-approve commercial pumps that meet three following categories: Engine Driven Pumps, Lightweight Portable Pumps, and Portable Floating Pumps.

Engine driven pumps are defined as portable pumps which consist of a gasoline engine, centrifugal or positive displacement pump, and engine controls which weigh between 60–400 lbs. Lightweight portable pumps are "back packable" positive displacement or centrifugal pumps that use a gasoline engine which weigh up to sixty pounds. Floating portable pumps are self-priming and float on the water during operation.

Products must meet specification standards identified and maintained by the Forest Service's San Dimas Technology and Development Center (SDTDC) staff. This staff evaluates and approves commercially available pumps prior to use in fire management activities on lands managed by the Forest Service, Federal, and State Cooperators. Employees of SDTDC consider the following requirements when determining product effectiveness for use by Forest Service employees and Federal cooperators:

1. Pump performance. These performance requirements include pump pressure and flow ranges, priming and drafting performance parameters, weight and sound levels.

2. Reliability and endurance requirements. These requirements include a 100-hour endurance test and evaluation of the properties of materials used in construction.

3. Quality and refurbishment standards. The construction and assembly processes are evaluated to ensure that the pumps are robust, field serviceable, and can be refurbished and reissued.

4. Compatibility and interchangeability requirements. The engine driven pumps must be compatible with standard wildland fire hoses and other water handling appliances. Threads, physical dimensions, and markings are inspected to assure proper interface controls.

To evaluate portable pump products, SDTDC must collect product specific information from manufacturers. This information includes a qualification sample or any special tools to operate the pump; certificate of conformance for the material composition and properties of materials used in the construction and assembly of the pump; and user's manuals.

The information collected is necessary to ensure pumps are properly evaluated to meet specific requirements related to safety, effectiveness, efficiency, and reliability of the product prior to use in the field. If this information is not collected and pumps are not evaluated on an on-going basis, wildland fire fighters lives could be placed in danger using untested portable pumps during live fire management activities.

Estimate of Annual Burden: 3 hours.

Type of Respondents: Businesses (Manufacturers of portable pumps).

Estimated Annual Number of Respondents: 5.

Estimated Annual Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 45 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the

information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: January 14, 2011.

Barbara L. Cooper,

Acting Deputy Associate Chief, Business Operations.

[FR Doc. 2011–1202 Filed 1–19–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Collaborative Forest Landscape Restoration Program Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Collaborative Forest Landscape Restoration Program (CFLRP) Advisory Committee will meet via conference call. The purpose of the meeting is to come to consensus on the evaluation procedure that will be used to review Fiscal Year 2011 proposed CFLRP projects and make recommendations for project selection to the Secretary of Agriculture.

DATES: The meeting will be held February 4, 2011 from 1:30–3:30 p.m. EST.

ADDRESSES: The meeting will be held via conference call. The call in number is 888–390–0688, and the passcode is 3847973. Written comments should be sent to USDA Forest Service, Forest Management, Mailstop–1103, 1400 Independence Avenue, SW., Washington, DC 20250–1103. Comments may also be sent via e-mail to Megan Roessing, *mroessing@fs.fed.us,* or via facsimile to 202–205–1045.

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 USDA Forest Service, Forest Management, 201 14th Street, SW., Yates Building, Washington, DC 20024–1103. Visitors are encouraged to call ahead to 202–205–1688 to facilitate entry into the Forest Service building.

FOR FURTHER INFORMATION CONTACT: Megan Roessing, Biological Scientist, Forest Management, 202–205–0847.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Collaborative Forest Landscape Restoration Program matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided and individuals will have the opportunity to address the Committee at this session.

Dated: January 13, 2011.

Joel D. Holtrop,

Deputy Chief, NFS.

[FR Doc. 2011–1071 Filed 1–19–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Solicitation of Applications (NOSA) for Inviting Rural Business Enterprise Grant Program Applications for Grants To Provide Technical Assistance for Rural Transportation Systems

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS), an Agency within the USDA Rural Development mission area, solicits applications of two individual grants: one single grant from the passenger transportation funds appropriated for the Rural Business Enterprise Grant (RBEG) program and another single grant for Federally Recognized Native American Tribes' (FRNAT) from funds appropriated for the RBEG program. RBS will administer these awards under the RBEG program and 7 U.S.C. 1932(c)(2) for Fiscal Year (FY) 2011. Historically, Congress has appropriated funding for these specific programs. Last year, $500,000 was available for rural transportation projects and $250,000 for rural transportation projects for FRNAT. This Notice is being issued prior to passage of a FY 2011 Appropriations Act, which may or may not provide an appropriation for these programs, to allow applicants sufficient time to leverage financing, submit applications, and give the Agency time to process applications within FY 2011. A subsequent notice identifying the amount received in the appropriations, if any, will be published. Each grant is to be competitively awarded to a qualified national non-profit organization. One grant is for the provision of technical assistance to rural transportation projects. The other grant is for the provision of technical assistance to rural transportation projects operated by FRNAT only.

Expenses incurred in developing applications will be at the applicant's risk.

DATES: The deadline for receipt of applications in the USDA Rural Development State Office is no later than March 21, 2011. Applications received at a USDA Rural Development State Office after that date will not be considered for FY 2011 funding.

ADDRESSES: Entities wishing to apply for assistance should contact the appropriate USDA Rural Development State Office to receive copies of the application package. A list of the USDA Rural Development State Offices addresses and telephone numbers are as follows:

Alabama

USDA Rural Development State Office, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400/TDD (334) 279–3495

Alaska

USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7707/TDD (907) 761–8905

Arizona

USDA Rural Development State Office, 230 North First Avenue, Suite 206, Phoenix, AZ 85003–1706, (602) 280–8702/TDD (602) 280–8705

Arkansas

USDA Rural Development State Office, Federal Building, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200/TDD (501) 301–3279

California

USDA Rural Development State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5800/TDD (530) 792–5848

Colorado

USDA Rural Development State Office, Denver Federal Center, Building 56, Room 2300, P.O. Box 25426, Denver, CO 80225–0426, (720) 544–2903/TDD (800) 659–3656

Delaware-Maryland

USDA Rural Development State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3580/TDD (302) 857–3585

Florida/Virgin Islands

USDA Rural Development State Office, 4440 NW 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3400/TDD (352) 338–3499

Georgia

USDA Rural Development State Office, Stephens Federal Building, 355 East Hancock Avenue, Stop 300, Athens, GA 30601–2768, (706) 546–2162/TDD (706) 546–2034

Hawaii

USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8302/TDD (808) 933–8321

Idaho

USDA Rural Development State Office, 9173 West Barnes Drive, Suite A1, Boise, ID 83709, (208) 378–5601/TDD (208) 378–5644

Illinois

USDA Rural Development State Office, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6201/TDD (217) 403–6240

Indiana

USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 ext. 4/TDD (317) 290–3343

Iowa

USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663/TDD (515) 284–4858

Kansas

USDA Rural Development State Office, 1303 SW First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2777/TDD (785) 271–2767

Kentucky

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7300/TDD (859) 224–7422

Louisiana

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7920/TDD (318) 473–7655

Maine

USDA Rural Development State Office, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9161/TDD (207) 942–7331

Massachusetts/Rhode Island/Connecticut

USDA Rural Development State Office, 451 West Street, Amherst, MA 01002–2999, (413) 253–4302/TDD (413) 253–4590

Michigan

USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5190/TDD (517) 324–5169

Minnesota

USDA Rural Development State Office, 410 Farm Credit Service Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7800/TDD (651) 602–3799

Mississippi

USDA Rural Development State Office, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–4211/TDD (601) 965–5850

Missouri

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0987/TDD (573) 876–9480

Montana

USDA Rural Development State Office, 2229 Boot Hill Court, Bozeman, MT 59715, (406) 585–2580/TDD (406) 585–2562

Nebraska

USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, NE 68508, (308) 632–2195/TDD (402) 437–5093

Nevada

USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222/TDD (775) 885–0633

New Jersey

USDA Rural Development State Office, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ 08054, (856) 787–7700/TDD (856) 787–7784

New Mexico

USDA Rural Development State Office, 6200 Jefferson Street, Room 255, Albuquerque, NM 87109, (505) 761–4950/TDD (505) 761–4938

New York

USDA Rural Development State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6435/TDD (315) 477–6447

North Carolina

USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2015/TDD (919) 873–2003

North Dakota

USDA Rural Development State Office, Federal Building, Room 208, 220 East Rosser Avenue, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2037/TDD (701) 530–2113

Ohio

USDA Rural Development State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2390/TDD (614) 255–2554

Oklahoma

USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000/TDD (405) 742–1007

Oregon

USDA Rural Development State Office, 1201 Northeast Lloyd Boulevard, Suite 801, Portland, OR 97232, (503) 414–3305/TDD (503) 414–3387

Pennsylvania

USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2262/TDD (717) 237–2261

Puerto Rico

USDA Rural Development State Office, 654 Plaza Munoz Rivera Avenue, Suite 601, San Juan, PR 00936–6106, (787) 766–5095/TDD (787) 766–5332

South Carolina

USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163/TDD (803) 765–5697

South Dakota

USDA Rural Development State Office, Federal Building, Room 210, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1100/TDD (605) 352–1147

Tennessee

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1071, (615) 783–1300

Texas

USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700/TDD (254) 742–9712

Utah

USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4321/TDD (801) 524–3309

Vermont/New Hampshire

USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6080/TDD (802) 223–6365

Virginia

USDA Rural Development State Office, 1606 Santa Rosa Road, Suite 238, Richmond, VA 23229–5014, (804) 287–1552/TDD (804) 287–1753

Washington

USDA Rural Development State Office, 1835 Black Lake Boulevard SW, Suite B, Olympia, WA 98512–5715, (360) 704–7715/TDD (360) 704–7760

West Virginia

USDA Rural Development State Office, 1550 Earl Core Road, Suite 101, Morgantown, WV 26505, (304) 284–4860/TDD (304) 284–4836

Wisconsin

USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7671/TDD (715) 345–7614

Wyoming

USDA Rural Development State Office, P.O. Box 11005, 100 East B Street, Room 1005, Casper, WY 82601, (307) 233–6703/TDD (307) 233–6733

FOR FURTHER INFORMATION CONTACT: For additional information, please contact the appropriate USDA Rural Development State Office as provided in the **ADDRESSES** section of this Notice.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Business-Cooperative Service.

Solicitation Opportunity Title: Rural Business Enterprise Grants.

Announcement Type: Initial Solicitation Announcement.

Catalog of Federal Domestic Assistance Number: 10.769.

Dates: Application Deadline: Completed applications must be received in the USDA Rural Development State Office no later than March 21, 2011, to be eligible for FY 2011 grant funding. Applications received after this date will not be eligible for FY 2011 grant funding.

I. Funding Opportunity Description

The RBEG program is authorized by section 310B(c)(2) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1932(c)(2)). Regulations are contained in 7 CFR part 1942, subpart G. The primary objective of the program is to improve the economic conditions of rural areas. The program is administered on behalf of RBS at the State level by the USDA Rural Development State Offices. Assistance provided to rural areas under this program may include the provision of on-site technical assistance to local and regional governments, public transit agencies, and related non-profit and for-profit organizations in rural areas; the development of training materials; and the provision of necessary training assistance to local officials and agencies in rural areas.

Awards under the RBEG passenger transportation program will be made on a competitive basis using specific selection criteria contained in 7 CFR part 1942, subpart G, and in accordance with section 310B(c)(2) of the CONACT. Information required to be in the application package includes Forms SF 424, "Application for Federal Assistance;" RD 1940–20, "Request for Environmental Information;" Scope of Work Narrative; Income Statement; Balance Sheet or Audit for previous 3 years; AD–1047, "Debarment/Suspension Certification;" AD–1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion;" AD–1049, "Certification Regarding Drug-Free Workplace Requirements;" SF LLL, "Disclosure of Lobbying Activities;" RD 400–1, "Equal Opportunity Agreement;" RD 400–4, "Assurance Agreement;" a letter stating Board authorization to obtain assistance; and a letter certifying citizenship, as referenced in 7 CFR 1942.307(b). For the FRNAT grant, which must benefit Federally Recognized Native American Tribes, at least 75 percent of the benefits of the project must be received by members of Federally Recognized Native American Tribes. The project that scores the greatest number of points based on the RBEG selection criteria and the discretionary points will be selected for each grant. Applications will be tentatively scored by the Rural Development State Offices and submitted to the Rural Development National Office for review, final scoring, and selection.

Applicants must be qualified national non-profit organizations with experience in providing technical assistance and training to rural communities for the purpose of improving passenger transportation service or facilities. To be considered "national," RBS requires a qualified organization to provide evidence that it operates rural transportation assistance programming in multiple States. There is not a requirement to use the grant funds in a multi-State area. Under this Notice, grants will be made to qualified, private, non-profit organizations for the provision of technical assistance and training to rural communities for the purpose of improving passenger transportation services or facilities.

Definitions

The definitions are published at 7 CFR 1942.304.

II. Award Information

Type of Award: Grant.

Fiscal Year Funds: FY 2011.

Total Funding: If funding exists, it will be determined by the FY 2011 appropriations bill. The amount of grant funds available in FY 2011 will be announced in a separate **Federal Register** notice.

Approximate Number of Awards: Two

Average Award: Will be determined by amount received in the FY 2011 appropriations bill. The average of grant funds available in FY 2011 will be announced in a separate **Federal Register** notice.

Anticipated Award Date: May 5, 2011, subject to the availability of funding.

III. Eligibility Information

A. Eligible Applicants

To be considered eligible, an entity must be a private non-profit corporation serving rural areas. Grants will be competitively awarded to one or more qualified national organizations.

B. Cost Sharing or Matching

Matching funds are not required.

C. Other Eligibility Requirements

Applications will only be accepted from qualified national organizations to provide technical assistance for rural transportation.

D. Completeness Eligibility

Applications will not be considered for funding if they do not provide sufficient information to determine eligibility or are missing required elements.

IV. Fiscal Year 2011 Application and Submission Information

A. Address To Request Application Package

For further information, entities wishing to apply for assistance should contact the USDA Rural Development State Office provided in the **ADDRESSES** section of this Notice to obtain copies of the application package.

Applicants are encouraged to submit applications through the Grants.gov Web site at: *http://www.grants.gov.* Applications may be submitted in either electronic or paper format. Users of Grants.gov will be able to download a copy of the application package, complete it off line, and then upload and submit the application via the Grants.gov Web site. Applications may not be submitted by electronic mail.

- When you enter the Grants.gov web site, you will find information about submitting an application electronically through the site as well as the hours of operation. USDA Rural Development strongly recommends that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You may submit all documents electronically through the Web site, including all information typically included on the application and all necessary assurances and certifications.
- After electronically submitting an application through the Web site, the applicant will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number.
- USDA Rural Development may request that the applicant provide original signatures on forms at a later date.
- If applicants experience technical difficulties on the closing date and are unable to meet the deadline, you may submit a paper copy of your application to your respective Rural Development State Office. Paper applications submitted to a Rural Development State Office must meet the closing date and local time deadline.
- Please note that applicants can locate the downloadable application package for this program by the Catalog of Federal Domestic Assistance Number or FedGrants Funding Opportunity Number, which can be found at *http://www.Grants.gov.*

All applicants, whether filing applications through *www.Grants.gov* or by paper, must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or at *http://www.dnb.com.*

B. Content and Form of Submission

An application must contain all of the required elements. Each application received in a USDA Rural Development State Office will be reviewed to determine if it is consistent with the eligible purposes contained in section 310B(c)(2) of the CONACT. Each selection priority criterion outlined in 7 CFR 1942.305(b)(3), must be addressed in the application. Failure to address any of the criteria will result in a zero-point score for that criterion and will impact the overall evaluation of the application. Copies of 7 CFR part 1942, subpart G, will be provided by any interested applicant making a request to a USDA Rural Development State Office provided in the **ADDRESSES** section of this Notice.

All projects to receive technical assistance through these passenger transportation grant funds are to be identified when the applications are submitted to the USDA Rural Development State Office. Multiple project applications must identify each individual project, indicate the amount of funding requested for each individual project, and address the criteria as stated above for each individual project.

For multiple-project applications, the average of the individual project scores will be the score for that application.

C. Submission Dates and Times

Application Deadline Date: March 21, 2011

Explanation of Deadlines: Applications must be in the USDA Rural Development State Office by the deadline date.

V. Application Review Information

The Rural Development National Office will score applications based on the grant selection criteria and weights contained in 7 CFR part 1942, subpart G and will select a grantee subject to the grantee's satisfactory submission of the additional items required by 7 CFR part 1942, subpart G and the USDA Rural Development Letter of Conditions.

VI. Award Administration Information

A. Award Notices

Successful applicants will receive notification for funding from the USDA Rural Development State Office. Applicants must comply with all applicable statutes and regulations before the grant award will be approved. Unsuccessful applications will receive notification by mail. Grantees must further comply with applicable provisions of 7 CFR parts 3015, 3016, 3019, and 3052.

VII. Agency Contacts

For general questions about this announcement, please contact your USDA Rural Development State Office provided in the **ADDRESSES** section of this Notice.

VIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, the paperwork burden has been cleared by the Office of Management and Budget (OMB) under OMB Control Number 0570–0022.

Nondiscrimination Statement

"The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination write to USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider, employer, and lender."

Dated: January 7, 2011.

Judith A. Canales,

Administrator, Rural Business—Cooperative Service.

[FR Doc. 2011–1110 Filed 1–19–11; 8:45 am]

BILLING CODE 3410–XY–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, January 28, 2011; 11:30 a.m. EST.

PLACE: Via Teleconference. *Public Dial in:* 1–800–597–7623. *Conference ID#:* 37792479.

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:
- Consideration of Vermont SAC Chair.
- Re-chartering the Alabama SAC.

VI. Approval of Dec. 3, 2010 Meeting Minutes.
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: January 18, 2011.

Christopher Byrnes,

Delegated the Authority of the Staff Director.

[FR Doc. 2011–1277 Filed 1–18–11; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Census in Schools and Partnership Program Research

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 March 21, 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 Megan C. Kindelan, U.S. Census Bureau, 4600 Silver Hill Road, Suitland, MD 20746, (301) 763–2820 (w), *megan.c.kindelan@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

For the 2010 Census, among many integrated communications outreach efforts, the U.S. Census Bureau conducted the Census in Schools (CIS) Program and the Partnership Program (PP) with three primary objectives: (1) To increase the mail-back response rate of census forms; (2) to improve the accuracy and reduce differential undercount; and (3) to increase cooperation with enumerators in the field during the census data collection period. The CIS Program educated primary and secondary school students about the 2010 Census; the students, in turn, would influence their parents in returning the 2010 Census forms. The Census Bureau distributed materials, including promotional brochures, take-home materials, fact sheets, lesson plans, maps, quick start teaching guides, and other aids to increase the proportion of households returning completed 2010 Census forms. The Census Bureau distributed these materials to more than 118,000 schools representing grades Kindergarten through 12th grade. Some of these materials were in the form of printed copies. Hundreds of thousands of additional copies were downloaded in electronic form from the 2010 Census in Schools Web site.

At the same time, the Census Bureau also conducted the Partnership Program, involving commercial entities of national scope, state, local and tribal governments, and regional and local corporations and organizations. The purpose of the Partnership Program was to target historically "hard-to-count" (HTC) areas and increase the Census form mail-back rates. More than 257,000 partners participated in this program.

The Census Bureau needs to conduct collect and analyze qualitative data to address the following research questions: (a) What new methods can the Census Bureau use going forward, during the intercensal years, to reach out to educators and students from kindergarten to the graduate level to maintain strong relationships with the education community; (b) what are the needs of executive-level educators regarding statistical literacy and the types of materials Federal statistical agencies could provide to be most helpful with regards to statistics education, from the most basic level (kindergarten) to the most advanced (graduate studies); and (c) what can be done to improve the Census Partnership Program going forward and how best to maintain an active base of partners between censuses.

II. Method of Collection

The qualitative information will be collected via focus groups and interviews. The Census Bureau proposes to conduct 6 focus groups of primary, secondary, and college level administrators and teachers, with a maximum of 15 individuals per group to discuss questions concerning the Census in Schools Program and how it can be improved during the intercensal years as well as for the 2020 Census. Additionally, the Census Bureau is proposing to conduct 6 focus groups for organizations that participated in the Partnership Program for the 2010 Census, with a maximum of 15 individuals per focus group. Telephone interviews will also be conducted with 30 Partnership Program organizations to obtain data from those partners who are not able to attend the focus group sessions.

III. Data

OMB Control Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: School administrators and Teachers; representatives of corporations, and not-for-profit organizations.
Estimated Number of Respondents: 210.
Estimated Time per Response: 90 minutes per focus group session; 30 minutes per interview.
Estimated Total Annual Burden Hours: 285.
Estimated Total Annual Cost: There is no cost to respondents other than their time.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13 U.S.C. Section 141.

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: January 14, 2011.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–1116 Filed 1–19–11; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Annual Survey of State and Local Government Finances

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 March 21, 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 Jeff Barnett, Chief, Local Government Finance and Statistics Branch, Governments Division, U.S. Bureau of the Census, Washington, DC 20233–6800 [(301) 763–2787] (or via the Internet at *Jeffrey.L.Barnett@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request clearance for the forms necessary to conduct the public finance program which consists of an annual collection of information and a quinquennial collection in the census years ending in "2" and "7". During the upcoming three years, we intend to conduct the 2011 and 2013 Annual Survey of State and Local Government Finances and the 2012 Census of Governments: Finance.

The Annual Survey of State and Local Government Finance collects data on state government finances and estimates of local government revenue, expenditure, debt, and assets, nationally and within state areas. Data are collected for all agencies, departments, and institutions of the fifty state governments and for a sample of all local governments (counties, municipalities, townships, and special districts). Data for school districts are collected under a separate survey. In the census year, equivalent data are collected from all local governments.

Results of this survey are used by the Bureau of Economic Analysis to develop the public sector components of the National Income and Product Accounts. Other Federal agencies that make frequent use of these data include the Federal Reserve Board, the Congressional Research Service, the Government Accountability Office, and the Department of Justice. Other users include state and local government executives and legislators, policy makers, economists, researchers, and the general public.

II. Method of Collection

These surveys use multiple modes for data collection including: Web collection, mail canvass, telephone, e-reporting and central collection. Canvass methodology primarily consists of a mail out/mail back questionnaire. Responses will be scanned, and then put into an electronic format. Other methods used to collect data and maximize response include collecting local government data from central state sources and compiling from submitted financial audits, comprehensive financial reports, and public Internet outputs. Also, the finance forms can be completed on-line.

III. Data

OMB Control Number: 0607–0585.

Form Number: F–5, F–11, F–12, F–12(S), F–13, F–25, F–28, F–29, F–32, and F–42.

Type of Review: Regular submission.

Affected Public: State and local governments.

Estimated Number of Respondents: 11,589 (Annual) 50,613 (Census).

Estimated Time per Response: 2.965 hours (Annual), 2.892 hours (Census).

Estimated Total Annual Burden Hours: 34,367 (Annual), 146,379 (Census).

Estimated Total Annual Cost: Cost to respondents is estimated to be $788,433 (Annual) $3,358,214 (Census)

Note: Based upon the average hourly pay for full-time employment for the financial administration function within the 2007 Census of state and local government employment.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Sections 161 and 182.

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: January 14, 2011.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–1115 Filed 1–19–11; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Current Population Surveys (CPS)—Housing Vacancy Survey (HVS)

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 March 21, 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 Sheldon, U.S. Census Bureau, 7H108D, Washington, DC 20233–8400, (301) 763–7327.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is requesting clearance for the collection of data concerning the HVS. The current clearance expires July 31, 2011. The HVS has been conducted in conjunction with the CPS since 1956 and serves a broad array of data users as described below.

We conduct the HVS interviews with landlords or other knowledgeable people concerning vacant housing units identified in the monthly CPS sample and meeting certain criteria. The HVS provides the only quarterly and annual statistics on rental vacancy rates and homeownership rates for the United States, the four census regions, the 50 states and the District of Columbia, and the 75 largest metropolitan areas (MAs). Private and public sector organizations use these rates extensively to gauge and analyze the housing market with regard to supply, cost, and affordability at various points in time.

In addition, the rental vacancy rate is a component of the index of leading economic indicators published by the Department of Commerce.

Policy analysts, program managers, budget analysts, and congressional staff use these data to advise the executive and legislative branches of government with respect to the number and characteristics of units available for occupancy and the suitability of housing initiatives. Several other government agencies use these data on a continuing basis in calculating consumer expenditures for housing as a component of the gross national product; to project mortgage demands; and to measure the adequacy of the supply of rental and homeowner units. In addition, investment firms use the HVS data to analyze market trends and for economic forecasting.

II. Method of Collection

Field representatives collect this HVS information by personal-visit interviews in conjunction with the regular monthly CPS interviewing. We collect HVS data concerning units that are vacant and intended for year-round occupancy as determined during the CPS interview. Approximately 7,260 units in the CPS sample meet these criteria each month. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Control Number: 0607–0179.

Form Number: HVS–600 (Fact Sheet for the Housing Vacancy Survey), CPS–263 (MIS–1) (L) (Introductory letter explaining the need for the survey and answering frequently asked questions) and BC–1428RV (Brochure—The U.S. Census Bureau Respects Your Privacy and Keeps Your Personal Information Confidential).

Type of Review: Regular submission.

Affected Public: Individuals who have knowledge of the vacant sample unit (*e.g.,* landlord, rental agents, neighbors).

Estimated Number of Respondents: 7,260 per month.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 4,477 hours.

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., 182, and Title 29, U.S.C., 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: January 13, 2011.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–1095 Filed 1–19–11; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on February 10, 2011, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Public Session

1. Welcome and Introductions.
2. Review Status of Working Groups.
3. Proposals from the Public.

Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than February 3, 2011.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel,

formally determined on October 15, 2010, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 §§ (10)(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)1 and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: January 13, 2011.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2011–1159 Filed 1–19–11; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet on February 10, 2011, 10 a.m., Herbert C. Hoover Building, Room 6087B, 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Open Session

1. Opening Remarks and Introduction.
2. Remarks from the Bureau of Industry and Security Management.
3. Presentation on the High Performance Fiber Council.
4. Report on Composite Working Group and Export Control Classification Number (ECCN) Review Subgroup.
5. Report on Regime-Based Activities.
6. Public Comments and New Business.

Closed Session

7. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than February 3, 2011.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 27, 2010, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the portion of the meeting dealing with matters the premature disclosure of which would likely frustrate the implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public. For more information, call Yvette Springer at (202) 482–2813.

Dated: January 13, 2011.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2011–1158 Filed 1–19–11; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008]

Circular Welded Carbon Steel Pipes and Tubes From Taiwan; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1131 or (202) 482–0649, respectively.

Background

On June 30, 2010, the Department published the notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 37759 (June 30, 2010). The respondents were initially Yieh Hsing Enterprise Co., Ltd. (Yieh Hsing) and Yieh Phui Enterprise Co., Ltd. (Yieh Phui). On November 18, 2010, the Department published a notice rescinding the review with respect to Yieh Hsing. *See Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 70723 (November 18, 2010). The current deadline for the preliminary results of this review is January 31, 2011.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order for which a review is requested. *See also* 19 CFR 351.213(h).

The Department finds it is not practicable to complete the preliminary results of this review within the original time frame because we require additional time to analyze various issues involving, for example, Yieh Phui's cost allocation methodologies and reported date of sale methodology. Accordingly, the Department is extending the time limit for completion of the preliminary results of this administrative review by 120 days, to May 31, 2011. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: January 13, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–1162 Filed 1–19–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–818]

Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 14, 2010, the U.S. Department of Commerce (the Department) published in the **Federal Register** its preliminary results of the administrative review of the countervailing duty (CVD) order on corrosion-resistant carbon steel flat products (CORE) from the Republic of Korea (Korea) for the period of review (POR) January 1, 2008, through December 31, 2008. *See Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review,* 75 FR 55745 (September 14, 2010) (*Preliminary Results*). We rescinded the administrative review, in part, with respect to Dongbu Steel Co., Ltd. (Dongbu) and Pohang Iron and Steel Co., Ltd. (POSCO) and preliminarily found that Hyundai HYSCO Ltd. (HYSCO) received *de minimis* countervailable subsidies during the POR. We did not receive any comments on our *Preliminary Results,* however, we have made revisions regarding two programs as discussed below.

DATES: *Effective Date:* January 20, 2011.

FOR FURTHER INFORMATION CONTACT: Gayle Longest at (202) 482–3338, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 1993, the Department published in the **Federal Register** the CVD order on CORE from Korea. *See Countervailing Duty Orders and Amendments to Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Korea,* 58 FR 43752 (August 17, 1993). On September 14, 2010, the Department published in the **Federal Register** its *Preliminary Results* of the administrative review of this order for the period January 1, 2008, through December 31, 2008. *See Preliminary Results,* 75 FR 55745. In accordance with 19 CFR 351.213(b), this administrative review covers HYSCO, a producer and exporter of subject merchandise.

In the *Preliminary Results,* we indicated that we would request from the Government of Korea (GOK) a full translation of the Act on Special Measures for the Promotion of Specialized Enterprises for Parts and Materials. The GOK filed a timely response on September 17, 2010.

In the *Preliminary Results,* we invited interested parties to submit briefs or request a hearing. Neither the petitioner, U.S. Steel Corporation, nor the respondent commented on the *Preliminary Results.* Moreover, the Department did not conduct a hearing in this review because none was requested.

Although we received no comments from interested parties, the Department has reconsidered its findings regarding the Act on Special Measures for the Promotion of Specialized Enterprises for Parts and Materials program and the Act on the Promotion of the Development of Alternative Energy program in these final results. The revisions to our calculations and findings concerning these programs are addressed in the accompanying Decision Memorandum for the Countervailing Duty Administrative Review on Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea (Decision Memorandum), which is dated concurrently with and hereby adopted by this notice. Parties can find a complete discussion of these revisions and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit of the main commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at *http://ia.ita.doc.gov/frn.*

The paper copy and the electronic version of the Decision Memorandum are identical in content.

Scope of Order

Products covered by the order are CORE from Korea. These products include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness. The merchandise subject to the order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7210.30.0000, 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.29.0090, 7210.60.0000, 7210.61.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.20.1500, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.30.15.0000, 7217.32.5000, 7217.33.5000, 7217.39.1000, 7217.39.5000, 7217.90.1000 and 7217.90.5000. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to the order is dispositive.

Period of Review

The POR for which we are measuring subsidies is from January 1, 2008, through December 31, 2008.

Final Results of Review

As noted above, the Department received no comments concerning the *Preliminary Results.* However, we find that certain changes are warranted in these final results. As a result, we have made adjustments to our calculations as explained in our Decision Memorandum. Therefore, in these final results, we find that HYSCO received a net subsidy of 0.05 percent *ad valorem,* a *de minimis* rate, during the POR.

Listed below are the programs we examined in the review and our findings with respect to each of these programs. For a complete analysis of the programs found to be countervailable, not to confer a benefit during the POR, not to be countervailable, and not to be used, *see* the *Preliminary Results.*

I. Programs Determined To Confer Subsidies During the POR

A. Short-Term Export Financing

B. Reduction in Taxes for Operation in Regional and National Industrial Complexes
C. GOK's Direction of Credit for Loans Issued Prior to 2002
D. R&D Grants and Loans under the Act on Special Measures for the Promotion of Specialized Enterprises for Parts and Materials

II. Programs That Provided No Benefits During the POR

A. Research and Development Grants Under the Industrial Development Act (IDA)
B. Energy Savings Fund Program
C. Overseas Resource Development Program: Loan from Korea Resources Corporation (KORES)
D. Overseas Resource Development Program: Loan from Korea National Oil Corporation (KNOC)
E. Long-Term Loans from the Korean Development Bank (KDB) Issued in Years 2002 through 2008
F. Overseas Resource Development Program: Loan from KEXIM
G. R&D Grants and Loans under the Act on the Promotion of the Development of Alternative Energy

III. Programs Found Not To Have Been Used During the POR

A. Reserve for Research and Manpower Development Fund Under RSTA Article 9 (TERCL Article 8)
B. RSTA Article 11: Tax Credit for Investment in Equipment to Development Technology and Manpower (TERCL Article 10)
C. Reserve for Export Loss Under TERCL Article 16
D. Reserve for Overseas market Development Under TERCL Article 17
E. Reserve for Export Loss Under TERCL Article 22
F. Exemption of Corporation Tax on Dividend Income from Overseas Resources Development Investment Under TERCL Article 24
G. Tax Credits for Temporary Investments Under TERCL Article 27
H. Social Indirect Capital Investment Reserve Funds Under TERCL Article 28
I. Energy-Servings Facilities Investment Reserve Funds Under TERCL Article 29
J. Reserve for Investment (Special Cases of Tax for Balanced Development Among Areas Under TERCL Articles 41–45
K. Tax Credits for Specific Investments Under TERCL Article 71
L. Asset Revaluation Under Article 56(2) of the Tax Reduction and Exemption Control Act (TERCL)
M. Emergency Load Reduction Program
N. Electricity Discounts Under the Requested Loan Adjustment Program
O. Electricity Discounts Under the Emergency Load Reductions Program
P. Export Industry Facility Loans and Specialty Facility Loans
Q. Local Tax Exemption on Land Outside of a Metropolitan Area
R. Short-Term Trade Financing Under the Aggregate Credit Ceiling Loan Program Administered by the Bank of Korea
S. Industrial Base Fund
T. Excessive Duty Drawback
U. Private Capital Inducement Act
V. Scrap Reserve Fund
W. Special Depreciation of Assets on Foreign Exchange Earnings
X. Export Insurance Rates Provided by the Korean Export Insurance Corporation
Y. Loans from the National Agricultural Cooperation Federation
Z. Tax Incentives from Highly Advanced Technology Businesses Under the Foreign Investment and Foreign Capital Inducement Act
AA. Other Subsidies Related to Operations at Asan Bay: Provision of Land and Exemption of Port Fees Under the Harbor Act
AB. D/A Loans Issued by the Korean Development Bank and Other Government-Owned Banks
AC. R&D Grants Under the Promotion of Industrial Technology Innovation Act
AD. Export Loans by Commercial Banks Under KEXIM's Trade Bill Rediscounting Program
AE. Restriction of Special Taxation Act (RSTA) Article 94: Equipment Investment to Promote Worker's Welfare

Assessment Rates/Cash Deposits

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these final results of review to liquidate shipments of subject merchandise by HYSCO entered, or withdrawn from warehouse, for consumption on or after January 1, 2008, through December 31, 2008, without regard to countervailing duties. We will also instruct CBP not to collect cash deposits of estimated countervailing duties on shipments of the subject merchandise by HYSCO entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review.

For all non-reviewed companies, the Department has instructed CBP to assess countervailing duties at the cash deposit rates in effect at the time of entry, for entries between January 1, 2008, and December 31, 2008. The cash deposit rates for all companies not covered by this review are not changed by the results of this review, and remain in effect until further notice.

Return or Destruction of Proprietary Information

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: January 12, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–1160 Filed 1–19–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–707]

Granular Polytetrafluoroethylene Resin From Japan: Final Results of Sunset Review and Revocation of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 1, 2010, the Department of Commerce ("the Department") initiated the sunset review of the antidumping duty order on granular polytetrafluoroethylene resin ("PTFE resin") from Japan. *See Initiation of Five-Year ("Sunset") Review,* 75 FR 67082 (November 1, 2010) ("*Initiation Notice*"). Because the domestic parties did not participate in this review, the Department is revoking this antidumping duty order.

DATES: *Effective Date:* December 22, 2010.

FOR FURTHER INFORMATION CONTACT: Joseph Shuler, AD/CVD Operations Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1293.

SUPPLEMENTARY INFORMATION:

Background

On August 24, 1988, the Department published an antidumping duty order on imports of PTFE resin from Japan. *See Antidumping Duty Order; Granular Polytetrafluoroethylene Resin From Japan,* 53 FR 32267 (August 24, 1988). On December 22, 2005, the Department published its most recent continuation of these orders. *See Continuation of Antidumping Duty Orders on Granular Polytetrafluoroethylene Resin from Italy and Japan,* 70 FR 76026 (December 22, 2005). On November 1, 2010, the Department initiated the current sunset review of this order. *See Initiation Notice.*

We did not receive a notice of intent to participate from domestic interested parties in this sunset review by the applicable deadline. As a result, in accordance with 19 CFR 351.218(d)(1)(iii)(A), the Department determined that no domestic interested party intends to participate in this sunset review, and on November 22, 2010, we notified the International Trade Commission, in writing, that we intended to issue a final determination revoking this antidumping duty order. *See* 19 CFR 351.218(d)(1)(iii) and (B)(2).

Scope of the Order

The merchandise covered by the antidumping duty order is PTFE resin, filled or unfilled. The order excludes PTFE dispersions in water, fine powders, and reprocessed PTFE powder. PTFE resin is currently classifiable under subheading 3904.61.00 of the HTSUS. The order covers all PTFE resin, regardless of its tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the order remains dispositive.

Determination To Revoke

Pursuant to section 751(c)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.218(d)(1)(iii)(B)(3), if no domestic interested party files a notice of intent to participate, the Department shall, within 90 days after the initiation of the review, issue a final determination revoking the order. Because the domestic interested parties did not file a notice of intent to participate in this sunset review, the Department finds that no domestic interested party is participating in this sunset review. Therefore, we are revoking this antidumping duty order.

Effective Date of Revocation

The effective date of revocation is December 22, 2010, the fifth anniversary of the date of publication in the **Federal Register** of the most recent notice of continuation of this antidumping duty order. Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.222(i)(2)(i), the Department intends to instruct U.S. Customs and Border Protection, 15 days after publication of the notice, to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after December 22, 2010. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative review of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

This five-year ("sunset") review and notice are in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: January 13, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–1164 Filed 1–19–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA150

Marine Mammals; File No. 14259

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that The Burke Museum of Natural History and Culture (Julie Stein, Responsible Party), University of Washington, Box 353010, 17th Ave NE. at NE. 45th Street, Seattle, WA 98195, has applied in due form for a permit to import, export, receive, possess, analyze, and archive marine mammal parts for scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before February 22, 2011.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 14259 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by e-mail to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the e-mail comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Laura Morse or Jennifer Skidmore, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The Burke Museum is requesting authorization to import, export, receive, possess, analyze and archive marine mammal and endangered species parts. The applicant is requesting parts of all marine mammals under NMFS jurisdiction to be included in this permit. Please refer to the following Web site for the list of species: *http://www.nmfs.noaa.gov/pr/species/mammals/.* No live animal takes are being requested and no incidental harassment of animals would occur. Parts would be archived by the Burke Museum and used to support research studies and incidental education. A five-year permit is requested.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: January 13, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–1179 Filed 1–19–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RIN 0648–XA158]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held February 7–10, 2011.

ADDRESSES: The meetings will be held at the Courtyard Marriott, 1600 E. Beach Blvd, Gulfport, MS 39501.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen Bortone, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Council

Wednesday, February 9, 2011

3:30 p.m.—The Council meeting will begin with a review of the agenda and approval of the minutes.

3:45 p.m.–4 p.m.—The Council will receive a presentation titled "Fisheries 101".

4 p.m.–6 p.m.—The Council will receive public testimony on exempted fishing permits (EFPs), if any and hold an open public comment period regarding any fishery issue of concern. People wishing to speak before the Council should complete a public comment card prior to the comment period.

Thursday, February 10, 2011

8:30 a.m.—5:15 p.m.—The Council will review and discuss reports from the committee meetings as follows: Sustainable Fisheries/Ecosystem; Reef Fish; Administrative Policy; Habitat Protection; SEDAR Selection; AP Selection; Data Collection; Budget/Personnel; Shrimp; Outreach & Education; Coral; Spiny Lobster/Stone Crab; and Coastal Migratory Pelagic (Mackerel).

5:15 p.m.–5:30 p.m.—Other Business items will follow.

Approximately 5:30 p.m., the Council will conclude its meeting.

Committees

Monday, February 7, 2011

8:30 a.m.–11:30 a.m. & 1 p.m.–2 p.m.—The Sustainable Fisheries/Ecosystem Committee will meet to receive an update on Ecosystem activities; receive a report from the Sector Separation workshop; review the Generic Annual Catch Limits/Accountability Measures Amendment; and review a Scoping Document for the Generic Earned Income Requirement/Crew Size Amendment.

2 p.m.–3:45 p.m.—The Administrative Policy Committee will review and potentially take final action on the Administrative Handbook; discuss initiating a strategic plan for the Council; and discuss SSC attendance issues and possible solutions.

3:45 p.m.–4:15 p.m.—The Habitat Protection Committee will meet to hear summaries and recommendations of the Habitat Protection Advisory Panels' meetings regarding the Essential Fish Habitat 5-year Review Report.

4:15 p.m.–4:45 p.m.—The Data Collection committee will meet to receive a summary and recommendations of the Vessel Monitoring Systems Advisory Panel.

4:45 p.m.–5 p.m.—SEDAR Selection Committee/Full Council. The SEDAR Selection Committee and full Council will receive a report on the SEDAR Steering Committee meeting.

5 p.m.–5:30 p.m.—Advisory Panel Selection Committee/Full Council will discuss the makeup of the new Ad Hoc Individual Fishing Quota Review Advisory Panel.

5:30 p.m.–5:45 p.m.—CLOSED SESSION—Advisory Panel Selection Committee/Full Council will appoint members to the new Ad Hoc Individual Fishing Quota Review Advisory Panel.

5:45 p.m.–6 p.m.—CLOSED SESSION—The Full Council will meet to hear a litigation briefing.

Recess

Tuesday, February 8, 2010

8:30 a.m.–9 a.m.—The Budget Committee will review the fourth quarter budget.

9 a.m.–10 a.m.—The Shrimp Management Committee will review the 2010 Texas Closure and consider the 2011 Texas closure; receive a summary of the Shrimp Advisory Panel meeting; receive a preliminary report on the 2010 shrimp effort; and hear a report of the Sawfish Workshop.

10 a.m.–12 noon & 1:30 p.m.–5:30 p.m.—The Reef Fish Management Committee will receive an update of the 2010 red snapper landings and status of the regulatory amendment; review the mutton snapper and goliath grouper benchmark assessments; review the re-run of the gag update assessment; review the goliath grouper assessment; discuss the impact of observed discard estimates on the red grouper stock assessment; review an options paper for a red snapper regulatory amendment to adjust the fall closing date and allow for weekend openings; receive a report on the Limited Access Privilege Program Advisory Panel meeting; discuss the individual fishing quota finance program; and review an individual fishing quota discussion paper.

Recess

Immediately Following Committee Recess—There will be an informal open public question and answer session on Gulf of Mexico Fishery Management Issues.

Wednesday February 9, 2011

8:30 a.m.–10 a.m.—The Spiny Lobster/Stone Crab Committee will review the actions of the South Atlantic Council regarding Joint Amendment 10 for Spiny Lobster and then approve the amendment for public hearings.

10 a.m.–12:30 p.m.—The Coastal Migratory Pelagics (Mackerel) Committee will review Draft Amendment 18 to the Coastal Migratory Pelagics and consider approval for public hearings.

2 p.m.–2:45 p.m.—The Outreach & Education Committee will hear a summary of the Outreach & Education Advisory Panel.

2:45 p.m.–3:30 p.m.—The Coral Management Committee will hear a presentation titled "Ecology &

Conservation of Deep-sea Coral Habitats & Communities in the Gulf of Mexico."

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date/time established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Trish Kennedy at the Council (*see* **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: January 14, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–1108 Filed 1–19–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Closed Meetings of the Department of Defense Wage Committee

AGENCY: DoD.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on Tuesday, February 8, 2011, and Tuesday, February 22, 2011, at 10 a.m. at 1400 Key Boulevard, Level A, Room A101, Rosslyn, Virginia, 22209. Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: January 13, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–1086 Filed 1–19–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Academy Board of Visitors Notice of Meeting

AGENCY: U.S. Air Force Academy Board of Visitors, DoD.

ACTION: Meeting notice.

SUMMARY: Pursuant to Section 9355, Title 10, United States Code (U.S.C.), the United States Air Force Academy (USAFA) Board of Visitors (BoV) will meet in Harmon Hall, 2304 Cadet Drive, Suite 3300, at USAFA in Colorado Springs, CO, on 4–5 February 2011. The meeting will begin on Friday, 4 February at 1330 p.m. and continue the next day, 5 February at 0710 a.m. The purpose of this meeting is to review morale and discipline, social climate, curriculum, instruction, infrastructure, fiscal affairs, academic methods, and other matters relating to the Academy. Specific topics for this meeting include updates on select USAFA metrics; an overview of the bi-annual Sexual Assault and Gender Relations Report; an overview of the USAFA diversity strategic plan; an overview of Don't Ask Don't Tell—the Way Ahead; and an overview of the Association of Graduates and University Endowment.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Administrative Assistant to the Secretary of the Air Force has determined that a portion of this meeting shall be closed to the public. The Administrative Assistant to the Secretary of the Air Force, in consultation with the Office of the Air Force General Counsel, has determined in writing that the public interest requires two portions of this meeting be closed to the public because it will involve matters covered by subsection (c)(6) of 5 U.S.C. 552b. The Character update/Status of discipline will discuss protected information on individual cases. Likewise, the focus groups will require cadets to share personal information, opinions and experiences concerning their superiors, peers, and the Academy. Closure of these portions of the meeting is appropriate under 5 U.S.C. 552b(c)(6) to protect the privacy of low level "employees."

Public attendance at the open portions of this USAFA BoV meeting shall be accommodated on a first-come, first-served basis up to the reasonable and safe capacity of the meeting room. In addition, any member of the public wishing to provide input to the USAFA BoV should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act (FACA) and the procedures described in this paragraph. Written statements must address the following details: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and provide any necessary background information. Written statements can be submitted to the Designated Federal Officer (DFO) at the Air Force Pentagon address detailed below at any time. However, if a written statement is not received at least 10 days before the first day of the meeting which is the subject of this notice, then it may not be provided to, or considered by, the BoV until its next open meeting. The DFO will review all timely submissions with the BoV Chairperson and ensure they are provided to members of the BoV before the meeting that is the subject of this notice. For the benefit of the public, rosters that list the names of BoV members and any releasable materials presented during open portions of this BoV meeting shall be made available upon request.

If, after review of timely submitted written comments, the BoV Chairperson and DFO deem appropriate, they may choose to invite the submitter of the written comments to orally present their issue during an open portion of the BoV meeting that is the subject of this notice. Members of the BoV may also petition the Chairperson to allow specific persons to make oral presentations

before the BoV. Per 41 CFR 102–3.140(d), any oral presentations before the BoV shall be in accordance with agency guidelines provided pursuant to a written invitation and this paragraph. Direct questioning of BoV members or meeting participants by the public is not permitted except with the approval of the DFO and Chairperson.

FOR FURTHER INFORMATION CONTACT: To attend this BoV meeting, contact Mr. David Boyle, USAFA Programs Manager, Directorate of Force Development, Deputy Chief of Staff, Manpower, Personnel, and Services AF/A1DOA, 2221 S. Clark St., Ste 500, Arlington, VA, 22202, (703) 604–8158.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2011–1122 Filed 1–19–11; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2011–0001]

Privacy Act of 1974; System of Records

AGENCY: U.S. Marine Corps, DoD.

ACTION: Notice to Delete Four Systems of Records.

SUMMARY: The U.S. Marine Corps is deleting four systems of records notices 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 February 22, 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: Ms. Tracy Ross at (703) 614–4008, or Headquarters, U.S. Marine Corps, FOIA/PA Section (ARSF), 2 Navy Annex, Room 3134, Washington, DC 20380–1775.

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 U.S. Marine Corps proposes to delete four systems of records notices 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: January 13, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions:

MIL00001, Assignment and Occupancy of Family House Records (May 11, 1999, 64 FR 25299).

MIL00002, Unaccompanied Personnel Housing Registration System (February 22, 1993, 58 FR 10630).

Reason: These records are covered under system of records notice NM11101–1, DON Family and Bachelor Housing Program (April 1, 2008, 73 FR 17334), therefore these notices can be deleted.

MIL00014, Exchange Privilege Authorization Log (February 22, 1993, 58 FR 10630).

MIL00022, Delinquent Clothing Alteration List (February 22, 1993, 58 FR 10630).

Reason: Presenting a valid Military ID has rendered these systems obsolete; therefore these notices can be deleted. All records have run their retention/disposition and have been destroyed.

[FR Doc. 2011–1087 Filed 1–19–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 21, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 13, 2011.

Darrin A. King,

Director Information Collection Clearance Division, Regulatory Information Management Services Office of Management.

Federal Student Aid

Type of Review: Extension..

Title of Collection: Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program Teacher Loan Forgiveness Forms.

OMB Control Number: 1845–0059.

Agency Form Number(s): N/A.

Frequency of Responses: On Occasion.

Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 8,700.

Total Estimated Number of Annual Burden Hours: 2,871.

Abstract: These forms serve as the means by which eligible borrowers in the Federal Family Education Loan Program and the William D. Ford Federal Direct Loan Program apply for teacher loan forgiveness and request forbearance on their loans while performing qualifying teaching service. The Teacher Loan Forgiveness Application is used by eligible Federal Family Education Loan and Direct Loan program borrowers; borrowers apply for loan forgiveness after they have completed five years of qualifying teaching service at a low-income elementary school, secondary school, or educational service agency. The Teacher Loan Forgiveness Forbearance Request serves as the means by which a borrower who intends to apply for teacher loan forgiveness requests forbearance (permission to temporarily cease making payments) on the loans for which he or she is seeking forgiveness while performing qualifying teaching service applies for said loan forgiveness.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4485. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–1178 Filed 1–19–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Monday, January 10, 2011.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–35–000

Applicants: NStar, Northeast Utilities.

Description: Application for Authorization of Disposition of Jurisdictional Assets and Merger of NSTAR and Northeast Utilities.

Filed Date: 01/07/2011.

Accession Number: 20110107–5284.

Comment Date: 5 p.m. Eastern Time on Monday, February 7, 2011.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–43–000.

Applicants: LSP Energy, Inc.

Description: Notice of Self-Certifiation of EWG Status of LSP Energy, Inc.

Filed Date: 01/07/2011.

Accession Number: 20110107–5128.

Comment Date: 5 p.m. Eastern Time on Friday, January 28, 2011.

Docket Numbers: EG11–44–000.

Applicants: Milford Wind Corridor Phase II, LLC.

Description: Notice of Self-Certification of Milford Wind Corridor Phase II, LLC as an Exempt Wholesale Generator.

Filed Date: 01/07/2011.

Accession Number: 20110107–5266.

Comment Date: 5 p.m. Eastern Time on Friday, January 28, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER03–721–015.

Applicants: New Harquahala Generating Company, LLC.

Description: Supplement to Updated Market Power Analysis for New Harquahala Generating Company, LLC.

Filed Date: 01/07/2011.

Accession Number: 20110107–5282.

Comment Date: 5 p.m. Eastern Time on Friday, January 28, 2011.

Docket Numbers: ER04–925–023; *ER04–925–024.*

Applicants: Merrill Lynch Commodities, Inc.

Description: Merrill Lynch Commodities, Inc. submits Notice of Nonmaterial Change in Status and Supplemental Information.

Filed Date: 01/07/2011.

Accession Number: 20110107–5283.

Comment Date: 5 p.m. Eastern Time on Friday, January 28, 2011.

Docket Numbers: ER11–67–001.

Applicants: Beacon Power Corporation.

Description: Beacon Power Corporation submits tariff filing per 35: Stephentown FERC Electric MBR Tariff to be effective 12/14/2010.

Filed Date: 12/20/2010.

Accession Number: 20101220–5000.

Comment Date: 5 p.m. Eastern Time on Monday, January 10, 2011.

Docket Numbers: ER11–1878–001.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc. submits tariff filing per 35: Compliance Filing, Nebraska Public Power District Interconnection & Interchange to be effective N/A.

Filed Date: 01/07/2011.

Accession Number: 20110107–5229.

Comment Date: 5 p.m. Eastern Time on Friday, January 28, 2011.

Docket Numbers: ER11–2048–002.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits tariff filing per 35: Compliance Filing to Update Filing Type Code and Record Effective Priority Order to be effective 4/1/2011.

Filed Date: 01/07/2011.

Accession Number: 20110107–5103.

Comment Date: 5 p.m. Eastern Time on Friday, January 28, 2011.

Docket Numbers: ER11–2084–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.17(b): Module B Facilities Study Procedures Errata to be effective 1/12/2011.

Filed Date: 12/02/2010.

Accession Number: 20101202–5093.

Comment Date: 5 p.m. Eastern Time on Thursday, January 20, 2011.

Docket Numbers: ER11–2145–001.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits tariff filing per 35.17(b): Amend SGIA 9415 Kaiser Way Fontana CA 92335 Solar Project SA 287 to be effective 11/19/2010.

Filed Date: 01/07/2011.

Accession Number: 20110107–5076.

Comment Date: 5 p.m. Eastern Time on Friday, January 28, 2011.

Docket Numbers: ER11–2192–001.

Applicants: Red Mesa Wind, LLC.

Description: Red Mesa Wind, LLC submits tariff filing per 35.17(b): Red Mesa Revisions to Tariff Language to be effective 11/25/2010.

Filed Date: 01/07/2011.

Accession Number: 20110107–5000.

Comment Date: 5 p.m. Eastern Time on Friday, January 28, 2011.

Docket Numbers: ER11–2400–001.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits tariff filing per 35.17(b): Errata to XML Metadata: Proposed Effective Date ER11–2400, to be effective 3/1/2011.

Filed Date: 01/07/2011.

Accession Number: 20110107–5157.

Comment Date: 5 p.m. Eastern Time on Friday, January 28, 2011.

Docket Numbers: ER11–2646–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc. submits tariff filing per 35: Schedule 3A, Generator Regulation & Frequency Response Svc to be effective 8/31/2010.

Filed Date: 01/07/2011.

Accession Number: 20110107–5071.

Comment Date: 5 p.m. Eastern Time on Friday, January 28, 2011.

Docket Numbers: ER11–2647–000.

Applicants: Carolina Power & Light Company.

Description: Cancellation of NITSA with Piedmont EMC by Carolina Power & Light Company.

Filed Date: 01/07/2011.

Accession Number: 20110107–5075.

Comment Date: 5 p.m. Eastern Time on Friday, January 28, 2011.

Docket Numbers: ER11–2648–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): Service Agreement Deadline after System Impact Study re Tariff Section 205.4.1 to be effective 3/9/2011.

Filed Date: 01/07/2011.

Accession Number: 20110107–5106.

Comment Date: 5 p.m. Eastern Time on Friday, January 28, 2011.

Docket Numbers: ER11–2649–000.

Applicants: 3C Solar LLC.

Description: 3C Solar LLC submits tariff filing per 35.12: 3C Solar LLC MBR Tariff to be effective 3/8/2011.

Filed Date: 01/07/2011.

Accession Number: 20110107–5136.

Comment Date: 5 p.m. Eastern Time on Friday, January 28, 2011.

Docket Numbers: ER11–2650–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): Compressed Air Energy Storage Station Power Definition Revision, to be effective 3/9/2011.

Filed Date: 01/07/2011.

Accession Number: 20110107–5156.

Comment Date: 5 p.m. Eastern Time on Friday, January 28, 2011.

Docket Numbers: ER11–2651–000.

Applicants: Mid-Continent Area Power Pool.

Description: Mid-Continent Area Power Pool submits a Notice of Cancellation of their Schedule F, FERC Electric Tariff, First Revised Volume 1.

Filed Date: 01/06/2011.

Accession Number: 20110107–0201.

Comment Date: 5 p.m. Eastern Time on Thursday, January 27, 2011.

Docket Numbers: ER11–2652–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits tariff filing per 35.13(a)(2)(iii): Top of the World Facilities Maintenance Agreement to be effective 12/8/2010.

Filed Date: 01/07/2011.

Accession Number: 20110107–5182.

Comment Date: 5 p.m. Eastern Time on Friday, January 28, 2011.

Docket Numbers: ER11–2653–000.

Applicants: Mid-Continent Area Power Pool.

Description: Mid-Continent Area Power Pool submits a Notice of Cancellation of their rate schedule designations for their restated agreement, FERC Electric Tariff, First Revised Volume 2 to be effective 4/1/11.

Filed Date: 01/06/2011.

Accession Number: 20110107–0202.

Comment Date: 5 p.m. Eastern Time on Thursday, January 27, 2011.

Docket Numbers: ER11–2654–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 205 Filing of LGIA Among NYISO, NYPA and Astoria Energy II to be effective 12/20/2010.

Filed Date: 01/07/2011.

Accession Number: 20110107–5224.

Comment Date: 5 p.m. Eastern Time on Friday, January 28, 2011.

Docket Numbers: ER11–2655–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): 1517R4 DWS Frisco, LLC SGIA to be effective 12/8/2010.

Filed Date: 01/07/2011.

Accession Number: 20110107–5239.

Comment Date: 5 p.m. Eastern Time on Friday, January 28, 2011.

Docket Numbers: ER11–2656–000.

Applicants: Black Hills Power, Inc.

Description: Black Hills Power, Inc. submits tariff filing per 35.13(a)(2)(iii): Spinning Reserve Service Agreement to be effective 1/10/2011.

Filed Date: 01/07/2011.

Accession Number: 20110107–5269.

Comment Date: 5 p.m. Eastern Time on Friday, January 28, 2011.

Docket Numbers: ER11–2657–000.

Applicants: Milford Wind Corridor Phase II, LLC.

Description: Milford Wind Corridor Phase II, LLC submits tariff filing per 35.12: Application for Order Accepting Market-Based Rate Tariff to be effective 1/18/2011.

Filed Date: 01/07/2011.

Accession Number: 20110107–5275.

Comment Date: 5 p.m. Eastern Time on Friday, January 28, 2011.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–12–000.

Applicants: PJM Interconnection L.L.C.

Description: Amendment to Application of PJM Interconnection L.L.C.

Filed Date: 01/07/2011

Accession Number: 20110107–5230

Comment Date: 5 p.m. Eastern Time on Tuesday, January 18, 2011.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC11–3–000

Applicants: Mount Miller Wind Energy Limited Partner

Description: Mount Miller Wind Energy Limited Partnership Notification of Self-Certification of Foreign Utility Company Status.

Filed Date: 01/07/2011

Accession Number: 20110107–5155

Comment Date: 5 p.m. Eastern Time on Friday, January 28, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–1100 Filed 1–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 12, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–116–002.
Applicants: Trans Bay Cable LLC.
Description: Trans Bay Cable LLC submits update to its 10/23/09 filing re Cost of Service Rate Update.
Filed Date: 01/11/2011.
Accession Number: 20110112–0201.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 01, 2011.

Docket Numbers: ER10–2721–001.
Applicants: El Paso Electric Company.
Description: El Paso Electric Company submits tariff filing per 35: Compliance Refiling of Market-Based Rate Tariff to be effective 9/17/2010.
Filed Date: 01/10/2011.
Accession Number: 20110110–5101.
Comment Date: 5 p.m. Eastern Time on Monday, January 31, 2011.

Docket Numbers: ER10–2288–002.
Applicants: Optim Energy Marketing LLC.
Description: Optim Energy Marketing LLC submits tariff filing per 35: Optim MBR Tariff Compliance filing to be effective 8/20/2010.
Filed Date: 01/11/2011.
Accession Number: 20110111–5000.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 01, 2011.

Docket Numbers: ER11–127–001.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35: Compliance filing to Original Service Agreement No. 2656 to be effective 9/17/2010.
Filed Date: 01/11/2011.
Accession Number: 20110111–5046.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 01, 2011.

Docket Numbers: ER11–1993–001.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35: Resubmission of the Eldorado Co-Tenancy and Communication Agreements to be effective N/A.
Filed Date: 01/10/2011.
Accession Number: 20110110–5157.
Comment Date: 5 p.m. Eastern Time on Monday, January 31, 2011.

Docket Numbers: ER11–2041–001.
Applicants: Innovative Energy Systems, LLC.
Description: Compliance Refund Report Filing of Innovative Energy Systems, LLC.
Filed Date: 01/10/2011.
Accession Number: 20110110–5235.
Comment Date: 5 p.m. Eastern Time on Monday, January 31, 2011.

Docket Numbers: ER11–2042–001.
Applicants: Seneca Energy II, LLC.
Description: Compliance Refund Report Filing of Seneca Energy II, LLC.
Filed Date: 01/10/2011.
Accession Number: 20110110–5236.
Comment Date: 5 p.m. Eastern Time on Monday, January 31, 2011.

Docket Numbers: ER11–2097–001.
Applicants: Oklahoma Gas and Electric Company.
Description: Oklahoma Gas and Electric Company submits tariff filing per 35: WM–1 and WC–1 Tariff Compliance Filing to be effective 11/12/2010.
Filed Date: 01/10/2011.
Accession Number: 20110110–5000.
Comment Date: 5 p.m. Eastern Time on Monday, January 31, 2011.

Docket Numbers: ER11–2166–001.
Applicants: Planet Energy (USA) Corp.
Description: Planet Energy (USA) Corp. submits tariff filing per 35.17(b): Planet Energy USA Supplement to MBR Application to be effective 1/1/2011.
Filed Date: 01/11/2011.
Accession Number: 20110111–5191.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 01, 2011.

Docket Numbers: ER11–2167–001.
Applicants: Planet Energy (Pennsylvania) Corp.
Description: Planet Energy (Pennsylvania) Corp. submits tariff filing per 35.17(b): Planet Energy Pennsylvania Supplement to MBR Application to be effective 1/1/2011.
Filed Date: 01/11/2011.
Accession Number: 20110111–5185.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 01, 2011.

Docket Numbers: ER11–2168–001.
Applicants: Planet Energy (Maryland) Corp.
Description: Planet Energy (Maryland) Corp. submits tariff filing per 35.17(b): Planet Energy Maryland Supplement to MBR Application to be effective 1/1/2011.
Filed Date: 01/11/2011.
Accession Number: 20110111–5183.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 01, 2011.

Docket Numbers: ER11–2179–001.
Applicants: Planet Energy (New York) Corp.
Description: Planet Energy (New York) Corp. submits tariff filing per

35.17(b): Planet Energy New York Supplement to MBR Application to be effective 1/1/2011.

Filed Date: 01/11/2011.

Accession Number: 20110111–5184.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 01, 2011.

Docket Numbers: ER11–2589–001.

Applicants: Evraz Claymont Steel, Inc.

Description: Evraz Claymont Steel, Inc. submits tariff filing per 35.17(b): MBRA Tariff to be effective 2/23/2011.

Filed Date: 01/11/2011.

Accession Number: 20110111–5151.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 01, 2011.

Docket Numbers: ER11–2665–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): 2066 Westar Energy, Inc. NITSA and NOA to be effective 1/1/2011.

Filed Date: 01/11/2011.

Accession Number: 20110111–5122.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 01, 2011.

Docket Numbers: ER11–2666–000.

Applicants: Louisville Gas and Electric Company.

Description: Louisville Gas and Electric Company submits tariff filing per 35: 1_11_11 Order 676E_Modify OATT Sect 4 to be effective 4/1/2011.

Filed Date: 01/11/2011.

Accession Number: 20110111–5126.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 01, 2011.

Docket Numbers: ER11–2667–000.

Applicants: New England Power Pool Participants Committee.

Description: New England Power Pool Participants Committee submits tariff filing per 35.13(a)(2)(iii): 122nd Agreement to be effective 3/15/2011.

Filed Date: 01/11/2011.

Accession Number: 20110111–5229.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 01, 2011.

Docket Numbers: ER11–2668–000.

Applicants: PSEG Energy Resources & Trade LLC, PSEG Fossil LLC.

Description: Filing in Compliance with the requirements of the RMR agreement of PSEG Energy Resources & Trade LLC, *et. al.*

Filed Date: 01/10/2011.

Accession Number: 20110110–5237.

Comment Date: 5 p.m. Eastern Time on Monday, January 31, 2011.

Docket Numbers: ER11–2669–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. Resource Termination Filing (EnerNOC).

Filed Date: 01/11/2011.

Accession Number: 20110111–5266.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 01, 2011.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR09–6–003.

Applicants: North American Electric Reliability Corp.

Description: Errata of the North American Electric Reliability Corporation to January 10, 2011 filing.

Filed Date: 01/12/2011.

Accession Number: 20110112–5017.

Comment Date: 5 p.m. Eastern Time on Monday, January 24, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE, Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–1098 Filed 1–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 11, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–149–005, *ER05–487–010, ER09–832–013.*

Applicants: Elk City Wind, LLC, FPL Energy Cowboy Wind, LLC, NexEra Energy Power Marketing, LLC.

Description: NextEra Energy Entities Notification of Non-Material Change in Status.

Filed Date: 01/10/2011.

Accession Number: 20110110–5144.

Comment Date: 5 p.m. Eastern Time on Monday, January 31, 2011.

Docket Numbers: ER10–2391–001.

Applicants: Vermont Yankee Nuclear Power Corporation.

Description: Triennial Market Power Analysis of Vermont Yankee Nuclear Power Corporation in Compliance with Order No. 697.

Filed Date: 01/10/2011.

Accession Number: 20110110–5131.

Comment Date: 5 p.m. Eastern Time on Friday, March 11, 2011.

Docket Numbers: ER11–39–001.

Applicants: Flat Water Wind Farm, LLC.

Description: Notice of Flat Water Wind Farm, LLC.
Filed Date: 01/10/2011.
Accession Number: 20110110–5231.
Comment Date: 5 p.m. Eastern Time on Monday, January 31, 2011.

Docket Numbers: ER11–2658–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii): PG&E's Five Points and Westside Solar Project LGIA to be effective 1/11/2011.
Filed Date: 01/10/2011.
Accession Number: 20110110–5002.
Comment Date: 5 p.m. Eastern Time on Monday, January 31, 2011.

Docket Numbers: ER11–2659–000.
Applicants: Florida Power Corporation.
Description: Florida Power Corporation submits tariff filing per 35.13(a)(2)(iii): Service Agreement No. 147 under Florida Power Corporation OATT to be effective 1/1/2011 under ER11–2659–000.
Filed Date: 01/10/2011.
Accession Number: 20110110–5035.
Comment Date: 5 p.m. Eastern Time on Monday, January 31, 2011.

Docket Numbers: ER11–2660–000.
Applicants: Southwestern Electric Power Company.
Description: Southwestern Electric Power Company submits tariff filing per 35.13(a)(2)(iii): 20110110 Tex-La Backup SA to be effective 1/1/2011.
Filed Date: 01/10/2011.
Accession Number: 20110110–5036.
Comment Date: 5 p.m. Eastern Time on Monday, January 31, 2011.

Docket Numbers: ER11–2661–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): Request for Waiver of Tariff Provision to be effective 1/10/2011.
Filed Date: 01/10/2011.
Accession Number: 20110110–5051.
Comment Date: 5 p.m. Eastern Time on Monday, January 31, 2011.

Docket Numbers: ER11–2662–000.
Applicants: PSEG Energy Resources & Trade LLC.
Description: PSEG Energy Resources & Trade LLC submits tariff filing per 35.1: Baseline Refile of Cost of Service Recovery Rate Tariff to be effective 1/11/2011.
Filed Date: 01/10/2011.
Accession Number: 20110110–5089.
Comment Date: 5 p.m. Eastern Time on Monday, January 31, 2011.

Docket Numbers: ER11–2663–000.
Applicants: Viridian Energy New Jersey LLC.
Description: Viridian Energy New Jersey LLC submits tariff filing per 35.12: FERC Electric Tariff, Volume No. 1 Filing to be effective 1/13/2011.
Filed Date: 01/10/2011.
Accession Number: 20110110–5127.
Comment Date: 5 p.m. Eastern Time on Monday, January 31, 2011.

Docket Numbers: ER11–2664–000.
Applicants: Powerex Corporation.
Description: Powerex Corporation submits tariff filing per 35: Rate Schedule No. 1 Compliance Filing to be effective 9/30/2010.
Filed Date: 01/10/2011.
Accession Number: 20110110–5159.
Comment Date: 5 p.m. Eastern Time on Monday, January 31, 2011.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM10–6–000
Applicants: Commonwealth Edison Company
Description: ComEd's Compliance Filing in Response to December 7, 2010 Deficiency Notice.
Filed Date: 01/06/2011
Accession Number: 20110106–5166
Comment Date: 5 p.m. Eastern Time on Thursday, February 03, 2011

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD11–1–000
Applicants: Version Two Facilities Design, Connectio
Description: Compliance Filing of the North American Electric Reliability Corporation in Response to December 7, 2010 Order Approving NERC's May 29, 2010 and July 6, 2010 Compliance Filings in Response to Order No. 722.
Filed Date: 01/06/2011.
Accession Number: 20110106–5111.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 26, 2011.

Docket Numbers: RR09–6–003.
Applicants: North American Electric Reliability Corporation.
Description: Errata of the North American Electric Reliability Corporation to December 23, 2010 Compliance Filing Regarding Appendix 4D to the NERC ROP, Standard Processes Manual.
Filed Date: 01/10/2011.
Accession Number: 20110110–5167.
Comment Date: 5 p.m. Eastern Time on Monday, January 24, 2011.

Docket Numbers: RR10–7–002.
Applicants: North American Electric Reliability Corporation.
Description: Compliance Filing of the North American Electric Reliability Corporation in Response to July 12, 2010 and December 1, 2010 Commission Orders Relating to Compliance Monitoring and Enforcement Agreements Between SERC and FRCC and SERC and SPP RE.
Filed Date: 01/10/2011.
Accession Number: 20110110–5090.
Comment Date: 5 p.m. Eastern Time on Monday, January 31, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the

Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–1099 Filed 1–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–2663–000]

Viridian Energy New Jersey LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

January 12, 2011.

This is a supplemental notice in the above-referenced proceeding Viridian Energy New Jersey LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 1, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–1101 Filed 1–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–2649–000]

3C Solar LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

January 12, 2011.

This is a supplemental notice in the above-referenced proceeding 3C Solar LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 1, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–1103 Filed 1–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–2657–000]

Milford Wind Corridor Phase II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

January 12, 2011.

This is a supplemental notice in the above-referenced proceeding Milford Wind Corridor Phase II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket

authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 1, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–1104 Filed 1–19–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

January 13, 2011.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: January 20, 2011, 9 a.m. *NOTE—There has been a time change for this meeting only.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda, *NOTE—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

966th—Meeting, Regular Meeting, January 20, 2011, 9 a.m.

Item No.	Docket No.	Company
	ADMINISTRATIVE	
A–1	AD02–1–000	Discussion on RTO/ISO Performance Metrics.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD11–8–000	Frequency Response Metrics to Assess Requirements for Reliable Integration of Variable Renewable Generation.
	ELECTRIC	
E–1	RM04–7–009	Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities.
E–2	RM10–20–000	Market-Based Rate Affiliate Restrictions.
E–3	OMITTED.	
E–4	RM08–13–001	Transmission Relay Loadability Reliability Standard.
E–5	ER11–2170–000, ER09–408–002, ER09–408–003.	PacifiCorp.
E–6	ER11–2183–000	American Electric Power Service Corporation.
E–7	ER10–1281–001	Hudson Transmission Partners, LLC.
E–8	ER10–713–001, ER10–713–002	PJM Interconnection, L.L.C. and Carolina Power & Light Company.
E–9	OMITTED.	
E–10	OMITTED.	
E–11	RD10–6–000, RD09–7–002	North American Electric Reliability Corporation.
E–12	OA07–110–003	NorthWestern Corporation.
E–13	EL10–64–002	California Public Utilities Commission.
	EL10–66–002	Southern California Edison Company, Pacific Gas and Electric Company, San Diego Gas & Electric Company.
E–14	ER11–2178–000	Southern California Edison Company.
E–15	ER11–2177–000	Southern California Edison Company.
	ER11–2369–000	California Independent System Operator Corporation.
E–16	ER11–2074–000	PJM Interconnection, L.L.C.
E–17	QM10–4–004	Public Service Company of New Hampshire.

Item No.	Docket No.	Company
	MULTI–INDUSTRY	
M–1	RM07–9–003	Revisions to Forms, Statements and Reporting Requirements for Natural Gas Pipelines.
	HYDRO	
H–1	P–13653–001	Claverack Creek, LLC.
H–2	P–10482–105	AER NY–Gen, LLC, Eagle Creek Hydro Power, LLC, Eagle Creek Water Resources, LLC, Eagle Creek Land Resources, LLC.
	CERTIFICATES	
C–1	CP10–496–000	Cameron LNG, LLC.
C–2	CP10–194–000	Central New York Oil and Gas Company, LLC.
C–3	CP07–414–002	Golden Triangle Storage, Inc.
C–4	CP11–34–000	Golden Pass Pipeline LLC.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2011–1238 Filed 1–18–11; 4:15 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13808–000; Project No. 13813–000]

Lock+ Hydro Friends Fund XLIX; FFP Missouri 14, LLC; Notice Announcing Preliminary Permit Drawing

January 12, 2011.

On July 12, 2010, at 8:30 a.m., the Commission received two preliminary permit applications for proposed projects to be located at the New Savannah Bluff Lock and Dam on the Savannah River, near Augusta, Georgia.[1] The applications were filed by Lock+ Hydro Friends Fund XLIX, for Project No. 13808–000, and FFP Missouri 14, LLC, for Project No. 13813–000.

Where all permit applicants are municipalities or all permit applicants are non-municipalities, and no applicant's plans are better adapted than the others' to develop, conserve, and utilize in the public interest the water resources of a region, the Commission issues a permit to the applicant who filed first in time.[2] In this case, because two applications from entities not claiming municipal preference are deemed filed at the same time, the Commission will conduct a random tie breaker to determine priority. In the event that the Commission concludes that neither applicant's plans are better adapted than the other, priority will be determined accordingly.

On January 18, 2011, at 2 p.m. (Eastern Time), the Secretary of the Commission, or her designee, will, by random drawing, determine the filing priority for the two applicants identified in this notice. The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First Street, NE., Washington, DC 20426. The results of the drawing will be recorded by the Secretary or her designee. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–1065 Filed 1–19–11; 8:45 am]

BILLING CODE 6717–01–P

[1] The Commission is open each day from 8:30 a.m. to 5 p.m., except Saturdays, Sundays, and holidays. 18 CFR 375.101(c) (2010). The applications were filed between 5 p.m. on Friday July 9, 2010, and 8:30 a.m. on Monday July 12, 2010. Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2010).

[2] 18 CFR 4.37 (2010). *See, e.g., BPUS Generation Development, LLC,* 126 FERC ¶ 61,132 (2009).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP11–1566–000]

Tennessee Gas Pipeline Company; Notice of Technical Conference

January 12, 2011.

On November 30, 2010, pursuant to section 4 of the Natural Gas Act (NGA), Tennessee Gas Pipeline Company (Tennessee) filed revised tariff records proposing a rate increase for existing services and changes to certain terms and conditions of service, including elimination of certain rate schedules. On December 29, 2010 the Commission accepted and suspended the primary tariff records proposed to be effective June 1, 2011, subject to refund and to the outcome of a hearing and technical conference. *Tennessee Gas Pipeline Company,* 133 FERC ¶ 61,266 (2010).

Take notice that a technical conference to discuss non-rate issues raised by Tennessee's filing will be held on Wednesday, February 2, 2011 at 10 a.m. (EST) and Thursday, February 3, 2011 at 10 a.m. (EST), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Federal Energy Regulatory Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–

1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

All parties and staff are permitted to attend. For further information please contact Robert D. McLean, (202) 502–8156.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–1102 Filed 1–19–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0065; FRL–9255–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Application Requirements for the Approval and Delegation of Federal Air Toxics Programs to State, Territorial, Local, and Tribal Agencies (Renewal), EPA ICR Number 1643.07, OMB Control Number 2060–0264

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before February 22, 2011.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OAR–2004–0065, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tina Ndoh, OAQPS/SPPD, D205–02, Environmental Protection Agency, RTP, NC 27711; *telephone number:* 919–541–2750; *fax number:* 919–541–6500; *e-mail address: ndoh.christina@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 20, 2010 (75 FR 64722), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OAR–2004–0065, which is available for public viewing online at *http://www.regulations.gov*, in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. **Please note** that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Application Requirements for the Approval and Delegation of Federal Air Toxics Programs to State, Territorial, Local, and Tribal Agencies (Renewal).

ICR Numbers: EPA ICR Number 1643.07, OMB Control Number 2060–0264.

ICR Status: This ICR is scheduled to expire on January 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This information collection is an application from State, territorial, local, or tribal agencies (S/L/Ts) for delegation of regulations developed under section 112 of the Clean Air Act (Act). The five options for delegation are straight delegation, rule adjustment, rule substitution, equivalency by permit, or state program approval. The information is needed and used to determine if the entity submitting an application has met the criteria established in the subpart E rule, codified as 40 CFR part 63, subpart E, in accordance with section 112(l) of the Act. This information is necessary and required for the Administrator to determine the acceptability of approving the S/L/T's rules, requirements or programs in lieu of the Federal section 112 rules or programs. Additionally, it is also necessary for the proper performance of our function, and will be used to ensure that the subpart E approval criteria have been met. The collection of information is authorized under 42 U.S.C. 7401–7671q.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 18 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State, territorial, local, or tribal agencies.

Estimated Number of Respondents: 119 S/L/Ts for maximum achievable control technology standards and 79 S/L/Ts for area source standards per year.

Frequency of Response: Occasionally, one time per delegation request.

Estimated Total Annual Hour Burden: 37,107 hours.

Estimated Total Annual Cost: About $1,355,100. This includes an estimated labor burden cost of $1,352,000 and an estimated cost of $3,100 for operation and maintenance costs resulting from photocopying and postage expenses.

Changes in the Estimates: There is a decrease of 25,737 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

The change in burden results from: (1) A decrease in the number of S/L/Ts taking delegation, (2) an increase in the number of occurrences related to the number of National Emission Standards for Hazardous Air Pollutants (NESHAP) delegated, and (3) a change in the distribution of S/L/Ts using each option when delegating Maximum Achievable Control Technologies (MACTs). These changes are discussed below.

The total number of occurrences increased from 399 to 5,119 for MACT standards partially due to the number of MACT standards being delegated increasing from 24 to 40. However, the number of delegations decreased from 124 to 119. The significant increase was largely due to a calculation error in determining the number of straight delegations in the previous ICR. The previous ICR estimated 12 occurrences of straight delegations during the clearance period while we calculated 4,719 occurrences for the upcoming 3-year period. The total number of occurrences decreased for area source standards from 4,177 to 920 due to the number of area source standards decreasing from 40 to 11 and number of delegations dropping from 99 to 79.

Second, based on the experience the EPA's Regional Air Toxics Coordinators have had with the subpart E program, S/L/Ts' use of the various delegation options has changed for MACTs. Straight Delegation is still the primary delegation mechanism and has significantly increased in frequency since the previous ICR. However, we found that S/L/Ts are using the Rule Adjustment Option and the Rule Substitution Option with greater frequency than previously assumed. Generally, sources do not use the State Program Approval Option.

Overall, the respondent hour burden has decreased. While there is an overall increase in the amount of occurrences, the overall burden decreases by 41 percent due to the significant increase in use of the straight delegation option which requires less hours than the other options.

While mailing costs have increased, we are requesting a decrease in the reporting and recordkeeping cost burden due to an error in the postal costs reported in the previous ICR. Some of the EPA mailing costs were incorrectly included in the sums for respondent costs, thus decreasing the overall costs.

Dated: January 12, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–1126 Filed 1–19–11; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Existing Collection; Emergency Extension

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Information Collection—Emergency Extension Without Change: Elementary-Secondary Staff Information Report (EEO–5).

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it submitted to the Office of Management and Budget (OMB) a request for a three-year extension of the Elementary-Secondary Staff Information Report (EEO–5) to be effective after the current January 31, 2011 expiration date.

FOR FURTHER INFORMATION CONTACT: Ronald Edwards, Director, Program Research and Surveys Division, 131 M Street, NE., Room 4SW30F, Washington, DC 20507; (202) 663–4958 (voice) or (202) 663–7063 (TTY).

SUPPLEMENTARY INFORMATION: Elementary and secondary public school systems and districts have been required to submit EEO–5 reports to EEOC since 1974 (biennially in even-numbered years since 1982). Since 1996, each public school district or system has submitted all of the district data on a single form, EEOC Form 168A. The individual school form, EEOC Form 168B, was eliminated in 1996, reducing the respondent burden and cost.

Overview of Information Collection

Collection Title: Elementary-Secondary Staff Information Report (EEO–5).

OMB-Number: 3046–0003.

Frequency of Report: Biennial.

Type of Respondent: Certain public elementary and secondary school districts.

Description of Affected Public: Certain public elementary and secondary school districts.

Number of Responses: 7,155.

Reporting Hours: 10,000.

Cost to the Respondents: $266,000.

Federal Cost: $160,000.

Number of Forms: 1.

Form Number: EEOC Form 168A.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed, to preserve such records, and to produce reports as the Commission prescribes by regulation or order. Accordingly, the EEOC issued regulations prescribing the reporting requirements for elementary and secondary public school districts. The EEOC uses EEO–5 data to investigate charges of employment discrimination against elementary and secondary public school districts. The data also are used for research. The data are shared with the Department of Education (Office for Civil Rights) and the Department of Justice. Pursuant to Section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–5 data also are shared with state and local Fair Employment Practices Agencies (FEPAs).

Burden Statement: The estimated number of respondents included in the biennial EEO–5 survey is 7,155 public elementary and secondary school districts. The form is estimated to impose 10,000 burden hours biennially.

Dated: December 22, 2010.

For the Commission.

Jacqueline A. Berrien,

Chair.

[FR Doc. 2011–1052 Filed 1–19–11; 8:45 am]

BILLING CODE 6750–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Existing Collection; Emergency Extension

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Information Collection—Emergency Extension Without Change: Local Union Report (EEO–3).

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission

(EEOC or Commission) announces that it submitted to the Office of Management and Budget (OMB) a request for a three-year extension of the Local Union Report (EEO–3), to be effective after the current January 31, 2011 expiration date.

FOR FURTHER INFORMATION CONTACT: Ronald Edwards, Director, Program Research and Surveys Division, 131 M Street, NE., Room 4SW30F, Washington, DC 20507; (202) 663–4958 (voice) or (202) 663–7063 (TTY).

SUPPLEMENTARY INFORMATION: The EEOC has collected information from local unions on the EEO–3 form since 1966 (biennially since 1985).

Overview of Information Collection

Collection Title: Local Union Report (EEO–3).

OMB Number: 3046–0006.

Frequency of Report: Biennial.

Type of Respondent: Referral local unions with 100 or more members.

Description of Affected Public: Referral local unions and independent or unaffiliated referral unions and similar labor organizations.

Responses: 1,399.

Reporting Hours: 4,500 (including recordkeeping).

Cost to Respondents: $85,000.

Federal Cost: $60,000.

Number of Forms: 1.

Form Number: EEOC Form 274.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-8(c), requires labor organizations to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to produce reports from the data. The EEOC issued regulations requiring referral local unions with 100 or more members to submit EEO–3 reports. The individual reports are confidential. The EEOC uses EEO–3 data to investigate charges of discrimination and for research.

Burden Statement: The estimated number of respondents included in the biennial EEO–3 survey is 1,399 referral unions. The form is estimated to impose 4,500 burden hours biennially. In order to help reduce survey burden, respondents are encouraged to report data electronically whenever possible.

Dated: December 22, 2010.

For the Commission.

Jacqueline A. Berrien,

Chair.

[FR Doc. 2011–1049 Filed 1–19–11; 8:45 am]

BILLING CODE 6570–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Existing Collection; Emergency Extension

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Information Collection—Emergency Extension Without Change: Employer Information Report (EEO–1).

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it submitted to the Office of Management and Budget (OMB) a request for a three-year extension of the Employer Information Report (EEO–1) to be effective after the current January 31, 2011 expiration date.

FOR FURTHER INFORMATION CONTACT: Ronald Edwards, Director, Program Research and Surveys Division, 131 M Street, NE., Room 4SW30F, Washington, DC 20507; (202) 663–4958 (voice) or (202) 663–7063 (TTY).

SUPPLEMENTARY INFORMATION: The EEOC has collected information from certain private employers on the EEO–1 Report form since 1966.

Overview of Information Collection

Collection Title: Employer Information Report (EEO–1).

OMB Number: 3046–0007.

Frequency of Report: Annual.

Type of Respondent: Private employers with 100 or more employees and certain federal government contractors and first-tier subcontractors with 50 or more employees.

Description of Affected Public: Private employers with 100 or more employees and certain federal government contractors and first-tier subcontractors with 50 or more employees.

Reporting Hours: 599,000.

Respondent Cost: $11.4 million.

Federal Cost: $2.1 million.

Number of Forms: 1.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed, to preserve such records, and to produce reports as the Commission prescribes by regulation or order. Accordingly, the EEOC issued regulations prescribing the EEO–1 reporting requirement. Employers in the private sector with 100 or more employees and some federal contractors with 50 or more employees have been required to submit EEO–1 reports annually since 1966. The individual reports are confidential. EEO–1 data is used by EEOC to investigate charges of employment discrimination against employers in private industry and to provide information about the employment status of minorities and women. The data is shared with the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, and several other federal agencies. Pursuant to § 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–1 data is also shared with state and local Fair Employment Practices Agencies (FEPAs).

Burden Statement: The estimated number of respondents included in the annual EEO–1 survey is 45,000 private employers. The estimated number of establishment-based responses per reporting company is between three and four EEO–1 reports annually. The annual number of responses is approximately 170,000. The form is estimated to impose 599,000 burden hours annually. In order to help reduce survey burden, respondents are encouraged to report data electronically whenever possible.

Dated: December 22, 2010.

For the Commission.

Jacqueline A. Berrien,

Chair.

[FR Doc. 2011–1054 Filed 1–19–11; 8:45 am]

BILLING CODE 6570–01–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Farm Credit System Insurance Corporation Board

Regular Meeting

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

Date and Time: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 20, 2011, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the

public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- December 9, 2010.

B. New Business

- Review of Insurance Premium Rates.
- FCSIC Policy Statement Concerning Environmental Hazards Assessment.

Dated: January 13, 2011.

Dale L. Aultman,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. 2011–1070 Filed 1–19–11; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

January 6, 2011.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 21, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.* Include in the e-mail the OMB control number of the collection. If you are unable to submit your comments by e-mail contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Cathy Williams on (202) 418–2918.

OMB Control Number: 3060–0433.

Title: Basic Signal Leakage Performance Report.

Form Number: FCC Form 320.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 5,920 respondents and 5,920 responses.

Frequency of Response: Recordkeeping requirement, Annual reporting requirement.

Estimated Time per Hours: 20 hours.

Total Annual Burden: 118,400 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i), 302 and 303 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: Cable television system operators and Multichannel Video Programming Distributors (MPVDs) who use frequencies in the bands 108–137 and 225–400 MHz (aeronautical frequencies) are required to file a Cumulative Signal Leakage Index (CLI) derived under 47 CFR Section 76.611(a)(1) or the results of airspace measurements derived under 47 CFR Section 76.611(a)(2). This filing must include a description of the method by which compliance with basic signal leakage criteria is achieved and the method of calibrating the measurement equipment. This yearly filing of FCC Form 320 is done in accordance with 47 CFR Section 76.1803.

OMB Control Number: 3060–0289.

Title: Section 76.76.601(a) Performance Tests, Section 76.1704(a)(b) Proof of Performance Test Data, Section 76.1705 Performance Tests (Channels Delivered) and Section 76.1717, Compliance with Technical Standards.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities and State, local or tribal government.

Number of Respondents and Responses: 8,250 respondents; 12,185 responses.

Estimated Time per Response: 0.5–70 hours.

Frequency of Response: Record keeping requirement, Semi-annual and Triennial reporting requirements; Third party disclosure requirement.

Total Annual Burden: 276,125 hours.

Total Annual Costs: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 4(i) and 624(e) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR Section 76.601(b) requires the operator of each cable television system shall conduct complete performance tests of that system at least twice each calendar year (at intervals not to exceed seven months), unless otherwise noted below. The performance tests shall be directed at determining the extent to which the system complies with all the technical standards set forth in § 76.605(a) and shall be as follows:

(1) For cable television systems with 1,000 or more subscribers but with 12,500 or fewer subscribers, proof-of-performance tests conducted pursuant to this section shall include measurements taken at six (6) widely separated points. However, within each cable system, one additional test point shall be added for every additional 12,500 subscribers or fraction thereof (*e.g.,* 7 test points if 12,501 to 25,000 subscribers; 8 test points if 25,001 to 37,500 subscribers, *etc.*). In addition, for technically integrated portions of cable systems that are not mechanically continuous (*i.e.,* employing microwave connections), at least one test point will be required for each portion of the cable system served by a technically integrated microwave hub. The proof-of-performance test points chosen shall be

balanced to represent all geographic areas served by the cable system. At least one-third of the test points shall be representative of subscriber terminals most distant from the system input and from each microwave receiver (if microwave transmissions are employed), in terms of cable length. The measurements may be taken at convenient monitoring points in the cable network: Provided, that data shall be included to relate the measured performance of the system as would be viewed from a nearby subscriber terminal. An identification of the instruments, including the makes, model numbers, and the most recent date of calibration, a description of the procedures utilized, and a statement of the qualifications of the person performing the tests shall also be included.

(2) Proof-of-performance tests to determine the extent to which a cable television system complies with the standards set forth in § 76.605(a) (3), (4), and (5) shall be made on each of the NTSC or similar video channels of that system. Unless otherwise as noted, proof-of-performance tests for all other standards in § 76.605(a) shall be made on a minimum of four (4) channels plus one additional channel for every 100 MHz, or fraction thereof, of cable distribution system upper frequency limit (*e.g.,* 5 channels for cable television systems with a cable distribution system upper frequency limit of 101 to 216 MHz; 6 channels for cable television systems with a cable distribution system upper frequency limit of 217–300 MHz; 7 channels for cable television systems with a cable distribution upper frequency limit of 300 to 400 MHz, *etc.*). The channels selected for testing must be representative of all the channels within the cable television system.

(3) The operator of each cable television system shall conduct semi-annual proof-of-performance tests of that system, to determine the extent to which the system complies with the technical standards set forth in § 76.605(a)(4) as follows. The visual signal level on each channel shall be measured and recorded, along with the date and time of the measurement, once every six hours (at intervals of not less than five hours or no more than seven hours after the previous measurement), to include the warmest and the coldest times, during a 24-hour period in January or February and in July or August.

(4) The operator of each cable television system shall conduct triennial proof-of-performance tests of its system to determine the extent to which the system complies with the technical standards set forth in § 76.605(a)(11).

47 CFR Section 76.601 states prior to additional testing pursuant to Section 76.601(c), the local franchising authority shall notify the cable operator, who will then be allowed thirty days to come into compliance with any perceived signal quality problems which need to be corrected.

47 CFR Section 76.1704 requires that proof-of-performance tests required by 47 CFR Section 76.601 shall be maintained on file at the operator's local business office for at least five years. The test data shall be made available for inspection by the Commission or the local franchiser, upon request. If a signal leakage log is being used to meet proof-of-performance test recordkeeping requirements in accordance with Section 76.601, such a log must be retained for the period specified in 47 CFR Section 76.601(d).

OMB Control Number: 3060–0920.

Title: Application for Construction Permit for a Low Power FM Broadcast Station; Report and Order in MM Docket No. 99–25 Creation of Low Power Radio Service; Sections 73.807, 73.809, 73.865, 73.870, 73.871, 73.872, 73.877, 73.878, 73.318, 73.1030, 73.1207, 73.1212, 73.1230, 73.1300, 73.1350, 73.1610, 73.1620, 73.1750, 73.1943, 73.3525, 73.3550, 73.3598, 11.61(ii), FCC Form 318.

Form Number: FCC Form 318.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions; State, local or tribal government.

Number of Respondents and Responses: 16,659 respondents, 23,377 responses.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 303, 308 and 325(a) of the Communications Act of 1934, as amended.

Estimated Time per Response: 0.0025 minutes − 12 hours.

Total Annual Burden: 34,396 hours.

Total Annual Costs: $23,850.

Nature and Extent of Confidentiality: Confidentiality is not required for this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: This information collection accounts for the following requirements:

47 CFR 73.807 sets forth minimum distance separation requirements for LPFM stations. The Third Report and Order allows LPFM stations to file second-adjacent channel waiver requests of this Rule by filing a Form 318 if it is at risk of displacement by an encroaching full-service station application.

47 CFR 73.809(b) states that an LPFM station will be provided an opportunity to demonstrate in connection with the processing of the commercial or NCE FM application that interference as described in paragraph (a) of this section is unlikely. If the LPFM station fails to so demonstrate, it will be required to cease operations upon the commencement of program tests by the commercial or NCE FM station.

47 CFR 809(c) states complaints of actual interference by an LPFM station subject to paragraphs (a) and (b) of this section must be served on the LPFM licensee and the Federal Communications Commission, attention Audio Services Division. The LPFM station must suspend operations within twenty-four hours of the receipt of such complaint unless the interference has been resolved to the satisfaction of the complainant on the basis of suitable techniques. An LPFM station may only resume operations at the direction of the Federal Communications Commission. If the Commission determines that the complainant has refused to permit the LPFM station to apply remedial techniques that demonstrably will eliminate the interference without impairment of the original reception, the licensee of the LPFM station is absolved of further responsibility for the complaint.

47 CFR 73.809(e) states that in each instance where suspension of operation is required, the licensee shall submit a full report to the FCC in Washington, DC, after operation is resumed, containing details of the nature of the interference, the source of the interfering signals, and the remedial steps taken to eliminate the interference.

47 CFR 73.865 allows a change in the name of an LPFM licensee where no change in ownership or control is involved to be accomplished by a written notification by the licensee to the Commission. This section also prohibits assignment of an LPFM authorization or transfer of control of an LPFM permittee or licensee if (a) consideration exceeds the depreciated fair market value of the physical equipment and facilities, and/or (b) the transferee or assignee is incapable of satisfying all eligibility criteria that apply to a LPFM licensee. Transfers of control involving a sudden change of more than 50 percent of an LPFM's governing board shall not be deemed a

substantial change in ownership or control, subject to the filing of an FCC Form 316.

47 CFR 73.870 and 73.871 allow licensees and permittees to file minor change applications and minor amendments to pending FCC Form 318 applications by requesting authority for transmitter site relocation of up to 5.6 kilometers for LP100 facilities and up to 3.2 kilometers for LP10 facilities. The Third Report and Order amended these Rules to also allow LPFM applicants with mutually exclusive applications to file minor amendments and minor changes that reflect changes to time-sharing agreements, including universal agreements that supersede involuntary arrangements.

47 CFR 73.870 and 73.871 allow voluntary time-share applicants to relocate an LPFM transmitter to a central location by filing amendments to their pending FCC Form 318 applications.

47 CFR 73.870(d) state petitions to deny such mutually exclusive LPFM applications may be filed within 30 days of such public notice and in accordance with the procedures set forth at § 73.3584. A copy of any petition to deny must be served on the applicant.

47 CFR 73.872(c) states if mutually exclusive applications have the same point total, any two or more of the tied applicants may propose to share use of the frequency by submitting, within 90 days of the release of a public notice announcing the tie, a time-share proposal. Such proposals shall be treated as minor amendments to the time-share proponents' applications, and shall become part of the terms of the station authorization. Where such proposals include all of the tied applications, all of the tied applications will be treated as tentative selectees; otherwise, time-share proponents points will be aggregated to determine the tentative selectees.

(1) Time-share proposals shall be in writing and signed by each time-share proponent, and shall satisfy the following requirements:

(i) The proposal must specify the proposed hours of operation of each time-share proponent;

(ii) The proposal must not include simultaneous operation of the time-share proponents; and

(iii) Each time-share proponent must propose to operate for at least 10 hours per week.

(2) Where a station is authorized pursuant to a time-sharing proposal, a change of the regular schedule set forth therein will be permitted only where a written agreement signed by each time-sharing permittee or licensee and complying with requirements in paragraphs (c)(1)(i) through (iii) of this section is filed with the Commission, Attention: Audio Division, Media Bureau, prior to the date of the change.

47 CFR 73.872(d)(1) states if a tie among mutually exclusive applications is not resolved through voluntary time-sharing in accordance with paragraph (c) of this section, the tied applications will be reviewed for acceptability and applicants with tied, grantable applications will be eligible for equal, successive, non-renewable license terms of no less than one year each for a total combined term of eight years, in accordance with § 73.873. Eligible applications will be granted simultaneously, and the sequence of the applicants' license terms will be determined by the sequence in which they file applications for licenses to cover their construction permits based on the day of filing, except that eligible applicants proposing same-site facilities will be required, within 30 days of written notification by the Commission staff, to submit a written settlement agreement as to construction and license term sequence. Failure to submit such an agreement will result in the dismissal of the applications proposing same-site facilities and the grant of the remaining, eligible applications.

47 CFR 73.872(d)(2) states groups of more than eight tied, grantable applications will not be eligible for successive license terms under this section. Where such groups exist, the staff will dismiss all but the applications of the eight entities with the longest established community presences, as provided in paragraph (b)(1) of this section. If more than eight tied, grantable applications remain, the applicants must submit, within 30 days of written notification by the Commission staff, a written settlement agreement limiting the group to eight. Failure to do so will result in dismissal of the entire application group.

47 CFR 73.877 requires each LPFM station to maintain a station log. Each log entry must include the time and date of observation and the name of the person making the entry. This log must contain entries of the information specified in this section.

47 CFR 73.878 requires licensees to make available to FCC representatives during regular business hours, the station records and logs. Upon request of the FCC, the licensee must mail (by either registered mail, return receipt requested, or certified mail, return receipt requested) the station records and logs. The licensee must retain the return receipt until such records are returned to the licensee.

Unattended operation. The Report and Order requires that LPFM stations that will operate unattended will be required to advise the Commission by letter of the unattended operation and provide an address and telephone number where a responsible party can be reached during such times.

47 CFR 73.318 requires LPFM stations to resolve all complaints received on blanketing interference occurring within the immediate vicinity of the antenna site for one year after commence of transmissions with new or modified facilities. Licensee shall provide technical information, notifications or assistance to complainants on remedies for blanketing interference.

47 CFR 73.1030 requires LPFM stations to coordinate, notify, and provide protection to the radio quiet zones at Green, West Virginia and at Boulder, Colorado. In addition, LPFM applicants in Puerto Rico will need to coordinate and notify Cornell University regarding the radio coordination zone on that island. This requirement is necessary to ensure that research work at these installations will not be disrupted.

47 CFR 73.1207 requires that licensees of broadcast stations obtain written permission from an originating station prior to retransmitting any program or any part thereof. A copy of the written consent must be kept in the station's files and made available to the FCC upon request. 47 CFR Section 73.1207 also requires stations that use the National Bureau of Standards ("NBS") time signals to notify the NBS semiannually of use of time signals.

47 CFR 73.1212 requires a broadcast station to identify the sponsor of any matter for which consideration is provided. For matter advertising commercial products or services, generally the mention of the name of the product or service constitutes sponsorship identification. In addition, when an entity rather than an individual sponsors the broadcast of matter that is of a political or controversial nature, licensee is required to retain a list of the executive officers, or board of directors, or executive committee, *etc.*, of the organization paying for such matter. Sponsorship announcements are waived with respect to the broadcast of "want ads" sponsored by an individual but the licensee shall maintain a list showing the name, address and telephone number of each such advertiser. These lists shall be made available for public inspection.

47 CFR 73.1230 requires that the station license and any other instrument of station authorization be posted in a conspicuous place at the place the licensee considers to be the principal control point of the transmitter. 47 CFR 73.1300 allows broadcast stations to be operated either attended or unattended. Regardless of which method is employed, licensees must employ written procedures and have them in the station's files to ensure compliance with the rules governing the Emergency Alert System.

47 CFR 73.1350 requires licensees of LPFM broadcast stations operating by remote control points at places other than the main studio or transmitter site locations to send written notifications containing the remote locations to the FCC within three days after commencing remote control operations from such points.

47 CFR 73.1610 requires the permittee of a new broadcast station to notify the FCC of its plans to conduct equipment tests for the purpose of making adjustments and measurements as may be necessary to assure compliance with the terms of the construction permit and applicable engineering standards.

47 CFR 73.1620 requires that upon completion of construction of a LPFM station, the licensee may begin program tests upon notification to the Commission.

47 CFR 73.1750 requires a broadcast licensee to notify the FCC of permanent discontinuance of operation and to forward the station license and other instruments of authorization immediately after discontinuance of operation.

47 CFR 73.1943 requires licensees of broadcast stations to keep and permit public inspection of a complete record of all requests for broadcast time, together with an appropriate notation showing the disposition made by the licensee of such request.

47 CFR 73.3525 requires applicants for a construction permit for a broadcast station to obtain approval from the FCC to withdraw, dismiss or amend its application pursuant to a settlement agreement when that application is in conflict with another application pending before the FCC. This request for approval to withdraw, dismiss or amend an application should contain a copy of the agreement and an affidavit of each party to the agreement. In the event that the proposed withdrawal of a conflicting application would unduly impede achievement of a fair, efficient and equitable distribution of radio service, the FCC must issue an order providing further opportunity to apply for the facilities specified in the application(s) withdrawn.

47 CFR 73.3550 requests for call sign assignment for a LPFM station must be made using the Commission's electronic call sign system.

47 CFR 73.3598 allows an LPFM permittee unable to complete construction within the timeframe specified in the original construction permit may apply for an eighteen month extension upon a showing of good cause.

47 CFR 11.61(ii) states DBS providers, analog and digital class D non-commercial educational FM stations, and analog and digital LPTV stations are required to log the receipt of emergency alert system transmissions.

This submission contains revised FCC Form 318, Application for Construction Permit for a Low Power FM Broadcast Station and its accompanying instructions and worksheets.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–1056 Filed 1–19–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 11–50]

Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the rechartering of the Consumer Advisory Committee (hereinafter "the Committee"), whose purpose is to make recommendations to the Federal Communications Commission ("FCC" or "Commission") regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations, such as American Indians and persons living in rural areas) in proceedings before the Commission. The Commission also requests applications for membership on the Committee.

DATES: Applications should be received no later than 11:59 p.m. EST, February 7, 2011.

ADDRESSES: Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street, SW., Room 3–A633, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, Consumer and Governmental Affairs Bureau, 202–418–2809 (voice), 202–418–0179 (TTY), or e-mail *scott.marshal@fcc.gov.*

SUPPLEMENTARY INFORMATION: The rechartering of the Committee was announced by Public Notice dated and released January xx, 2011. On November 17, 2010, the Charter of the Committee terminated. The Charter was renewed for another two (2) year term. This renewal is necessary and is in the public interest. The Committee is organized under, and will operate in accordance with, the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2 (1988).

The mission of the Committee is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations, such as American Indians and persons living in rural areas) in proceedings before the Commission.

Each meeting of the full Committee will be open to the public. A notice of each meeting will be published in the **Federal Register** at least fifteen (15) days in advance of the meeting. Records will be maintained of each meeting and made available for public inspection.

The topics to be addressed by the Committee will include, but are not limited to, the following areas:

Consumer protection and education (*e.g.,* cramming, slamming, consumer friendly billing, detariffing, bundling of services, Lifeline/Linkup programs, customer service, privacy, telemarketing abuses, and outreach to underserved populations such as Native Americans and persons living in rural areas).

Access by people with disabilities (*e.g.,* telecommunications relay services, hearing aid compatibility, video description, closed captioning, accessible billing and access to telecommunications products and services) to the extent that these issues are not within the jurisdiction of the Emergency Access Advisory Committee and the Video Programming and Emergency Access Advisory Committee created by the Twenty-first Century Communications and Video Accessibility Act of 2010.

Impact upon consumers of new and emerging technologies (*e.g.,* availability of broadband, digital television, cable, satellite, low power FM, and the convergence of these and emerging technologies).

Implementation of Commission rules and consumer participation in the FCC rulemaking process.

Who May Apply for Membership and Obligations of Members

The Commission seeks applications from interested organizations, institutions, or other entities from both the public and private sectors, that wish to be considered for membership on the Committee. Selections will be made on the basis of factors such as expertise and diversity of viewpoints that are necessary to address effectively the questions before the Committee.

Applicants should be recognized authorities in their fields, including, but not limited to, organizations focusing upon consumer advocacy, disabilities, underserved populations (*e.g.,* persons living in rural areas and tribal communities), telecommunications infra-structure and equipment, telecommunications services (including wireless), and broadcast/cable services. Individuals who do not represent an organization, institution, or entity, but who possess expertise valuable to the Committee's work, are also welcome to apply. Such applicants should be aware, however, that government ethics rules may require financial and other disclosures.

In addition, all applicants are advised that the Commission has elected to adhere to the President's policy, as announced in his memorandum of June 18, 2010, "Lobbyists on Agency Boards and Commissions," which aspires to keep Federal agencies' advisory boards and committees free of federally registered lobbyists. For this reason, the Commission will not consider registered lobbyists as members or representatives of members of the Committee.

The number of Committee members will be established to effectively accomplish the Committee's work. During calendar year 2011, it is anticipated that the Committee will meet in Washington, DC for three (3) one-day meetings. In addition, as needed, working groups or subcommittees will be established to facilitate the Committee's work between meetings of the full Committee. Meetings will be fully accessible to individuals with disabilities.

Members must be willing to commit to a two-year term of service, should be willing and able to attend three (3) one-day meetings per year in Washington, DC, and are also expected to participate in deliberations of at least one working group or subcommittee. The time commitment to each working group or subcommittee may be substantial. Working group deliberations are conducted primarily through e-mail and teleconferences.

Application Procedure, Deadline and Member Appointments

Applications should be submitted in accordance with the procedures outlined below, which include an optional online application form.

Applications should be received by the Commission no later than 11:59 p.m.. EST, February 7, 2011. Applications should be addressed to the Federal Communications Commission, Consumer & Governmental Affairs Bureau, *Attn.:* Scott Marshall, and may be sent via e-mail to *scott.marshall@fcc.gov* or via an online application form on the web at *http://www.fcc.gov/cgb/cac/2011app,* or via U.S. mail to 445 12th Street, SW., Room 3a633, Washington, DC 20554. Due to the extensive security screening of incoming mail since September 11, 2001, delivery of mail sent to the FCC may be delayed. Therefore, we urge you to submit applications via e-mail or online. Applications will be acknowledged shortly after receipt via e-mail or U.S. mail.

Applications for Organizations Should Include the Following Information

(1) The name of the organization, institution, or entity applying for Committee membership (hereinafter the "applicant");

(2) The name of the applicant's primary representative including title, postal mailing address, e-mail address, and telephone number, including a statement that the representative of the applicant is not a registered lobbyist;

(3) The name of the applicant's alternate representative including title, postal mailing address, e-mail address, and telephone number, including a statement that the alternate representative is not a registered lobbyist;

(4) A statement of the interests represented by the organization, institution, or entity (*e.g.,* consumer advocate, disability advocate, government regulator, tribal government, industry, trade association *etc.*) and a narrative statement detailing the applicant's previous involvement concerning issues relevant to the Committee's work and the applicant's ability and willingness to contribute substantively to the Committee's deliberations.

In the case of an individual applicant the application should include the following:

(1) The applicant's specific knowledge or expertise which is relevant to issues to be addressed by the committee, including a statement that the individual applicant is not a registered lobbyist. As noted above, financial and other additional disclosures may also apply to individual applicants, and;

(2) A statement by the applicant indicating a willingness to serve on the Committee for a two year period of time; a commitment to attend three (3) plenary one-day meetings per year in Washington, DC; and a commitment to work on at least one working group or subcommittee. Members will have an initial and continuing obligation to disclose any interests in, or connections to, persons or entities that are, or will be, regulated by or have interests before the Commission.

Please note this document is not intended to be the exclusive method by which the Commission will solicit nominations and expressions of interest to identify qualified candidates. However, all candidates for membership on the Committee will be subject to the same evaluation criteria.

After the applications have been reviewed, the Commission will publish a notice in the **Federal Register** announcing the appointment of the Committee members and the first meeting date of the Committee. All applicants will be notified via U.S. Postal mail concerning the disposition of their applications. It is anticipated that appointments to the Committee will be made in late February or March of 2011 with the first meeting of the Committee to occur in March or April of 2011.

Federal Communications Commission.

Joel Gurin,

Chief, Consumer and Governmental Affairs Bureau

[FR Doc. 2011–1170 Filed 1–19–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. A copy of the agreement is available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201143–010.

Title: West Coast MTO Agreement.

Parties: APM Terminals Pacific, Ltd.; California United Terminals, Inc.; Eagle

Marine Services, Ltd.; International Transportation Service, Inc.; Long Beach Container Terminal, Inc.; Seaside Transportation Service LLC; Trapac, Inc.; Total Terminals LLC; West Basin Container Terminal LLC; Yusen Terminals, Inc.; Pacific Maritime Services, L.L.C.; SSA Terminals, LLC; and SSA Terminal (Long Beach), LLC.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW., Suite 1100, Washington, DC 20006.

Synopsis: The amendment corrects the address of Eagle Marine Services, Ltd.

Dated: January 14, 2011.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–1177 Filed 1–19–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

License Number: 001393F.
Name: McLean Cargo Specialists, Incorporated.
Address: 16680 Central Green Blvd., Houston, TX 77032.
Date Revoked: December 17, 2010.
Reason: Failed to maintain a valid bond.

License Number: 003134F.
Name: Enterprise Forwarders, Inc.
Address: 8555 NW. 29th Street, Doral, FL 33122.
Date Revoked: December 15, 2010.
Reason: Failed to maintain a valid bond.

License Number: 004094F.
Name: All Transport, Inc.
Address: 8369 NW. 66th Street, Miami, FL 33166.
Date Revoked: December 24, 2010.
Reason: Failed to maintain a valid bond.

License Number: 4413F.
Name: Industrial Connections, Inc.
Address: 300 Park Blvd., Suite 165, Itasca, IL 60143.
Date Revoked: December 12, 2010.
Reason: Failed to maintain a valid bond.

License Number: 004659F.
Name: Baron Worldwide, Inc.
Address: 5282 S. Newton Street, Littleton, CO 80123.
Date Revoked: December 1, 2010.
Reason: Failed to maintain a valid bond.

License Number: 14443N.
Name: Advance Ocean Inc.
Address: 17870 Castleton Street, Suite 255, City of Industry, CA 91748.
Date Revoked: December 6, 2010.
Reason: Failed to maintain a valid bond.

License Number: 015837N.
Name: Air Sea Containers, Inc.
Address: 2749 NW. 82nd Avenue, Miami, FL 33122.
Date Revoked: December 14, 2010.
Reason: Failed to maintain a valid bond.

License Number: 016159N.
Name: American Pioneer Shipping L.L.C.
Address: 80 Morristown Road, Room 273, Bernardsville, NJ 07924.
Date Revoked: December 18, 2010.
Reason: Failed to maintain a valid bond.

License Number: 16722N.
Name: Can-Med Lines (USA) Inc.
Address: 21163 Twinridge Square, Sterling, VA 20164.
Date Revoked: December 30, 2010.
Reason: Surrendered license voluntarily.

License Number: 017526N.
Name: Intertainer Line, Inc.
Address: 5839 Bender Road, Houston, TX 77396.
Date Revoked: December 8, 2010.
Reason: Failed to maintain a valid bond.

License Number: 018694F.
Name: Global Parcel System LLC.
Address: 8304 NW. 30th Terrace, Miami, FL 33122.
Date Revoked: December 10, 2010.
Reason: Failed to maintain a valid bond.

License Number: 019297N.
Name: Premier Van Lines, Inc.
Address: 3953 South 200th East, Salt Lake City, UT 84107.
Date Revoked: December 17, 2010.
Reason: Failed to maintain a valid bond.

License Number: 019689N.
Name: Powin Express, Inc.
Address: 1224 Santa Anita Avenue, Suite F, South El Monte, CA 91733.
Date Revoked: December 4, 2010.
Reason: Failed to maintain a valid bond.

License Number: 019753N.
Name: S Cargo International, Inc.
Address: 3255 Wilshire Blvd., Suite 803, Los Angeles, CA 90010.
Date Revoked: December 1, 2010.
Reason: Failed to maintain a valid bond.

License Number: 020410F.
Name: MBA Logistics, LLC.
Address: 11455 Narin Drive, Brighton, MI 48114.
Date Revoked: December 4, 2010.
Reason: Failed to maintain a valid bond.

License Number: 020477N.
Name: Omega Shipping (FL), Inc.
Address: 8710 NW 100th Street, Miami, FL 33178.
Date Revoked: December 1, 2010.
Reason: Failed to maintain a valid bond.

License Number: 020826NF.
Name: New World Forwarding LLC.
Address: 8524 Highway 6 North, Suite 276, Houston, TX 77095.
Date Revoked: December 14, 2010.
Reason: Failed to maintain valid bonds.

License Number: 021204NF.
Name: United Logistics Corp.
Address: 3650 Mansell Road, Suite 400, Alpharetta, GA 30022.
Date Revoked: December 18, 2010.
Reason: Failed to maintain valid bonds.

License Number: 021262NF.
Name: Amass International Group Inc.
Address: 13191 Crossroads Parkway North, Suite 385, City of Industry, CA 91746.
Date Revoked: December 18, 2010.
Reason: Failed to maintain valid bonds.

License Number: 021370NF.
Name: Encargo Export Corporation dba Encargo Lines dba Encargo Logistics.
Address: 10800 NW. 103rd Street, Miami, FL 33178.
Date Revoked: December 28, 2010.
Reason: Failed to maintain valid bonds.

License Number: 021562N.
Name: RDM Solutions, Inc.
Address: 154–09 146th Avenue, Suite 203, Jamaica, NY 11434.
Date Revoked: December 30, 2010.
Reason: Failed to maintain a valid bond.

License Number: 021566N.
Name: Alex O. De Guzman dba Eastern Express Cargo.
Address: 10717 Camino Ruiz, Suite 228, San Diego, CA 92126.
Date Revoked: December 9, 2010.
Reason: Failed to maintain a valid bond.

License Number: 022057F.
Name: Noah International Logistics, Inc.

Address: 110 Mackenzie Lane, Fayetteville, GA 30214.

Date Revoked: December 3, 2010.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011–1175 Filed 1–19–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by e-mail at *OTI@fmc.gov*.

B.Y. International Inc. (NVO & OFF), 11841 Trapani Drive, Rancho Cucamonga, CA 91701, Officer: Quan Li Smith, President/Treasurer/Secretary, Application Type: New NVO & OFF License.

Capito Enterprises, Inc. (NVO & OFF), 190 Ellis Road, Lake In The Hills, IL 60156, Officers: Rizalina D. Capito, President/Treasurer (Qualifying Individual), Rosette Capito, Vice President, Application Type: New NVO & OFF License.

CDS Global Logistics, Inc. (NVO & OFF), 1001 Virginia Avenue, Suite 315, Atlanta, GA 30354, Officers: Henry O. Wiseman, President (Qualifying Individual), Anna L. Henggeler, Corporate Secretary, Application Type: Trade Name Change.

Eagle Trans Shipping & Logistics LLC (NVO & OFF), Hoboken Business Center, 50 Harrison Street, Suite 204B, Hoboken, NJ 07030, Officers: Michelle L. Hasenauer, Manager (Qualifying Individual), Harbans S. Shrinkant, Manager, Application Type: New NVO & OFF License.

General Logistics, Inc. (NVO), 1400 NW 159 Street, Suite 105, Miami Gardens, FL 33169, Officers: Leszek Przybylski, President (Qualifying Individual), Dariusz Wietocha, Secretary, Application Type: New NVO License.

Imexzon Logistics Inc. dba, Unix Global (NVO & OFF), 1240 Blalock Road, #253, Houston, TX 77055, Officers: Seung (aka Kevin) K. Yang, Secretary (Qualifying Individual), Yoon S. Kim, President/CEO, Application Type: New NVO & OFF License.

InterChez Global Services, Inc. (NVO & OFF), 600 Alpha Parkway, Stow, OH 44224, Officers: Rocio Kemp, Vice President Marketing (Qualifying Individual), Sharlene Chesnes, EVP/Board Chair, Application Type: QI Change.

Logic Global LLC (NVO), 1900 Hemstead Turnpike, Suite 405, East Meadow, NY 11554, Officer: Kathleen Fox, Member/Manager (Qualifying Individual), Application Type: New NVO License.

LTA Import & Export, Inc. (NVO & OFF), 14331 SW 120th Street, #203, Miami, FL 33186, Officers: Eric E. Diaz, Director of Sales & Marketing (Qualifying Individual), Annette Trimino, President, Application Type: New NVO & OFF License.

Marine Cargo Line, L.C. dba, Active Freight & Logistics (NVO), One Blue Hill Plaza, Pearl River, NY 10965, Officer: Hector Rodriguez, Senior Vice President (Qualifying Individual), Alan Elkin, CEO/Manager, Application Type: QI Change.

Miami Freight & Logistics Services, Inc., dba Miami Global Lines (NVO & OFF), 3630 NW 76th Street, Miami, FL 33143, Officers: Syed H. Hussaini, Director/Secretary/Vice President (Qualifying Individual), Mohamed Abouelmatti, Director/President, Application Type: New NVO & OFF License.

Morgan Systems International, Inc., dba Global Marine Line (NVO & OFF), 16140 Waverly, Houston, TX 77032, Officer: James M. Terry, President (Qualifying Individual), Application Type: Trade Name Change & Add NVO Service.

Pavao Sosic dba C.O. Logistic (OFF), 3711 Country Club Drive, #6, Long Beach, CA 90807, Officer: Pavao Sosic, Sole Proprietor (Qualifying Individual), Application Type: Add NVO Service.

Sanritsu Logistics America Inc. (NVO & OFF), 18239 S. Figueroa Street. Gardena, CA 90248, Officers: Yoichi J. Kamachi, Assistant Vice President (Qualifying Individual), Yasuhide Miura, President/Director, Application Type: New NVO & OFF License.

Sarosh International Shipping Inc. (NVO & OFF), 11222 S. Cienega Blvd., Suite 149, Inglewood, CA 90304, Officers: Donna Caberto, President/CEO (Qualifying Individual), Vishnukanth Puthalapattu, Director/VP/Treasurer, Application Type: New NVO & OFF License.

Status Logistics Corp. (NVO & OFF), 700 Rockaway Turnpike, #488, Lawrence, NY 11559, Officer: Anthony R. Evangelista, President/Sec./Treas. (Qualifying Individual) Application Type: New NVO & OFF License.

Technicolor Global Logistics, LLC (NVO & Off), 3233 E. Mission Oaks Blvd., Camarillo, CA 93012 Officer: Elaine Singleton, General Manager (Qualifying Individual) Application Type: New NVO & OFF License.

Dated: January 14, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–1171 Filed 1–19–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
017080N	General Cargo & Logistics, 17828 S. Main Street, Carson, CA 90248	November 21, 2010.
017747N	Tomcar Investment USA, Inc., 10773 NW 58th Street, Suite 275, Miami, FL 33178	November 6, 2010.
020675N	Service Galopando Corp., 3190 South State Road 7, Bay 5, Miramar, FL 33023	October 23, 2010.
020983N	KCE Logistics Inc. dba, Korea Cargo Express, 1932 NW. 82nd Avenue, Miami, FL 33126	November 21, 2010.
021789F	Daleray Corporation, 3350 SW. 3rd Avenue, Suite 207, Fort Lauderdale, FL 33315	November 30, 2010.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011–1174 Filed 1–19–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 3, 2011.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Gregory R. Raymo,* Worthington, Minnesota, individually and as a proposed Co-Trustee of the First State Bank Southwest 2010 Amended and Restated KSOP Plan and trust; to acquire voting shares of First Rushmore Bancorporation, Inc., Worthington, Minnesota, and thereby indirectly acquire voting share of First State Bank Southwest, Pipestone, Minnesota.

Board of Governors of the Federal Reserve System, January 14, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–1120 Filed 1–19–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Annual Update of the HHS Poverty Guidelines

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice provides an update of the Department of Health and Human Services (HHS) poverty guidelines to account for last calendar year's increase in prices as measured by the Consumer Price Index.

DATES: *Effective Date:* Date of publication, unless an office administering a program using the guidelines specifies a different effective date for that particular program.

ADDRESSES: Office of the Assistant Secretary for Planning and Evaluation, Room 404E, Humphrey Building, Department of Health and Human Services, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: For information about how the guidelines are used or how income is defined in a particular program, contact the Federal, State, or local office that is responsible for that program. For information about poverty figures for immigration forms, the Hill-Burton Uncompensated Services Program, and the number of people in poverty, use the specific telephone numbers and addresses given below.

For general questions about the poverty guidelines themselves, contact Gordon Fisher, Office of the Assistant Secretary for Planning and Evaluation, Room 404E, Humphrey Building, Department of Health and Human Services, Washington, DC 20201—telephone: (202) 690–7507—or visit *http://aspe.hhs.gov/poverty/.*

For information about the percentage multiple of the poverty guidelines to be used on immigration forms such as USCIS Form I–864, Affidavit of Support, contact U.S. Citizenship and Immigration Services at 1–800–375–5283.

For information about the Hill-Burton Uncompensated Services Program (free or reduced-fee health care services at certain hospitals and other facilities for persons meeting eligibility criteria involving the poverty guidelines), contact the Office of the Director, Division of Facilities Compliance and Recovery, Health Resources and Services Administration, HHS, Room 10–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. To speak to a staff member, please call (301) 443–5656. To receive a Hill-Burton information package, call 1–800–638–0742 (for callers outside Maryland) or 1–800–492–0359 (for callers in Maryland). You also may visit *http://www.hrsa.gov/gethealthcare/affordable/hillburton/.*

For information about the number of people in poverty, visit the Poverty section of the Census Bureau's Web site at *http://www.census.gov/hhes/www/poverty/poverty.html* or contact the Census Bureau's Customer Service Center at 1–800–923–8282 (toll-free) or visit *http://ask.census.gov* for further information.

SUPPLEMENTARY INFORMATION:

Background

Section 673(2) of the Omnibus Budget Reconciliation Act (OBRA) of 1981 (42 U.S.C. 9902(2)) requires the Secretary of the Department of Health and Human Services to update the poverty guidelines at least annually, adjusting them on the basis of the Consumer Price Index for All Urban Consumers (CPI–U). The poverty guidelines are used as an eligibility criterion by the Community Services Block Grant program and a number of other Federal programs. The *poverty guidelines* issued here are a simplified version of the *poverty thresholds* that the Census Bureau uses to prepare its estimates of the number of individuals and families in poverty.

As required by law, this update is accomplished by increasing the latest published Census Bureau poverty thresholds by the relevant percentage change in the Consumer Price Index for All Urban Consumers (CPI–U). The guidelines in this 2011 notice reflect the 1.6 percent price increase between calendar years 2009 and 2010. After this inflation adjustment, the guidelines are rounded and adjusted to standardize the differences between family sizes. The same calculation procedure was used this year as in previous years (except for 2010, as discussed below).

Last year's poverty guidelines—the 2010 guidelines—were issued at an atypical time (August 3, 2010, rather than late January 2010) because legislation enacted in late 2009 (Pub. L. 111–118) and early 2010 (Pub. L. 111–144 and 111–157) ultimately prohibited publication of 2010 poverty guidelines before May 31, 2010. The details of the calculation of the 2010 guidelines were adjusted to take into account the period for which their publication was delayed, as described at 75 FR 45628. However, the level of the 2011 poverty guidelines presented here is not affected by the way in which the 2010 poverty guidelines were calculated because, in following the usual process for updating the poverty guidelines, the starting point for calculating the 2011 poverty guidelines is the 2009 Census Bureau poverty thresholds, and not the 2010 poverty guidelines.

The following guideline figures represent annual income.

2011 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA

Persons in family	Poverty guideline
1	$10,890
2	14,710
3	18,530
4	22,350
5	26,170
6	29,990
7	33,810
8	37,630

For families with more than 8 persons, add $3,820 for each additional person.

2011 POVERTY GUIDELINES FOR ALASKA

Persons in family	Poverty guideline
1	$13,600
2	18,380
3	23,160
4	27,940
5	32,720
6	37,500
7	42,280
8	47,060

For families with more than 8 persons, add $4,780 for each additional person.

2011 POVERTY GUIDELINES FOR HAWAII

Persons in family	Poverty guideline
1	$12,540
2	16,930
3	21,320
4	25,710
5	30,100
6	34,490
7	38,880
8	43,270

For families with more than 8 persons, add $4,390 for each additional person.

Separate poverty guideline figures for Alaska and Hawaii reflect Office of Economic Opportunity administrative practice beginning in the 1966–1970 period. (Note that the Census Bureau poverty thresholds—the version of the poverty measure used for statistical purposes—have never had separate figures for Alaska and Hawaii.) The poverty guidelines are not defined for Puerto Rico or other outlying jurisdictions. In cases in which a Federal program using the poverty guidelines serves any of those jurisdictions, the Federal office that administers the program is generally responsible for deciding whether to use the contiguous-States-and-DC guidelines for those jurisdictions or to follow some other procedure.

Due to confusing legislative language dating back to 1972, the poverty guidelines sometimes have been mistakenly referred to as the "OMB" (Office of Management and Budget) poverty guidelines or poverty line. In fact, OMB has never issued the guidelines; the guidelines are issued each year by the Department of Health and Human Services. The poverty guidelines may be formally referenced as "the poverty guidelines updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2)."

Some Federal programs use a percentage multiple of the guidelines (for example, 125 percent or 185 percent of the guidelines), as noted in relevant authorizing legislation or program regulations. Non-Federal organizations that use the poverty guidelines under their own authority in non-Federally-funded activities may also choose to use a percentage multiple of the guidelines.

The poverty guidelines do not make a distinction between farm and non-farm families, or between aged and non-aged units. (Only the Census Bureau poverty thresholds have separate figures for aged and non-aged one-person and two-person units.)

Note that this notice does not provide definitions of such terms as "income" or "family," because there is considerable variation in defining these terms among the different programs that use the guidelines. These variations are traceable to the different laws and regulations that govern the various programs. Therefore, questions about how a particular program applies the poverty guidelines (for example, Is income counted before or after taxes? Should a particular type of income be counted? Should a particular person be counted in the family or household unit?) should be directed to the entity that administers or funds the program; that entity has the responsibility for defining such terms as "income" or "family," to the extent that these terms are not already defined for the program in legislation or regulations.

Dated: January 14, 2011.

Kathleen Sebelius,

Secretary of Health and Human Services.

[FR Doc. 2011–1237 Filed 1–18–11; 4:15 pm]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Nominations Requested for the 2011 Healthy Living Innovation Awards

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) seeks nominations of public and private sector organizations to receive the 2011 Healthy Living Innovation Awards. The Awards are a part of Secretary Sebelius' Healthy Weight Initiative and HHS' continuing focus on highlighting preventive health and recognizing organizations that implement innovative approaches to address chronic diseases and promote healthier lifestyles. The statutory authority for this health promotion activity is Section 1703[42 U.S.C. 300u-2] from Title XVII of the Public Health Service Act. The Healthy Living Innovation Awards will identify and acknowledge innovative health promotion projects that demonstrated a significant impact on the health status of a community. Eligible organizations must have an innovative project in at least one of three health promotion areas:

(1) Healthy weight;
(2) Physical activity; and
(3) Nutrition.

The Department intends that these awards will provide an opportunity to increase public awareness of creative approaches to develop and expand innovative health programs and encourage duplication of successful strategies. Awards will be given in the following categories:

- Faith-Based and/or Community Initiatives
- Health Care Delivery
- Healthy Workplace
  - Large Employer> 500 employees
  - Small Employer< 500 employees
- Non-Profit
- Public Sector
- Schools (K–12)
- *Let's Move!* Cities and Towns

The following criteria will be taken into consideration upon review:

- Creativity and Innovation
- Leadership
- Sustainability
- Replicability
- Results/Outcomes

DATES: Nominations must be received by 11:59 p.m. EDT on March 1, 2011.

Nominations: NORC at the University of Chicago, a 501(c) (3) organization focused on health research, is coordinating the nomination process for

the Healthy Living Innovation Awards on behalf of the HHS. Nominations can only be made electronically at *http://HealthyLivingInnovation.Challenge.gov.*

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services is the U.S. government's principal agency for promoting and protecting the health of all Americans. The HHS manages many programs, covering a broad spectrum of health promotion and disease prevention services and activities. Leaders in the business community, State and local government officials, tribes and tribal entities, and charitable, faith-based, and community organizations have expressed an interest in working with the Department to promote healthy choices and behaviors. The Secretary welcomes this interest. With this notice, the Secretary outlines opportunities to identify and celebrate outstanding organizations that have implemented innovative and creative health promotion programs.

Dated: January 14, 2011.

Sherry Glied,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 2011–1180 Filed 1–19–11; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 25, 2011, between approximately 8:30 a.m. and 1:50 p.m.

Location: DoubleTree Hotel Bethesda and Executive Meeting Center, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Donald W. Jehn or Denise Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On February 25, 2011, the committee will discuss and make recommendations on the selection of strains to be included in the influenza virus vaccine for the 2011–2012 influenza season. The committee will also hear an update on Pandemic Influenza Surveillance.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 18, 2011. Oral presentations from the public will be scheduled between approximately 11:50 a.m. and 12:50 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 10, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 11, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Donald W. Jehn or Denise Royster at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 12, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–1105 Filed 1–19–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on the National Health Service Corps; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on the National Health Service Corps (NHSC).

Dates and Times: February 10, 2011—1 p.m.–4 p.m.; February 11, 2011—8:30 a.m.–4 p.m.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852, Phone: 301–822–9200.

Status: The meeting will be open to the public.

Agenda: The Council is convening in Bethesda, MD to hear NHSC program updates. Findings from recent research will be discussed along with future plans for additional research. Site Partnerships, Clinician Retention and NHSC Communications and Marketing Strategies will also be part of the discussions.

For Further Information Contact: Njeri Jones, Bureau of Clinician Recruitment and Service, Health Resources and Services Administration, Parklawn Building, Room 8A–46, 5600 Fishers Lane, Rockville, MD 20857; e-mail: *NJones@hrsa.gov;* Telephone: 301–443–2541.

Dated: January 12, 2011.

Robert Hendricks,

Director, Division of Policy and Information Coordination.

[FR Doc. 2011–1112 Filed 1–19–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health; Center for Scienific 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: Infectious Diseases and Microbiology Integrated Review Group. Pathogenic Eukaryotes Study Section.
Date: February 10–11, 2011.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Marina del Rey Hotel, 13534 Bali Way, Marina del Rey, CA 90292.
Contact Person: Tera Bounds, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, 301–435–2306. *boundst@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel. Member Conflict: Integrative Neuroscience.
Date: February 17–18, 2011.
Time: 7 a.m. to 8 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).
Contact Person: Brian Hoshaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7844, Bethesda, MD 20892. 301–435–1033. *hoshawb@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group. Molecular and Cellular Hematology.
Date: February 17–18, 2011.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel and Suites, 2033 M Street, NW., Main Ball Room, Washington, DC 20036.
Contact Person: Delia Tang, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892. 301–379–9827. *tangd@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group. Clinical and Integrative Cardiovascular Sciences Study Section.
Date: February 17–18, 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: Russell T Dowell, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892. (301) 435–1850. *dowellr@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group. Biophysics of Neural Systems Study Section.
Date: February 17–18, 2011.
Time: 8 a.m. to 4 p.m..
Agenda: To review and evaluate grant applications.
Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.
Contact Person: Geoffrey G Schofield, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892. 301–435–1235. *geoffreys@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group. Macromolecular Structure and Function E Study Section.
Date: February 17, 2011.
Time: 8 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Fairmont Hotel, 950 Mason Street, San Francisco, CA 94108.
Contact Person: Nitsa Rosenzweig, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7760, Bethesda, MD 20892. (301) 435–1747. *rosenzweign@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group. Auditory System Study Section.
Date: February 17–18, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.
Contact Person: Lynn E Luethke, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892. (301) 806–3323. *luethkel@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group. Gene and Drug Delivery Systems Study Section.
Date: February 17–18, 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: Amy L Rubinstein, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7844, Bethesda, MD 20892. 301–408–9754. *rubinsteinal@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group. Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section.
Date: February 17–18, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Nikko, 222 Mason Street, San Francisco, CA 94102.
Contact Person: Boris P Sokolov, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892. 301–408–9115. *bsokolov@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel. Member Conflict: Arthritis, Oral and Skin.
Date: February 17–18, 2011.
Time: 12 p.m. to 8 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).
Contact Person: Jean D Sipe, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892. 301/435–1743. *sipej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel. Cancer and Musculoskeletal Imaging Applications.
Date: February 18, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.
Contact Person: Eileen W Bradley, DSC, Chief, SBIB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5100, MSC 7854, Bethesda, MD 20892. (301) 435–1179. *bradleye@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel. BTSS and SAT Member Conflict.
Date: February 18, 2011.
Time: 1 p.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: Guo Feng Xu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854. Bethesda, MD 20892. 301–237–9870. *xuguofen@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: January 13, 2011

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1135 Filed 1–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Program Project in Cardiovascular Diseases.

Date: February 8, 2011.

Time: 12 p.m. to 3 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: Shelley S Sehnert, PhD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892–7924. 301–435–0303. *ssehnert@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Clinical Investigator and Research Scientist Career Development Awards.

Date: February 9–10, 2011.

Time: 8 a.m. to 3 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: Stephanie J Webb, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892. 301–435–0291. *stephanie.webb@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Program Project in Cardiovascular Diseases.

Date: February 9, 2011

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: Shelley S Sehnert, PhD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892–7924. 301–435–0303. *ssehnert@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Career Development Grants Review Panel.

Date: February 10–11, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Keith A. Mintzer, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892–7924. 301–435–0280. *mintzerk@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Novel Technologies for Powering Ventricular Assist Devices.

Date: February 11, 2011.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Youngsuk Oh, PhD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924. 301–435–0277. *yoh@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Pathway to Independence Awards.

Date: February 24–25, 2011.

Time: 8 a.m. to 3 p.m

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Holly K. Krull, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892–7924. 301–435–0280. *krullh@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 13, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1146 Filed 1–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 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 Cancer Institute Special Emphasis Panel; Methylation Meeting.

Date: March 8, 2011.

Time: 1:30 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 8103, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Timothy C. Meeker, M.D., PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8103, Bethesda, MD 20892, (301) 594–1279, *meekert@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 13, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1149 Filed 1–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, February 17, 2011, 1 p.m. to February

17, 2011, 3 p.m., Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852 which was published in the **Federal Register** on January 5, 2011, 76 FR 577.

This notice is amending the start time of the meeting from 1 p.m. to 8:30 a.m. The meeting is closed to the public.

Dated: January 13, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1151 Filed 1–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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/or 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 grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovative and Early Stage Development of Emerging Technologies in Biospecimen Science.

Date: February 24, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Donald L. Coppock, PhD, Scientific Review Officer, Scientific Review and Logistic Branch, Division of Extramural Activities, NCI, National Institutes of Health, 6116 Executive Blvd., Rm 7151, Bethesda, MD 20892. 301–451–9385. *coppockdl@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Radioprotector/Mitigator Development for Radiotherapy.

Date: February 24–25, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Viatcheslav A. Soldatenkov, M.D., PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd Room 8057, Bethesda, MD 20892–8329. 301–451–4758. *soldatenkovv@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Creating Interdisciplinary Research Teams in Basic Behavioral and Social Science Research.

Date: March 7, 2011.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Ellen K Schwartz, EDD, MBA, Scientific Review Officer, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8055B, Bethesda, MD 20892–8329. 301–594–1215. *schwarel@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer-related Applications for Conferences and Scientific Meetings.

Date: March 7, 2011.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Ellen K Schwartz, EDD, MBA, Scientific Review Officer, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8055B, Bethesda, MD 20892–8329. 301–594–1215. *schwarel@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Novel Imaging Agents to Expand the Clinical Toolkit for Cancer Diagnosis, Staging and Treatment.

Date: March 8, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: The Legacy Hotel, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Savvas C Makrides, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm 8050a, Bethesda, MD 20892. 301–496–7421. *makridessc@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Prevention Research Small Grant Program (R03).

Date: March 10–11, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance M Street Hotel. 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Irina Gordienko, PhD, Scientific Review Officer, Scientific Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm. 7073, Bethesda, MD 20892. 301–594–1566. *gordienkoiv@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Emerging Technologies for Cancer Research.

Date: March 29–30, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Viatcheslav A. Soldatenkov, M.D., PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd Room 8057, Bethesda, MD 20892–8329. 301–451–4758. *soldatenkovv@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 13, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1150 Filed 1–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; 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 Human Genome Research Institute Special Emphasis Panel, KOMP (KNOCK-OUT MOUSE PROJECT).

Date: February 16, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Keith McKenney, PhD, Scientific Review Officer, NHGRI, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814, 301–594–4280, *mckenneyk@mail.nih.gov.*

Name of Committee: National Human Genome Research Institute Special Emphasis Panel eMERGE (Electronic Medical Records and Genomics).

Date: March 11, 2011.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Residence Inn by Marriott, 7335 Wisconsin Avenue, Bethesda, MD.

Contact Person: Ken D. Nakamura, PhD, Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301–402–0838, *nakamurk@mail.nih.gov.*

Name of Committee: National Human Genome Research Institute Special Emphasis Panel Sequencing Technology.

Date: March 22–23, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Residence Inn by Marriott, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ken D. Nakamura, PhD, Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301–402–0838, *nakamurk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: January 13, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1148 Filed 1–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; 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 Human Genome Research Institute Initial Review Group; Genome Research Review Committee.

Date: March 4, 2011.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Keith McKenney, PhD, Scientific Review Officer, NHGRI, 5635 Fishers Lane, Suite 4076, MSC 9306, Bethesda, MD 20814, 301–594–4280, *mckenneyk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: January 13, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1141 Filed 1–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Bacterial Pathogenesis Study Section.

Date: February 8–9, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Ritz-Carlton, Washington DC Hotel, 1150 22nd Street, NW., Washington, DC 20035.

Contact Person: Richard G. Kostriken, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892. 301–402–4454. *kostrikr@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Synapses, Cytoskeleton and Trafficking Study Section.

Date: February 10–11, 2011.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 480 King Street, Alexandria, VA 22314.

Contact Person: Jonathan K. Ivins, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7850, Bethesda, MD 20892. (301) 594–1245. *ivinsj@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Vector Biology Study Section.

Date: February 10, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street at Sutter, San Francisco, CA 94102.

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, Synthetic and Biological Chemistry A.

Date: February 10, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.

Contact Person: John L. Bowers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892. (301) 435–1725. *bowersj@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group, Clinical Oncology Study Section.

Date: February 14–15, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Tysons Corner, 7801 Leesburg Pike, Falls Church, VA 22043.

Contact Person: Malaya Chatterjee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892. 301–451–0131. *chatterm@csr.nih.gov.*

Name of Committee: Oncology 1—Basic Translational Integrated Review Group, Tumor Microenvironment Study Section.

Date: February 14–15, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 700 F Street, NW., Washington, DC 20001.

Contact Person: Eun Ah Cho, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892. (301) 451–4467. *choe@csr.nih.gov.*

Name of Committee: Oncology 1—Basic Translational Integrated Review Group, Tumor Cell Biology Study Section.
Date: February 14–15, 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: Angela Y Ng, PhD, MBA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892. 301–435–1715. *ngan@mail.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Integrative Nutrition and Metabolic Processes Study Section.
Date: February 14, 2011.
Time: 8 a.m. to 6 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: Sooja K Kim, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892. (301) 435–1780. *kims@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR10–018: Accelerating the Pace of Drug Abuse Research Using Existing Epidemiology, Prevention, and Treatment Research Data.
Date: February 14–16, 2011.
Time: 6 p.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)
Contact Person: Bob Weller, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892. (301) 435–0694. *wellerr@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group, Hemostasis and Thrombosis Study Section.
Date: February 15, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Bukhtiar H Shah, PhD, DVM, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892. (301) 435–1233. *shahb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Program Project: Integrative Neuroscience.
Date: February 15–16, 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: Brian Hoshaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7844, Bethesda, MD 20892. 301–435–1033. *hoshawb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Societal and Ethical Issues in Research.
Date: February 15, 2011.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Monaco, 480 King Street, Alexandria, VA 22314.
Contact Person: Karin F. Helmers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892. 301–254–9975. *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Platelets.
Date: February 15, 2011.
Time: 1 p.m. to 3 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: Katherine M. Malinda, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892. 301–435–1241. *Katherine_Malinda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cell Biology.
Date: February 15, 2011.
Time: 3 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: Jonathan Arias, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892. 301–435–2406. *ariasj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Immune Mechanism.
Date: February 15, 2011.
Time: 12:30 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)
Contact Person: Scott Jakes, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892. 301–495–1506. *jakesse@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, MIT Laser Biomedical Research Center.
Date: February 16–18, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Kendall Hotel at the Engine 7 Firehouse, 350 Main Street, Cambridge, MA 02142.
Contact Person: Xiang-Ning Li, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892. 301–435–1744. *lixiang@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Pain.
Date: February 16–17, 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: John Bishop, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892. (301) 408–9664. *bishopj@csr.nih.gov.*

(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: January 13, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–1128 Filed 1–19–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2010–0711]

Collection of Information Under Review by Office of Management and Budget: OMB Control Number: 1625–0080

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision to the following collection of information: 1625–0080, Customer Satisfaction Surveys. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork

burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before February 22, 2011.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2010–0711] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) and/or to OIRA. To avoid duplicate submissions, please use only one of the following means:

(1) *Online:* (a) To Coast Guard docket at *http://www.regulation.gov.* (b) To OIRA by e-mail via: *OIRA-submission@omb.eop.gov.*

(2) *Mail:* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. (b) To OIRA, 725 17th Street, NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Hand Delivery:* To DMF address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–611), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2100 2ND ST., SW., STOP 7101, WASHINGTON, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of information subject to the collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request [USCG 2010–0711], and must be received by February 22, 2011. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the "Privacy Act" paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2010–0711], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via *http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**, but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov*, and type "USCG–2010–0711" in the "Keyword" box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0711" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: USCG–2010–0711.

Privacy Act

Anyone can search the electronic form of comments received in 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 statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The

Coast Guard has published the 60-day notice (75 FR 57808, September 22, 2010) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Request

Title: Customer Satisfaction Surveys.

OMB Control Number: 1625–0080.

Type of Request: Extension of a previously approved collection.

Respondents: Recreational boaters, commercial mariners, industry groups, and State/local governments.

Abstract: Putting people first means ensuring that the Federal Government provides the highest-quality of service possible to the American people. Executive Order 12862 requires all executive departments/agencies providing significant services directly to the public, seek to meet established standards of customer service.

Forms: None.

Burden Estimate: The estimated burden has decreased from 15,516 hours to 1,316 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: January 7, 2011.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2011–1189 Filed 1–19–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–1146]

Safety Requirements and Manning Exemption Eligibility on Distant Water Tuna Fleet Vessels

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability and request for comments.

SUMMARY: Pursuant to Section 904 of the 2010 Coast Guard Authorization Act, the Coast Guard announces the availability of a draft policy regarding distant water tuna fleet vessels manning exemption eligibility and safety requirements. We request your comments on the Safety Requirements and Manning Exemption Eligibility on Distant Water Tuna Fleet Vessels.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before February 22, 2011 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2010–1146 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail Jonathan G. Wendland, Fishing Vessel Safety Division (CG–5433), U.S. Coast Guard; telephone 202–375–1245, e-mail *jonathan.g.wendland@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 draft policy on Safety Requirements and Manning Exemption Eligibility on Distant Water Tuna Fleet Vessels. 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–2010–1146) 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* and type "USCG–2010–1146" in the "Keyword" box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit 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 and related material: To view the comments, the draft policy, the USCG Marine Safety Manual Volume III Marine Industry Personnel, MSC.1/Circ.1163/Rev.6/ (commonly referred to as "the White List") and STCW A–I/10 as referenced in the draft policy, 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–2010–1146" 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

The Coast Guard Maritime Transportation Act (CGMTA) of 2006 (section 421) authorized United States-documented purse seine vessels fishing for highly migratory species (under a license issued pursuant to the 1987 South Pacific Tuna Treaty [SPTT]) to use foreign citizens, except for the master, to meet manning requirements if no United States citizen personnel are readily available. The manning exemption was only applicable to vessels operating in and out of American Samoa. That authorization was for a 48-month period and ended on July 11, 2010.

Section 904 of the 2010 Coast Guard Authorization Act (CGAA), signed into law (Pub. L. 111–281) on 15 October

2010, reauthorized for a period of two years the use of foreign citizens (excluding the master) on United States-documented purse seine vessels in the Distant Water Tuna Fleet (DWTF). This reauthorized manning exemption also only applies to vessels operating in and out of American Samoa. In addition, the 2010 CGAA added a safety examination requirement such that a vessel's owner/operator may not employ a foreign citizen to meet a manning requirement unless it first successfully completes an annual dockside safety examination by an individual authorized to enforce part B of subtitle II of title 46, United States Code. Furthermore, the 2010 CGAA also amended 46 U.S.C. 4502 establishing requirements for an individual in charge of a vessel to keep a record of equipment maintenance and required instruction and drills, and for a vessel to be issued a certificate of compliance upon successfully completing a dockside safety examination. The reauthorization retained the restriction that a foreign officer engaged to fill a position must hold a valid license or certificate issued in accordance with the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, as amended, standards and by an authority recognized by the Coast Guard. The manning exemption reauthorization is set to expire December 31, 2012.

We are requesting your comments for consideration in preparing the final Coast Guard policy that is intended to clarify the requirements enabling a DWTF vessel to take advantage of the temporary manning exemption.

Authority

This notice is issued under authority of 5 U.S.C. 552(a).

Dated: January 13, 2011.

Kevin S. Cook,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. 2011–1191 Filed 1–19–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–1150]

Towing Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Towing Safety Advisory Committee (TSAC). This Committee advises the Coast Guard on matters relating to shallow-draft inland and coastal waterway navigation and towing safety.

DATES: Completed application forms should reach us on or before March 7, 2011.

ADDRESSES: Application forms are available for download on the Advisory Committee's Web site at *http://homeport.uscg.mil/tsac.* Look for the *Application for Committee Membership ACM* under "General Information". You may also request an application form be e-mailed or sent to you by writing to Commandant (CG–5222)/TSAC, U.S. Coast Guard, 2100 Second St., SW,, STOP 7126, Washington, DC 20593–7126; calling 202–372–1427; or e-mail to *Michael.J.Harmon@uscg.mil.*

Also a copy of the application form, as well as this notice, is available in our online docket, USCG–2010–1150, at *http://www.regulations.gov.* Send your completed application to Michael J. Harmon, the Alternate Designated Federal Officer (ADFO) at the street address above.

FOR FURTHER INFORMATION CONTACT: Michael J. Harmon, ADFO of Towing Safety Advisory Committee (TSAC); telephone 202–372–1427; fax 202–372–1926; or e-mail at *Michael.J.Harmon@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Towing Safety Advisory Committee (TSAC) ("Committee") is a Federal advisory committee under 5 U.S.C. App. (Pub. L. 92–463). It was established under authority of the Act to establish a Towing Safety Advisory Committee in the Department of Transportation, Public Law 96–380, which was most recently amended by section 621 of the Coast Guard Authorization Act of 2010, Public Law 111–281. The Committee advises the Secretary of Homeland Security on matters relating to shallow-draft inland and coastal waterway navigation and towing safety. This advice also assists the Coast Guard in formulating the position of the United States regarding the towing industry in advance of International Maritime Organization meetings.

The Committee meets at least twice a year either in the Washington DC area or in cities with large towing centers of commerce and populated by high concentrations of towing industry and related businesses. It may also meet for extraordinary purposes. Subcommittees and workgroups may conduct intercessional telephonic meetings when necessary for specific tasking. The 18 members include:

- Seven members representing the Barge and Towing industry (reflecting a regional geographical balance);
- One member representing the offshore mineral and oil supply vessel industry;
- One member representing holders of active licensed Masters or Pilots of towing vessels with experience on the Western Rivers and the Gulf Intracoastal Waterway.
- One member representing the holders of active licensed Masters of towing vessels in offshore service.
- One member representing Masters who are active ship-docking or harbor towing vessel.
- One member representing licensed or unlicensed towing vessel engineers with formal training and experience.
- Two members each representing the following sectors:
  - Port districts, port authorities or terminal operators;
  - Shippers (of whom one must be engaged in the shipment of oil or hazardous materials by barge);
- Two members representing the General Public.

The Coast Guard is currently considering applications for eight positions, four current positions that will become vacant on September 30, 2011 and four newly created active-credentialed positions, resulting from amendments to the committee membership by section 621 of the 2010 Coast Guard Authorization Act, Public Law 111–281:

- Two representatives from the Barge and Towing industry;
- One representative from port districts, port authorities or terminal operators;
- One holder of an active license as Master or Pilot of towing vessels with experience on the Western Rivers and the Gulf Intracoastal Waterway.
- One holder of an active license as Master of towing vessels in offshore service.
- One active Master of a ship-docking or harbor towing vessel.
- One licensed or unlicensed towing vessel engineer with formal training and experience.
- One member from the General Public.

To be eligible, applicants should have expertise, knowledge, and experience relative to the position in the towing industry, marine transportation, or business operations associated with shallow-draft inland and coastal waterway navigation and towing safety. Registered lobbyists are not eligible to serve on Federal advisory committees. Registered lobbyists are lobbyists required to comply with provisions

contained in the Lobbying Disclosure Act of 1995 (Pub. L. 104–65, as amended by Title II of Pub. L. 110–81). Each member serves for a term of up to 3 years. Members may be considered to serve consecutive terms. All members serve at their own expense and receive no salary, or other compensation from the Federal Government. The exception to this policy is the possible reimbursement of travel expenses depending on fiscal budgetary constraints.

In support of the policy of the Coast Guard on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply. The Coast Guard values diversity as an enhancement to all the different characteristics and attributes that augment the Coast Guard mission.

If you are selected as a member who represents the general public, you will be appointed and serve as a special Government employee (SGE) as defined in section 202(a) of title 18, United States Code. As a candidate for appointment as a SGE, applicants are required to complete a Confidential Financial Disclosure Report (OGE Form 450). A completed OGE Form 450 is not releasable to the public except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a). Only the Designated Agency Ethics Official or the DAEO's designate may release a Confidential Financial Disclosure Report.

If you are interested in applying to become a member of the Committee, send a completed application to Michael J. Harmon, Alternate Designated Federal Officer (ADFO) of TSAC at Commandant (CG–5222)/ TSAC, U.S. Coast Guard, 2100 Second St., SW., STOP 7126, Washington, DC 20593–7126. Send the application in time for it to be received by the DFO on or before March 7, 2011. Please do not complete the political affiliation portion of the application because all TSAC appointments are made without regard to political affiliation. In addition to your "HOME ADDRESS", please include a valid e-mail address in that block. In the "TELEPHONE" block please include a valid contact number. A copy of the application form is available in the docket for this notice. To visit our online docket, go to *http://www.regulations.gov,* enter the docket number for this notice (USCG–2010–1150) in the Search box, and click "Go."

Dated: January 10, 2011.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2011–1068 Filed 1–19–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2009–0012]

NIMS Training Plan

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) is requesting public comments on the *NIMS Training Plan.* This plan defines National Incident Management System (NIMS) national training. It specifies stakeholder responsibilities and activities for developing, maintaining, and sustaining NIMS training. In addition to delineating responsibilities and actions, the *NIMS Training Plan* defines the process for developing training and personnel qualification requirements for emergency management/response personnel.

DATES: Comments must be received by February 22, 2011.

ADDRESSES: You may submit comments, identified by Docket ID FEMA–2009–0012, by one of the following methods:

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

E-mail: FEMA–POLICY@dhs.gov. Include Docket ID FEMA–2009–0012 in the subject line of the message.

Fax: 703.483.2999.

Mail/Hand Delivery/Courier: Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

Instructions: All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the Privacy Notice link in the footer of *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Kevin Molloy, Program Specialist, Emergency Management Institute, 16825 South Seton Avenue, Building G-Room 209, Emmitsburg, MD 21727. Phone: 301.447.1383.

SUPPLEMENTARY INFORMATION: On March 1, 2004, the Department of Homeland Security published the initial version of the *National Incident Management System (NIMS).* NIMS provides a consistent nationwide template to enable Federal, State, Tribal, and local governments, the private sector, and nongovernmental organizations to work together to prepare for, prevent, respond to, recover from, and mitigate the effects of incidents regardless of cause, size, location, or complexity. This consistency provides the foundation for use of NIMS for all incidents, ranging from daily occurrences to incidents requiring a coordinated Federal response. The *NIMS* document was revised and released in December 2008 based on input from stakeholders at every level within the Nation's response community and lessons learned during recent incidents.

A critical tool in promoting the nationwide implementation of NIMS is a well-developed training program that guides and enables NIMS training throughout the Nation. Core competencies will form the basis of the training courses' learning objectives and personnel qualifications that validate proficiency.

The National Integration Center at FEMA is charged with developing NIMS core competencies, training courses, and personnel qualifications. This updated *NIMS Training Plan* describes the operational foundations of these efforts, defines NIMS core competencies, training courses, and personnel qualifications as part of NIMS national training, assembles and updates the training guidance for available NIMS courses (organized as a core curriculum), and lays out a future plan to continue development of NIMS national training.

The document is available for nationwide review at *http://www.regulations.gov* under Docket ID FEMA–2009–0012. FEMA will review all comments received and may revise the document accordingly. Once the revision is complete, FEMA will release the final draft to the nation and post it

on the NIMS Resource Center: *http://www.fema.gov/nims.*

Authority: 6 U.S.C. 312; Homeland Security Presidential Directive (HSPD)–5.

Dated: January 11, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–1111 Filed 1–19–11; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Request for Information

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0023.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Request for Information (CBP Form 28). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (75 FR 70680) on November 18, 2010, allowing for a 60-day comment period. One comment was received. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before February 22, 2011.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Request for Information.

OMB Number: 1651–0023.

Form Number: CBP Form 28.

Abstract: Under 19 U.S.C. 1500 and 1401a, Customs and Border Protection (CBP) is responsible for appraising imported merchandise by ascertaining its value, classifying merchandise under the tariff schedule, and assessing a rate and amount of duty to be paid. On occasions when the invoice or other documentation does not provide sufficient information for appraisement or classification, the CBP Officer requests additional information through the use of CBP Form 28, Request for Information. This form is completed by CBP personnel requesting additional information and the importers, or their agents, respond in the format of their choice. CBP Form 28 is provided for by 19 CFR 151.11. A copy of this form and instructions are available at *http://forms.cbp.gov/pdf/CBP_Form_28.pdf.*

Current Actions: This submission is being made to extend the expiration date 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: 60,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 60,000.

If additional information is required contact: 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.

Dated: January 13, 2011.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2011–1048 Filed 1–19–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 5482–N–01]

Notice of Proposed Information Collection; Comment Request; Section 3 Business Self-Certification Application

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The information collection associated with the Section 3 Business Self-Certification Pilot Program is being submitted to the Office of Management and Budget (OMB) as a new collection, as required by the Paperwork Reduction Act. The Office of Fair Housing and Equal Opportunity will be implementing a six-month Section 3 Business Self-Certification pilot program in five metropolitan areas: (1) Washington, DC; (2) Los Angeles, CA; (3) New Orleans, LA; (4) Detroit, MI; and (5) Miami, FL. The findings from this pilot program will allow HUD to determine the feasibility of implementing the Section 3 Business Self-Certification program nationally. The proposed Section 3 Business Self-Certification Application Form has been developed to allow eligible businesses to self-certify that they meet the regulatory definition of a Section 3 Business Concern set forth at 24 CFR part 135. Eligible firms will complete and submit the form electronically to HUD, and will be placed into a registry of Section 3 Businesses maintained on HUD's Web site. Agencies that receive Section 3 covered HUD funding will be encouraged to contact the firms listed in HUD's registry of Section 3 Businesses to facilitate the award of contracts and subcontracts to these entities.

DATES: *Comments Due Date:* March 21, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Paperwork Reduction

Act Officer, Office of the Chief Information Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410. Telephone number (202) 402–3400.

FOR FURTHER INFORMATION CONTACT: Staci Gilliam, Director, Economic Opportunity Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW., Room 5232, Washington, DC 20410, telephone (202) 402–3468. (This is not a toll-free number). Hearing or speech-impaired individuals may access this number TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION: Recipients of HUD funding that is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 are required to meet the minimum numerical goals for employment and contracting set forth in the Section 3 regulation at 24 CFR 135.30, to the greatest extent feasible. The proposed Section 3 Business Self-Certification pilot program will increase the capacity of covered agencies to comply with the requirements of Section 3, and is anticipated to result in numerous economic opportunities for low-income persons and the businesses that substantially employ them. The proposed pilot program will also enhance the Department's ongoing efforts to strengthen the overall effectiveness and enforcement of Section 3.

Title of Proposal: Section 3 Business Self-Certification Application.

Office: Fair Housing and Equal Opportunity.

OMB Control Number: 2529-.

Description of the need for the information and proposed use: The information collected from the Section 3 Business Self-Certification Application will allow HUD and recipients of covered HUD funding to identify Section 3 Businesses within their communities. The overriding purpose of this information collection is to ensure that contracting opportunities are provided to Section 3 businesses in fulfillment of the regulatory requirements set forth at 24 CFR Part 135, and to increase the capacity of covered agencies to comply with the requirements of Section 3. HUD will use the information to identify firms that self-certify that they meet the regulatory definition of a Section 3 Business. The information collected from the Section 3 Business Self-Certification Application will be posted in a registry of Section 3 Businesses which will be posted on HUD's webpage. Agencies that receive covered HUD funding in the five pilot locations will be encouraged to notify the Section 3 Businesses contained in HUD's registry about the availability of covered contracting opportunities.

Agency form numbers, if applicable:

Members of affected public: Businesses that are either owned by, or substantially employ, low- or very low-income persons; low-income persons; developers; members of the general public; Public Housing Agencies; and State and local governments.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The Department estimates that approximately 20,000 businesses in the five pilot locations may complete the Section 3 Self-Certification Application during the six-month pilot program. It is estimated that each application will take approximately 30 minutes to complete for a total of 10,000 hours.

Status of the proposed information collection: New information collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 13, 2011.

Bryan Greene,

General Deputy Assistant, Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 2011–1156 Filed 1–19–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO350000.L14300000.PN0000]

Renewal and Revision of Information Collection, OMB Control Number 1004–0009

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-day Notice and Request for Comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) to continue the collection of information from individuals, State and local governments, and the private sector in applications to use, occupy, or develop public lands administered by the BLM. This information collection activity was previously approved by the OMB, and was assigned control number 1004–0009.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. Therefore, written comments should be received on or before February 22, 2011.

ADDRESSES: Submit comments directly to the Desk Officer for the Department of the Interior (OMB # 1004–0009), Office of Management and Budget, Office of Information and Regulatory Affairs, by fax 202–395–5806, or by electronic mail at *oira_docket@omb.eop.gov.* Please send a copy of your comments to the BLM by mail, fax, or electronic mail.

Mail: Bureau Information Collection Clearance Officer (WO–630), Department of the Interior, 1849 C Street, NW., Mail Stop 401 LS, Washington, DC 20240.

Electronic mail: *jean_sonneman@blm.gov.*

Fax: to Jean Sonneman at 202–912–7102. Regardless of the form of your comment, please indicate "OMB # 1004–0009."

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, contact Vanessa Engle, Division of Lands, Realty, and Cadastral Survey, at 202–912–7339. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, to leave a message for Ms. Engle.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond. 44 U.S.C. 3506 and 3507.

OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521), require that interested members of the public and affected agencies be provided an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d) and 1320.12(a)). This notice identifies information collections that are contained in 43 CFR part 4700.

The following information is provided for the information collection:

Title: Land Use Application and Permit (43 CFR Part 2920).

Forms: Form 2920–1, Land Use Application and Permit.

OMB Control Number: 1004–0009.

Abstract: Section 302 of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1732) and regulations at 43 CFR part 2920

authorize the issuance of leases, permits, and easements for the use, occupancy, or development of public lands administered by the BLM. Respondents may be individuals, large or small private entities, or State and local governments. They may use Form 2910–1 to apply for leases, permits, or easements, and the BLM uses the information collected on Form 2920–1 to determine whether or not to grant the applications.

Various land uses may be authorized under FLPMA Section 302 and 43 CFR part 2920. Examples may include commercial filming, advertising displays, commercial or noncommercial croplands, apiaries, livestock holding or feeding areas not related to grazing permits and leases, harvesting of native or introduced species, temporary or permanent facilities for commercial purposes (other than mining claims), ski resorts, construction equipment storage sites, assembly yards, oil rig stacking sites, mining claim occupancy if the residential structures are not incidental to the mining operation, and water pipelines and well pumps related to irrigation and non-irrigation facilities.

Frequency of Collection: On occasion.

Estimated Number and Description of Respondents: 407 responses annually: 66 from individuals, 45 from State and local governments, 286 typical responses from the private sector, and 10 complex responses from the private sector.

Estimated Reporting and Recordkeeping "Hour" Burden: The estimated annual reporting burden for this collection is 1,597 hours: 66 hours for individuals, 45 hours for State and local governments, 286 hours for typical responses from the private sector, and 1,200 hours for complex responses from the private sector.

The burdens for complex responses from the private sector reflect the uses sought in those applications, which may involve substantial construction, development, or land improvements. Typical responses from the private sector, as well as responses from individuals and State and local governments, seek authorization for uses involving few or no land improvements, construction, investment, or alteration of public lands.

60-Day Notice: As required by 5 CFR 1320.8(d), the BLM published the 60-day notice in the **Federal Register** on August 3, 2010 (75 FR 45649), soliciting comments from the public and other interested parties. The comment period closed on October 4, 2010. The BLM did not receive any comments from the public in response to this notice, and did not receive any unsolicited comments.

The BLM requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments to the addresses listed under **ADDRESSES**. Please refer to OMB control number 1004–0009 in your correspondence. 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.

Jean Sonneman,

Acting Information Collection Clearance Officer.

[FR Doc. 2011–1201 Filed 1–19–11; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000–L14200000–BJ0000]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; Louisiana.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM–Eastern States office in Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management-Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: The survey was requested by the Bureau of Land Management-Eastern States.

The lands surveyed are:

Louisiana Meridian, Louisiana

T. 5 N., R 3 E.

The plat of survey represents the dependent resurvey of the portion of the east boundary and a portion of the sub-divisional line and the survey of the subdivision of section 26, in Township 5 North, Range 3 East, of the Louisiana Meridian, in the State of Louisiana, and was accepted January 4, 2011.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against the survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Date: January 12, 2011.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. 2011–1133 Filed 1–19–11; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID100000–LF31010WU.PN0000.LFHFPJ020000]

Notice of Public Meeting, Idaho Falls District Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Idaho Falls District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The RAC will next meet in Idaho Falls, Idaho, on February 15–16, 2011 for a two-day meeting. The first day will be new member orientation in the afternoon starting at 2 p.m. at the Idaho Falls BLM Office, 1405 Hollipark Drive, Idaho Falls, Idaho. The second day will be at the same location starting at 8 a.m. with election of a new chairman, vice chairman and secretary. Other meeting topics include land tenure adjustments,

litigation, land use planning updates, travel plan management, Recreation Enhancement Act (REA) and Recreation RAC items. Additional topics will be scheduled as appropriate.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the BLM Idaho Falls District (IFD), which covers eastern Idaho.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Danny Miller, Acting District Public Affairs Officer, Idaho Falls District, 1405 Hollipark Dr., Idaho Falls, ID 83401. Telephone: (208) 524–7550. E-mail: *Danny_Miller@blm.gov.*

Dated: January 4, 2011.

Danny K. Miller,

District Public Affairs Specialist, Acting.

[FR Doc. 2011–1130 Filed 1–19–11; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

[8145–8B90–SZM]

Dog Management Plan/Environmental Impact Statement, Golden Gate National Recreation Area, California

AGENCY: National Park Service.

ACTION: Notice of Availability of a Draft Environmental Impact Statement for the Dog Management Plan, Golden Gate National Recreation Area.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2) (C), the National Park Service (NPS) is releasing a Draft Environmental Impact Statement for the Dog Management Plan (Draft Plan/EIS), Golden Gate National Recreation Area (GGNRA), California. Current dog management in GGNRA is based on a number of factors. Areas covered by the GGNRA Citizens' Advisory Commission's 1979 pet policy are managed in accordance with the June 2, 2005, decision by U.S. District Court for the Northern District of California (U.S. vs. Barley, Kieselhorst, and Sayad) affirming that the NPS may not enforce the NPS-wide regulation requiring on-leash walking of pets (36 CFR 2.15(a)(2)) in areas that were included in the 1979 pet policy until notice and comment rulemaking under Section 1.5(b) is completed. A Notice of Proposed Rulemaking will be published for notice and comment after comments on the Draft Plan/EIS have been received, evaluated, and addressed. A final rule will be published after the Final Plan/EIS has been published and a Record of Decision signed.

The purpose of the Draft Plan/EIS is to provide a clear, enforceable policy to determine the manner and extent of dog use in appropriate areas of GGNRA. This plan will promote the following objectives: preserve and protect natural and cultural resources and natural processes, provide a variety of visitor experiences, improve visitor and employee safety, reduce user conflicts, and maintain GGNRA resources and values for future generations.

The Draft Plan/EIS evaluates impacts of six alternatives for dog management in 21 areas of GGNRA. The range of alternatives includes the consensus recommendations of the GGNRA Negotiated Rulemaking Committee for Dog Management, the 1979 Pet Policy, 36 CFR 2.15, and voice-control dog walking. The preferred alternative combines site-specific treatments from multiple action alternatives and allows for a balanced range of visitor experiences, including areas that prohibit dogs and areas that allow on-leash and voice-control dog walking. It includes the following key elements: the Negotiated Rulemaking Committee's consensus agreements; on-leash and/or voice-control dog walking in certain, specific areas of GGNRA where impacts to sensitive resources and visitor experience are minimized; no dogs in areas of GGNRA where impacts are unacceptable and cannot be mitigated; a compliance-based management strategy measuring compliance in on-leash and voice-control dog walking areas which directs a range of management responses, including further restrictions or elimination of a use where compliance is not achieved; permits for more than three dogs in limited areas of GGNRA; and new lands closed to dog walking, but opened for on-leash dog walking by compendium if certain criteria are met.

DATES: The NPS will accept comments on the Draft Plan/EIS for 90 days following publication by the Environmental Protection Agency (EPA) of their notice of availability of the Draft Plan/EIS. After the EPA notice has been published, the NPS will schedule four open-house style public meetings during the comment period. Dates, times, and locations of these meetings will be announced in press releases, e-mail announcements and on the project website at *http://parkplanning.nps.gov/goga.*

ADDRESSES: Copies of the Draft Plan/EIS will be available for public review at *http://parkplanning.nps.gov/goga.* A limited number of printed copies will be available at Park Headquarters, Fort Mason, Building 201, San Francisco, CA 94123, or a copy may be requested, as long as supplies last, from Frank Dean, General Superintendent, at the address noted above. Copies will also be available at local libraries in San Mateo, San Francisco and Marin Counties, as well as in Berkeley and Oakland.

SUPPLEMENTARY INFORMATION: If you wish to comment electronically, you may submit your comments online by visiting *http://parkplanning.nps.gov/goga,* clicking on open for comment, clicking on Dog Management Plan/EIS, and then clicking on Comment on Document. If you wish to submit written comments (*e.g.* in a letter), you may send them by U.S. Postal Service or other mail delivery service or hand-deliver them to: Frank Dean, General Superintendent, Golden Gate National Recreation Area, Fort Mason, Building 201, San Francisco, CA 94123. Oral statements and written comments will also be accepted during the hearing-style public meetings. Comments will not be accepted by fax, e-mail, or in any other way than those specified above. Bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Shirwin Smith, Management Assistant, Golden Gate National Recreation Area, Fort Mason, Building 201, San Francisco, CA 94123 (415) 561–4947.

Dated: December 7, 2010.

George J. Turnbull,

Acting Regional Director, Pacific West Region.

[FR Doc. 2011–1085 Filed 1–19–11; 8:45 am]

BILLING CODE 4312–FN–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SER–BICY–1217–6429; 5120–SZM]

2011 Meetings of the Big Cypress National Preserve Off-Road Vehicle (ORV) Advisory Committee

AGENCY: Department of the Interior, National Park Service, ORV Advisory Committee.

ACTION: Notice of meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, 10), notice is hereby given of the meetings of the Big Cypress National Preserve ORV Advisory Committee for 2011.

DATES: The Committee will meet on the following dates:

Wednesday, February 23, 2011, 3:30–8 p.m.
Wednesday, April 27, 2011, 3:30–8 p.m.
Thursday, June 23, 2011, 3:30–8 p.m.
Thursday, August 25, 2011, 3:30–8 p.m.
Tuesday, October 18, 2011, 3:30–8 p.m.
Tuesday, December 6, 2011, 3:30–8 p.m.

ADDRESSES: All meetings will be held at the Big Cypress Swamp Welcome Center, 33000 Tamiami Trail East, Ochopee, Florida. Written comments and requests for agenda items may be submitted electronically on the Web site *http://www.nps.gov/bicy/parkmgmt/orv-advisory-committee.htm.* Alternatively, comments and requests may be sent to: Superintendent, Big Cypress National Preserve, 33100 Tamiami Trail East, Ochopee, FL 34141–1000, Attn: ORV Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Pedro Ramos, Superintendent, Big Cypress National Preserve, 33100 Tamiami Trail East, Ochopee, Florida 34141–1000; 239–695–1103, or go to the Web site *http://parkplanning.nps.gov/projectHome.cfm?parkId=352&projectId=20437.*

SUPPLEMENTARY INFORMATION: The Committee was established (**Federal Register**, August 1, 2007, pp. 42108–42109) pursuant to the Preserve's 2000 *Recreational Off-road Vehicle Management Plan* and the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix) to examine issues and make recommendations regarding the management of off-road vehicles (ORVs) in the Preserve. The agendas for these meetings will be published by press release and on the *http://parkplanning.nps.gov/projectHome.cfm?parkId=352&projectId=20437* Web site. The meetings will be open to the public, and time will be reserved for public comment. Oral comments will be summarized for the record. If you wish to have your comments recorded verbatim, you must submit them in writing. 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.

Pedro Ramos,

Superintendent, Big Cypress National Preserve.

[FR Doc. 2011–1084 Filed 1–19–11; 8:45 am]

BILLING CODE 4310–V6–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKR–LACL–1221–6466; 9924–PYS]

Alaska Region's Subsistence Resource Commission (SRC) Program; Public Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of public meeting for the National Park Service Alaska Region's Subsistence Resource Commission (SRC) program.

SUMMARY: The Lake Clark National Park SRC will meet to develop and continue work on National Park Service (NPS) subsistence hunting program recommendations and other related subsistence management issues. The NPS SRC program is authorized under Title VIII, Section 808 of the Alaska National Interest Lands Conservation Act, Public Law 96–487, to operate in accordance with the provisions of the Federal Advisory Committee Act.

Public Availability of Comments: This meeting is open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the SRC. This meeting will be recorded and meeting minutes will be available upon request from the park superintendent for public inspection approximately six weeks after each meeting. Before including your address, telephone 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.

Lake Clark National Park SRC Meeting Date and Location: The Lake Clark National Park SRC will meet at the Pedro Bay Village Council Office, 907–850–2230 in Pedro Bay, Alaska on Saturday, February 12, 2011, from 1 p.m. to 5 p.m. If the meeting date and location are changed, a notice will be published in local newspapers and announced on local radio stations prior to the meeting date. SRC meeting location and dates may need to be changed based on lack of quorum, inclement weather or local circumstances.

For Further Information on the Lake Clark National Park SRC Meeting Contact: Joel Hard, Superintendent, and Michelle Ravenmoon, Subsistence Manager, (907) 781–2119, Lake Clark National Park and Preserve, 240 West 5th Avenue, Suite 236, Anchorage, Alaska 99501, or Clarence Summers, Subsistence Manager, NPS Alaska Regional Office, at (907) 644–3603.

Proposed SRC Meeting Agenda: The proposed meeting agenda includes the following:

1. Call to order.
2. SRC Roll Call and Confirmation of Quorum.
3. Welcome and Introductions.
4. Approval of Minutes.
5. Administrative Announcements.
6. Approve Agenda.
7. Review SRC Purpose.
8. SRC Member Reports.
9. Public and Other Agency Comments.
10. Federal Subsistence Board Update.
11. Alaska Board of Game Update.
12. Old Business.
a. Subsistence Uses of Horns, Antlers, Bones and Plants EA Update.
b. SRC Chair's Workshop 2010.
13. New Business.
a. Subsistence Manager Report.
b. Ranger Report.
c. Resource Management Program Update.
14. Public and other Agency Comments.
15. SRC Work Session.
16. Set Time and Place for next SRC Meeting.

17. Adjournment.

Victor W. Knox,

Deputy Regional Director, Alaska.

[FR Doc. 2011–1083 Filed 1–19–11; 8:45 am]

BILLING CODE 4312–GY–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NER–BOHA–1210–6748; 1727–SZS]

Boston Harbor Islands National Recreation Area Advisory Council; Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service, Boston Harbor Islands National Recreation Area.

ACTION: Notice of annual meeting.

SUMMARY: Notice is hereby given that a meeting of the Boston Harbor Islands National Recreation Area Advisory Council will be held on Wednesday, March 2, 2011, at 6 p.m. to 8 p.m. at New England Aquarium, Central Wharf, Harborside Learning Lab, Boston, MA.

The agenda will include: A presentation by Phillip Marsh on the Civil War Sesquicentennial and Boston Harbor Islands; community outreach update; elections of officers; park update; and, public comment. The meeting will be open to the public. Any person may file with the Superintendent a written statement concerning the matters to be discussed. Persons who wish to file a written statement at the meeting or who want further information concerning the meeting may contact Superintendent Bruce Jacobson at Boston Harbor Islands, 408 Atlantic Avenue, Suite 228, Boston, MA 02110, or (617) 223–8667. 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.

DATES: March 2, 2011, at 6 p.m.

ADDRESSES: New England Aquarium, Central Wharf, Harborside Learning Lab, Boston, MA.

FOR FURTHER INFORMATION CONTACT: Superintendent Bruce Jacobson, (617) 223–8667.

SUPPLEMENTARY INFORMATION: The Advisory Council was appointed by the Director of National Park Service pursuant to Public Law 104–333. The 28 members represent business, educational/cultural, community and environmental entities; municipalities surrounding Boston Harbor; Boston Harbor advocates; and Native American interests. The purpose of the Council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the development and implementation of a management plan and the operations of the Boston Harbor Islands NRA.

Dated: December 23, 2010.

Richard Armenia,

Acting Superintendent, Boston Harbor Islands NRA.

[FR Doc. 2011–1069 Filed 1–19–11; 8:45 am]

BILLING CODE 4310–8G–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2280–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before December 25, 2010. Pursuant to sections 60.13 or 60.15 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by February 4, 2011.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ARKANSAS

Desha County

Furr, Hubert & Ionia, House, 702 Desoto Ave., Arkansas City, 10001197

CALIFORNIA

Los Angeles County

Arroyo Seco Parkway Historic District, CA 110 from 4-Level Interchange in Los Angeles to East Glenarm St in Pasadena, Los Angeles, 10001198

Solano County

Dixon Carnegie Library, 135 E. B St., Dixon, 10001199

IDAHO

Idaho County

Tolo Lake, Tolo Lake Rd., Grangeville, 10001200

ILLINOIS

Cook County

Cermak, Anton, House, 2348 S. Millard, Chicago, 10001201

Jo Daviess County

Frentess, Henry N., Farmstead, 19140 US 20 W., East Dubuque, 10001202

IOWA

Adair County

Adair County Democrat—Adair County Free Press Building, 108 E. Iowa St., Greenfield, 10001203

Black Hawk County

Master Service Station, 500 Jefferson St., Waterloo, 10001204

Butler County

McBride, Charles H. & Theresa H., Bungalow, 127 E. Adair St., Shell Rock, 10001205

KANSAS

Greenwood County

Robertson House, 403 N. Plum, Eureka, 10001207

Johnson County

Broadmoor Ranch House Historic District, 6900–7017 W. 68th St., 6900–7001 W. 69th St., 6900–7019 W. 69th Terr., Overland Park, 10001208

Montgomery County

Ball, Charles M., House, 702 Spruce St., Coffeyville, 10001209

KANSAS

Shawnee County

Ritchie, John & Mary, House, 1116 SE. Madison St, Topeka, 10001210

MONTANA

Missoula County

Missoula Downtown Historic District (Boundary Increase—Decrease), (Missoula MPS) Higgins Ave. & Front St., Missoula, 10001206

OHIO

Champaign County

Kiser Mansion, 149 E. Main St, Saint Paris, 10001211

Geauga County

Pebblebrook Farm House and Gardens, 12525 Heath Rd., Chesterland, 10001212

Hamilton County

Kroger Barnes Graf, Gretchen, House, 9575 Cunningham Rd., Indian Hill, 10001213

Trumbull County

Chalker High School, 4432 OH 305, Southington, 10001214

OREGON

Lane County

McKenzie Highway Historic District, OR 242, Belknap Springs, 10001215

PUERTO RICO

Bayamon Municipality

Casa Dr. Agustin Stahl Stamm, 14 Jose Marti St., Bayamon, 10001216

Santa Isabel Municipality

Brumbaugh, Dr. Martin G., Graded School, (Early Twentieth Century Schools in Puerto Rico TR) 33 Eugenio M. de Hostos St., Santa Isabel, 10001217

RHODE ISLAND

Providence County

Church Hill Industrial District (Boundary Increase), 60 Dexter St., 125 Goff Ave., 265 Pine St., Pawtucket, 10001218

SOUTH CAROLINA

Aiken County

Oakland Plantation, 2930 Storm Branch Rd., Beech Island, 10001219

Richland County

Columbia Electric Street Railway, Light & Power Substation, 1337 Assembly St., Columbia, 10001220

TEXAS

Burnet County

Park Road 4 Historic District, Park Rd. 4 from US 281 to TX 29 & Longhorn Cavern State Park, Burnet, 10001221

Matagorda County

Blessing Masonic Lodge No. 411, 619 Ave. B/FM 616, Blessing, 10001222

Holman, Judge William Shields, House, 2504 Ave. K, Bay City, 10001223

Travis County

Norwood Tower, 114 W. 7th St., Austin, 10001224

WEST VIRGINIA

Fayette County

New Deal Resources in Hawk's Nest State Park Historic District, (New Deal Resources in West Virginia State Parks and Forests MPS) 49 Hawks Nest State Park Rd., Anstead, 10001225

Hardy County

New Deal Resources in Lost River State Park Historic District, (New Deal Resources in West Virginia State Parks and Forests MPS) 321 Park Dr., Mathais, 10001226

Pocahontas County

New Deal Resources in Watoga State Park Historic District, (New Deal Resources in West Virginia State Parks and Forests MPS) HC 82 (9 mi. SW. of WV 39), Marlinton, 10001227

Webster County

New Deal Resources in Holly River State Park Historic District, (New Deal Resources in West Virginia State Parks and Forests MPS) WV 20 (32 mi. S. of US 33), Hacker Valley, 10001228

WISCONSIN

Dodge County

Paramount Knitting Company Mill, 222 Madison St., Beaver Dam, 10001229

OTHER ACTIONS

Request for REMOVAL has been made for the following resources:

ARIZONA

Maricopa County

Archeological Site No. AZ U:10:61(ASM) Address Restricted, Mesa, 95000753

OREGON

Marion County

Breitenbush Guard Station, Willamette National Forest, Detroit, 86000843

[FR Doc. 2011–1092 Filed 1–19–11; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bunker Hill Groundwater Basin, Riverside-Corona Feeder Project, San Bernardino and Riverside Counties, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and the Western Municipal Water District (Western) have prepared a Supplemental Draft Environmental Impact Report and a Draft Environmental Impact Statement (SDEIR/DEIS) for the proposed Riverside-Corona Feeder (RCF) Project. Interested parties are invited to comment on the SDEIR/DEIS.

The Federal action will provide funds for a proposed aquifer storage and recovery project, including new groundwater wells and a 28-mile water pipeline with pump stations and a reservoir storage tank. The project is intended to improve the reliability of Western's water supply through managed storage, extraction and distribution of local and imported water supplies, using available capacity in the Bunker Hill Groundwater Basin and the Chino Basin.

DATES: Submit written comments on the SDEIR/DEIS by March 22, 2011.

ADDRESSES: Send written comments to Mrs. Amy Witherall, SCAO–7300, Bureau of Reclamation, Southern California Area Office, 27708 Jefferson Avenue, Suite 202, Temecula, CA 92590; facsimile (951) 695–5319; e-mail: *awitherall@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Amy Witherall, telephone (951) 695–5310; facsimile (951) 695–5319; e-mail: *awitherall@usbr.gov.*

SUPPLEMENTARY INFORMATION: The SDEIR/DEIS can be downloaded from our Web site: *http://www.usbr.gov/lc/socal/envdocs.html.* Copies are also available for public review and inspection at the following locations:

- Bureau of Reclamation, Lower Colorado Regional Office, 500 Fir Street, Boulder City, Nevada 89005
- Bureau of Reclamation, Southern California Area Office, 27708 Jefferson Avenue, Suite 202, Temecula, California 92590
- Western Municipal Water District, 14205 Meridian Parkway, Riverside, California 92518
- San Bernardino Public Library, 555 West 6th Street, San Bernardino, California 92410
- Corona Public Library, 650 South Main Street, Corona, California 92882
- Riverside Public Library, 9556 Magnolia Avenue, Riverside, California 92503

Authority

This notice is provided pursuant to NEPA, 42 U.S.C. 4332(2)(c), and Department of the Interior regulations for the implementation of NEPA, 43 CFR Part 46.

Section 9112 of the Omnibus Public Land Management Act of 2009 (Public Law 111–11, 123 Stat. 1318), signed by the President on March 30, 2009, authorizes the Secretary of the Interior, in cooperation with Western, to participate in the planning, design, and construction of the Riverside-Corona Feeder Project including: (i) 20 groundwater wells; (ii) groundwater treatment facilities; (iii) water storage and pumping facilities; and (iv) 28 miles of pipeline in San Bernardino and Riverside Counties in the State of California.

Background

The proposed project will install up to 20 groundwater wells in the Bunker Hill Groundwater Basin, San Bernardino County, California. Existing recharge basins will be used to store imported water and local Santa Ana River flows in the Bunker Hill Groundwater Basin when supplies are available. The stored groundwater will be extracted later for delivery to communities in Western's service area in Riverside County, California, via 28 miles of pipeline ranging in diameter up to 78 inches, capable of delivering up to 40,000 acre-feet per year of groundwater at 100 cubic feet per second. The first phase of the project will also provide access to groundwater from the Chino Basin in San Bernardino County.

The currently proposed RCF alignment is a modification to a project previously evaluated by Western in 2005 and revised in 2008. The original project included eight segments, Reaches A through H, analyzed in the Programmatic Environmental Impact Report (PEIR) for the Riverside-Corona Feeder, California State Clearinghouse (SCH) No. 2003031121, certified by Western on May 18, 2005. Reaches E, F, and G were refined slightly in 2007 and evaluated in the Environmental Impact Report for the La Sierra Avenue Water Transmission Pipeline Project (SCH No. 2006101152), certified by Western on February 20, 2008. Western issued a Notice of Preparation of a draft Supplemental Program EIR on July 30, 2008, to evaluate a change in the pipeline alignment. Reclamation issued a Notice of Intent (NOI) to prepare an Environmental Impact Statement on February 24, 2010 (75 FR 8395).

The new alignment will not change the number of wells or the Bunker Hill groundwater extraction described in the 2005 PEIR, but will now allow Western to access available groundwater from existing desalter facilities in Chino Basin under an approved Optimum Basin Management Plan. The current project includes realignment of Reaches A through D, now referred to as the Northern and Central Reaches, with Reach H remaining as proposed in the original project. The refined alignment for Reaches E, F, and G will remain consistent with the approvals in the 2008 EIR.

Additional connection facilities were added to the project including a new well field for five (5) of the 20 wells, two (2) additional pump stations, one (1) five-million gallon reservoir, and connecting pipelines.

Reclamation is incorporating the two previous CEQA Environmental Impact Reports by reference. They are included as appendices to the draft SDEIR/DEIS.

Public Disclosure

Before including your name, 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: January 13, 2011.

Lorri Gray-Lee,

Regional Director, Lower Colorado Region.

[FR Doc. 2011–1127 Filed 1–19–11; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under The Clean Air Act

Notice is hereby given that on January 13, 2011, a proposed Consent Decree in *United States et al.* v. *Northern Indiana Public Service Co.,* Civil Action No. 2:11–cv–016, was filed with the United States District Court for the Northern District of Indiana.

In this action, the United States and Indiana sought penalties and injunctive relief for the Defendants' violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.,* and the Indiana Code 13–13–5–1 and 13–13–5–2, at its four coal-fired power plants in Chesterton, Michigan City, Wheatfield, and Gary, Indiana.

To resolve the United States' and Indiana's claims, the Defendants will pay a penalty of $3.5 million, and will install or upgrade air emission controls at three of its plants, and cease operations at its fourth plant in Gary, Indiana. In addition, the Defendant will perform environmental mitigation projects costing at least $9.5 million.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent 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, D.C. 20044–7611, and should refer to either: *United States et al.* v. *Northern Indiana Public Service Co.,* Civil Action No. 2:11–cv–016, or D.J. Ref. 90–5–2–1–08417. The Consent Decree may be examined at the Office of the United States Attorney, Northern District of Indiana, 5400 Federal Plaza, Suite 1500, Hammond, Indiana 46320, and at the United States Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, Illinois 60604. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent 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, payable to the U.S. Treasury, in the amount of $26.00 (25 cents per page

reproduction cost), or, if by e-mail or fax, forward a check in the applicable amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–1107 Filed 1–19–11; 8:45 am]

BILLING CODE 4410–15–P

OFFICE OF MANAGEMENT AND BUDGET

2010 Pay-As-You-Go (PAYGO) Report

Authority: Sec. 5, Public Law 111–139, 124 Stat. 8.

AGENCY: Office of Management and Budget (OMB).

ACTION: Notice.

SUMMARY: This report is being published as required by the Statutory Pay-As-You-Go (PAYGO) Act of 2010. The Act requires that OMB issue (1) an annual report of all legislation affecting mandatory spending and revenue enacted during the prior session of Congress and (2) a sequestration order, if necessary.

FOR FURTHER INFORMATION CONTACT: Patrick Locke, 202–395–3945.

SUPPLEMENTARY INFORMATION: This report and additional information about the PAYGO Act can be found at *http://www.whitehouse.gov/omb/paygo_default.*

Courtney Timberlake,

Assistant Director for Budget.

This Report is being published pursuant to section 5 of the Statutory Pay-As-You-Go (PAYGO) Act of 2010, Public Law 111–139, 124 Stat. 8, which requires that OMB issue an annual PAYGO report, including a sequestration order if necessary, within 14 working days after the end of a Congressional session. This Report covers all legislation enacted during the second session of the 111th Congress since enactment of the PAYGO Act on February 12, 2010. This Report summarizes the budgetary effects of enacted PAYGO legislation, the current policy adjustments provided by the PAYGO Act, and legislation designated as an emergency under the PAYGO Act. This Report also presents the five-year and ten-year PAYGO scorecards maintained by OMB.

Because balances on both scorecards represent PAYGO savings in net, a sequestration order is not necessary.

I. PAYGO Legislation With Budgetary Effects

PAYGO legislation is authorizing legislation that affects direct spending or revenues and appropriations legislation that affects direct spending or revenues in the years beyond the budget year.[1] For a more complete description of the Statutory PAYGO Act, *see http://www.whitehouse.gov/omb/paygo_description.* The scorecards show that PAYGO legislation enacted since February 12, 2010, was estimated to have PAYGO budgetary effects that increase the deficit by $4.3 billion in 2010 and $114.5 billion in 2011, and decrease the deficit by $55.2 billion over the 2010–2015 period and $63.7 billion over the 2010–2020 period.[2] The scorecards also show that since February 12, 2010, 97 laws (96 public laws and one private law) were enacted that were determined to constitute PAYGO legislation.[3]

Of the 97 enacted PAYGO laws, 13 have estimated PAYGO budgetary effects in excess of $500 million over the 2010–2015 and/or 2010–2020 periods. These are:

- Hiring Incentives to Restore Employment Act, Public Law 111–147;
- Patient Protection and Affordable Care Act, Public Law 111–148;
- Health Care and Education Reconciliation Act of 2010, Public Law 111–152;
- Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, Public Law 111–192;
- Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203;
- Public Law 111–226, an act that provides education jobs and Medicaid assistance to States;[4]
- Small Business Jobs Act of 2010, Public Law 111–240;
- The Physician Payment and Therapy Relief Act of 2010, Public Law 111–286;
- Claims Resolution Act of 2010, Public Law 111–291;
- Healthy, Hunger-Free Kids Act of 2010, Public Law 111–296;
- Medicare and Medicaid Extenders Act of 2010, Public Law 111–309;
- Omnibus Trade Act of 2010, Public Law 111–344; and
- Post-9/11 Veterans Educational Assistance Improvements Act of 2010, Public Law 111–377

In addition to these 13 laws, 21 laws were enacted that were estimated to have PAYGO budgetary effects greater than zero but less than $500 million over the 2010–2015 or 2010–2020 period. These are:

- Social Security Disability Applicants' Access to Professional Representation Act of 2010, Public Law 111–142;
- Capitol Police Administrative Technical Correction Act of 2009/Travel Promotion Act of 2009, Public Law 111–145;
- An Act to provide that Members of Congress shall not receive a cost-of-living adjustment in pay during fiscal year 2011, Public Law 111–165;
- Haiti Economic Lift Program Act of 2010, Public Law 111–171;
- Homebuyer Assistance and Improvement Act of 2010, Public Law 111–198;
- A Joint Resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003 and for other purposes, Public Law 111–210;
- United States Manufacturing Enhancement Act of 2010, Public Law 111–227;
- General and Special Risk Insurance Funds Availability Act of 2010, Public Law 111–228;
- An Act making emergency supplemental appropriations for border security for fiscal year ending September 30, 2010, and for other purposes, Public Law 111–230;[5]

[1] Provisions in appropriations acts that affect direct spending or revenues in the years beyond the budget year are not considered to be PAYGO legislation to the extent that the resulting outyear outlay changes flow from budget authority changes that occur in the current or budget year, or if the provisions produce outlay changes netting to zero over a six-year period consisting of the current year, the budget year, and the four subsequent years. As specified in section 3 of the Statutory PAYGO Act, off-budget effects are not counted as budgetary effects. Off-budget effects refer to effects on the Social Security trust funds (Old-Age and Survivors Insurance and Disability Insurance) and the Postal Service Fund.

[2] Budgetary effects on the PAYGO scorecard are based on Congressional estimates if those estimates are placed in the Congressional Record according to the procedures of the PAYGO Act and cross-referenced in the enacted PAYGO legislation in question. Absent a valid Congressional cost estimate, OMB uses its own estimate for the scorecard. Of the 97 PAYGO laws on the scorecard, 44 used a Congressional cost estimate and 53 used an OMB estimate.

[3] In addition to the 97 laws shown on the scorecards, 149 laws were enacted that did not affect direct spending or revenues.

[4] P.L. 111–226 was amended before enactment to strike its original provisions and substitute provisions that provided funding to States for education jobs and Medicaid assistance. The amendment did not change the official title, which refers to the bill's original provisions concerning reauthorization of the Federal Aviation Administration and modernization of the air traffic control system. OMB's PAYGO scorecard refers to the bill using this official title.

[5] Public Law 111–230 law was the single appropriations law enacted during the second

Continued

- Star-Spangled Banner Commemorative Coin Act, Public Law 111–232;
- Firearms Excise Tax Improvement Act of 2010, Public Law 111–237;
- Security Cooperation Act of 2010, Public Law 111–266;
- Veterans' Benefits Act of 2010, Public Law 111–275;
- Coin Modernization, Oversight, and Continuity Act of 2010, Public Law 111–302;
- Regulated Investment Company Modernization Act of 2010, Public Law 111–325;
- An Act to require the Federal Deposit Insurance Corporation to fully insure Interest on Lawyers Trust Accounts, Public Law 111–343;
- James Zadroga 9/11 Health Compensation Act of 2010, Public Law 111–347;
- Section 202 Supportive Housing for the Elderly Act of 2010, Public Law 111–372;
- Pedestrian Safety Enhancement Act of 2010, Public Law 111–373;
- An Act to clarify the National Credit Union Administration authority to make stabilization fund expenditures without borrowing from the Treasury, Public Law 111–382; and
- Ike Skelton National Defense Authorization Act for Fiscal Year 2011.

Finally, in addition to the laws identified above, 63 laws enacted since February 12, 2010, were estimated to have a negligible PAYGO budgetary effect. The PAYGO budgetary effect of these laws was estimated to fall below $500,000 each year and in the aggregate from 2010 through 2020.

II. PAYGO Legislation Excluded From the Scorecard Balances

Some or all of the budgetary effects of a number of PAYGO laws enacted since February 12, 2010, are not included in the calculations for the PAYGO scorecards due to emergency designations and other exclusions required by law. As noted above, the 97 PAYGO laws enacted during the second session of the 111th Congress were estimated to result in PAYGO savings of $55.2 billion over 2010–2015 and $63.7 billion over 2010–2020, after reflecting emergency designations, current policy adjustments, and other adjustments. Before applying these adjustments, these laws were estimated to increase the on-budget deficit by $899.4 billion over 2010–2015 and by $820.1 billion over 2010–2020. The budget effects that were excluded from balances on the PAYGO scorecards are discussed below.

Legislation Subject to Current Policy Adjustments

Current policy adjustments are excluded from the budgetary effects of certain legislation, as specified in sections 4(c) and 7 of the PAYGO Act. Legislation affecting Medicare physicians' payments, the estate and gift tax, the alternative minimum tax (AMT), and certain provisions of the 2001 and 2003 tax acts is subject to current policy adjustments. In addition to excluding current policy adjustments from the scorecards, any savings from the Community Living Assistance Services and Supports (CLASS) Act or amendments to the CLASS Act are excluded from the scorecards, as specified in Section 4(d) of the PAYGO Act. The following 8 laws were enacted that contain provisions subject to current policy adjustments and the CLASS Act provision:

- Temporary Extension Act of 2010, Public Law 111–144;
- Patient Protection and Affordable Care Act, Public Law 111–148;
- Continuing Extension Act of 2010, Public Law 111–157;
- Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, Public Law 111–192;
- Small Business Jobs Act of 2010, Public Law 111–240;
- The Physician Payment and Therapy Relief Act of 2010, Public Law 111–286;
- Medicare and Medicaid Extenders Act of 2010, Public Law 111–309; and
- Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public Law 111–312.

The total costs excluded from the scorecards due to current policy adjustments are $436.4 billion over 2010–2015 and $433.8 billion over 2010–2020. The total savings excluded from the scorecards through the CLASS Act provision are $39.9 billion over 2010–2015 and $78.6 billion over 2010–2020. As discussed in the next section, three of these laws, the Temporary Extension Act of 2010, the Continuing Extension Act of 2010, and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, also contain provisions that were designated as emergencies.

Section 7(c) of the PAYGO Act exempts from the scorecards some of the costs of providing relief from the scheduled cuts to Medicare physician payments that would have occurred under the Sustainable Growth Rate (SGR) formula. Under the PAYGO Act, the cost of extending physician payments through 2014 at December 2009 levels is excluded from the scorecard. The Temporary Extension Act of 2010, Public Law 111–144, and the Continuing Extension Act of 2010, Public Law 111–157, extended physician payments at the December 2009 levels through March 31, 2010, and May 31, 2010, respectively. The PAYGO Act's current policy adjustment excluded these extensions from the PAYGO scorecards. The Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, Public Law 111–192, extended physician payments through November 30, 2010, at a level that was 2.2 percent above December 2009 levels. The current policy adjustment applied only to the cost of extending the December 2009 payment rates; the cost of the additional 2.2 percent was included on the scorecards. The Physician Payment and Therapy Relief Act of 2010, Public Law 111–286, and the Medicare and Medicaid Extenders Act of 2010, Public Law 111–309, extended these higher rates through December 31, 2010, and December 31, 2011, respectively, and the current policy adjustment applied only to the extension of December 2009 payment levels. All three of these bills that extended higher payment levels resulted in net savings on the PAYGO scorecards because of the combination of the current policy adjustments and other provisions in the bills that reduce direct spending.

Section 7(f) of the PAYGO Act exempts from the scorecards the costs of extending the middle class tax cuts enacted under the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) and the Jobs and Growth Tax Relief Reconciliation Act (JGTRRA), as amended. In addition, section 7(e) exempts from the scorecards the cost of extending AMT relief through 2011, and section 7(d) exempts from the scorecards the cost of extending a portion of estate and gift tax relief through 2011. The PAYGO scorecards include a current policy adjustment for the provision of the Small Business Jobs Act of 2010 that amended Section 179(b) of the Internal Revenue Code to extend and increase expensing limitations for small businesses. The scorecards also include current policy adjustments for three provisions of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public Law 111–312: the two-year extension of the middle-class tax cuts, the two-year extension of AMT relief, and the amount of the estate tax relief

session of the 111th Congress that was determined to constitute PAYGO legislation. The law made changes to direct spending beyond the budget year by increasing immigration fees; these changes constitute PAYGO budgetary effects under section 3 of the PAYGO Act.

that would correspond to a two-year extension of estate and gift taxes at the tax rates, exemption amount, and related parameters in effect in 2009. The Patient Protection and Affordable Care Act, Public Law 111–148, also included a current policy adjustment for a provision affecting the adoption credit, which was originally enacted as a middle-class tax cut in EGTRRA.

Legislation Designated as an Emergency

As shown on the scorecards, five laws were enacted that contain provisions that received an emergency designation under the Statutory PAYGO Act: The Temporary Extension Act of 2010, Public Law 111–144; the Continuing Extension Act of 2010, Public Law 111–157; the Unemployment Compensation Extension Act of 2010, Public Law 111–205; an Act to extend the deadline for Social Services Block Grant expenditures of supplemental funds appropriated following disasters occurring in 2008, Public Law 111–285; and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public Law 111–312. The total costs excluded through emergency designations were $570.1 billion over 2010–2015 and $545.1 billion over 2010–2020. Although shown on the scorecards, the budgetary effects of provisions designated as emergencies are not included in the PAYGO effects shown on the scorecards, as specified by Section 4(g) of the PAYGO Act.

Emergency Offsets

Scorekeeping guidelines adopted by the Office of Management and Budget, the Congressional Budget Office, and the Congressional budget committees preclude scoring savings for the subsequent repeal of legislative provisions that were designated as emergency spending when enacted. Although the laws repealing the emergency provisions are reported on the PAYGO scorecards maintained by OMB, the savings associated with repeal are not included in the balances on the scorecards that are used to determine the need for a sequestration. Two such laws were enacted during the second session of the 111th Congress: The Education, Jobs and Medicaid Assistance to States Act, Public Law 111–226, and the Healthy, Hunger-Free Kids Act of 2010, Public Law 111–296. These adjustments excluded $12.0 billion of savings over 2010–2015 and $16.5 billion of savings over 2010–2020.

Total Exclusions

In total, a net of $883.8 billion in costs over 2010–2020 were enacted by Congress but excluded from the PAYGO scorecards through current policy adjustments, emergency designations, or other adjustments. Of that amount, $894.0 billion of costs were enacted in the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public Law 111–312. All other exemptions or exclusions produced a net of $10.2 billion in uncounted savings.

III. Sequestration Order

As shown on the scorecards, the budgetary effects of PAYGO legislation enacted since enactment of the PAYGO Act did not result in a "debit" on either the five-year or the ten-year scorecard in the budget year, 2011, which means that costs for the budget year as shown on the scorecards do not exceed savings for the budget year. For this reason, a sequestration order is not necessary and is not included in this Report.

The savings shown on the scorecards for 2011 will be removed from the scorecards that are used to record the budgetary effects of PAYGO legislation enacted in the first session of the 112th Congress. The savings shown in 2012 through 2020 will remain on the scorecards and will be used in determining whether a sequestration order will be necessary at the end of future sessions of Congress.

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STATUTORY ESTIMATES OF PAY-AS-YOU-GO LEGISLATION *

(In millions of dollars; positive amounts portray net increases in deficits and negative amounts portray net decreases in deficits)

* Uses Congressional estimates referenced in enacted legislation or OMB estimates if there are no references to the Congressional estimates.

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010-15	2010-20
PART I:													
Total PAYGO legislation enacted in the 2nd session of the 111th Congress since February 12, 2010													
Net impact on the on-budget deficit	39,778	627,227	354,771	25,895	86,874	61,375	31,976	-5,223	-16,772	-45,275	-44,035	899,419	820,093
Less:													
Impact of CLASS Act	0	-3,700	-6,400	-8,700	-9,900	-11,200	-9,600	-8,600	-7,500	-6,800	-6,200	-39,900	-78,600
Current policy adjustment	5,863	160,328	217,430	54,916	-1,536	-604	-885	-879	-507	-255	-120	436,396	433,750
Emergency requirements	29,624	356,234	165,990	32,616	-10,220	-4,177	-7,209	-7,529	-5,162	-3,112	-1,917	570,067	545,139
Repeal of prior emergency requirement	-13	-111	-216	-666	-6,207	-4,757	-2,781	-1,292	-438	0	0	-11,970	-16,481
Net PAYGO impact	4,304	114,477	-22,034	-52,270	-59,010	-40,638	52,451	13,077	-3,166	-35,108	-35,798	55,173	-63,714
Five-year PAYGO scorecard, this session		-11,035	-11,035	-11,035	-11,035	-11,035							
Balances from prior sessions		0	0	0	0	0							
Total, five-year PAYGO scorecard		-11,035	-11,035	-11,035	-11,035	-11,035							
Ten-year PAYGO scorecard, this session		-6,371	-6,371	-6,371	-6,371	-6,371	-6,371	-6,371	-6,371	-6,371	-6,371		
Balances from prior sessions		0	0	0	0	0	0	0	0	0	0		
Total, ten-year PAYGO scorecard		-6,371	-6,371	-6,371	-6,371	-6,371	-6,371	-6,371	-6,371	-6,371	-6,371		
Potential Sequestration, end of session		0											
PART II:													
All PAYGO legislation enacted since February 12, 2010													
1 P.L. 111-142 — Social Security Disability Applicants' Access to Professional Representation Act of 2010													
Enacted 02-27-2010 — Net PAYGO impact	-3	-6	-6	-6	-6	-6	-6	-6	-6	-6	-6	-33	-63
H.R. 4532													
Estimate: OMB — Five-year PAYGO scorecard		-7	-7	-7	-7	-7							
Ten-year PAYGO scorecard		-6	-6	-6	-6	-6	-6	-6	-6	-6	-6		
2 P.L. 111-144 — Temporary Extension Act of 2010													
Enacted 03-02-2010 — Net impact on the on-budget deficit	8,605	750	286	275	195	105	75	10	0	0	0	10,216	10,301
H.R. 4691 — Less:													
Estimate: Congress — Current policy adjustment	1,040	0	0	0	0	0	0	0	0	0	0	1,040	1,040
Emergency requirement	7,565	750	286	275	195	105	75	10	0	0	0	9,176	9,261
Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
Five-year PAYGO scorecard		0	0	0	0	0							
Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
3 P.L. 111-145 — Capitol Police Administrative Technical Corrections Act of 2009/Travel Promotion Act of 2009													
Enacted 03-04-2010 — Net PAYGO impact	6	-65	-54	-53	-60	48	0	0	0	0	0	-178	-178
H.R. 1299													
Estimate: OMB — Five-year PAYGO scorecard		-36	-36	-36	-36	-36							
Ten-year PAYGO scorecard		-18	-18	-18	-18	-18	-18	-18	-18	-18	-18		
4 P.L. 111-147 — Hiring Incentives to Restore Employment Act													
Enacted 03-18-2010 — Net PAYGO impact	4,521	6,247	2,328	382	-13,629	58	12,673	-820	-2,715	-9,168	-532	-93	-655
H.R. 2847													
Estimate: Congress — Five-year PAYGO scorecard		-19	-19	-19	-19	-19							
Ten-year PAYGO scorecard		-66	-66	-66	-66	-66	-66	-66	-66	-66	-66		

STATUTORY ESTIMATES OF PAY-AS-YOU-GO LEGISLATION *

(in millions of dollars; positive amounts portray net increases in deficits and negative amounts portray net decreases in deficits)

* Uses Congressional estimates referenced in enacted legislation or OMB estimates if there are no references to the Congressional estimates.

		2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010-15	2010-20
5 P.L. 111-148	Patient Protection and Affordable Care Act[3]													
Enacted 03-23-2010	Net impact on the on-budget deficit	4,813	-7,793	-19,918	-48,909	-34,889	-6,789	17,511	13,111	4,111	-2,889	-10,889	-113,485	-92,530
H.R. 3590	Less:													
Estimate: OMB	Impact of CLASS Act	0	-3,700	-6,400	-8,700	-9,900	-11,200	-9,600	-8,600	-7,500	-6,800	-6,200	-39,900	-78,600
	Current policy adjustment	0	171	98	0	0	0	0	0	0	0	0	269	269
	Net PAYGO impact	4,813	4,264	-13,616	-40,209	-24,989	4,411	27,111	21,711	11,611	3,911	4,689	-73,854	-14,199
	Five-year PAYGO scorecard		-14,771	-14,771	-14,771	-14,771	-14,771							
	Ten-year PAYGO scorecard		-1,420	-1,420	-1,420	-1,420	-1,420	-1,420	-1,420	-1,420	-1,420	-1,420		
6 P.L. 111-151	Satellite Television Extension Act of 2010													
Enacted 03-26-2010	Net PAYGO impact	-2	1	1	0	0	0	0	0	0	0	0	0	0
S. 3186														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
7 P.L. 111-152	Health Care and Education Reconciliation Act of 2010													
Enacted 03-30-2010	Health provisions	1,816	4,311	-635	541	-13,128	251	-7,175	-4,378	-4,765	-5,839	-7,112	-6,844	-36,113
H.R. 4872	Education provisions	-2,064	-2,986	4,571	-2,824	1,602	-222	489	1,286	1,870	2,169	2,062	-1,923	5,953
Estimate: OMB	Net PAYGO impact	-248	1,325	3,936	-2,283	-11,526	29	-6,686	-3,092	-2,895	-3,670	-5,050	-8,767	-30,160
	Five-year PAYGO scorecard		-1,753	-1,753	-1,753	-1,753	-1,753							
	Ten-year PAYGO scorecard		-3,016	-3,016	-3,016	-3,016	-3,016	-3,016	-3,016	-3,016	-3,016	-3,016		
8 P.L. 111-153	Federal Aviation Administration Extension Act of 2010													
Enacted 03-31-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
H.R. 4957														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
9 P.L. 111-154	Prevent All Cigarette Trafficking Act of 2009													
Enacted 03-31-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
S. 1147														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
10 P.L. 111-157	Continuing Extension Act of 2010													
Enacted 04-15-2010	Net impact on the on-budget deficit	15,629	1,870	262	225	143	61	52	-10	-5	0	0	18,190	18,227
H.R. 4851	Less:													
Estimate: Congress	Current policy adjustment	2,115	0	0	0	0	0	0	0	0	0	0	2,115	2,115
	Emergency requirement	13,514	1,870	262	225	143	61	52	-10	-5	0	0	16,075	16,112
	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		

STATUTORY ESTIMATES OF PAY-AS-YOU-GO LEGISLATION *

(in millions of dollars; positive amounts portray net increases in deficits and negative amounts portray net decreases in deficits)

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		2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010-15	2010-20
11 P.L. 111-161	Airport and Airway Extension Act of 2010													
Enacted 04-30-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
H.R. 5147														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
12 P.L. 111-163	Caregivers and Veterans Omnibus Health Services Act of 2010													
Enacted 05-05-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
S. 1963														
Estimate: Congress	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
13 P.L. 111-165	To provide that Members of Congress shall not receive a cost of living adjustment in pay during fiscal year 2011.													
Enacted 05-14-2010	Net PAYGO impact	0	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-5	-10
H.R. 5146														
Estimate: OMB	Five-year PAYGO scorecard		-1	-1	-1	-1	-1							
	Ten-year PAYGO scorecard		-1	-1	-1	-1	-1	-1	-1	-1	-1	-1		
14 P.L. 111-168	To provide for the sale of the Federal Government's reversionary interest in approximately 60 acres of land in Salt Lake City, Utah, originally conveyed to the Mount Olivet Cemetery Association under the Act of January 23, 1909.													
Enacted 05-24-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
H.R. 1442														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
15 P.L. 111-171	Haiti Economic Lift Program Act of 2010													
Enacted 05-24-2010	Net PAYGO impact	0	60	70	78	-272	-16	562	108	-645	-111	165	-80	-1
H.R. 5160														
Estimate: Congress	Five-year PAYGO scorecard		-16	-16	-16	-16	-16							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
16 P.L. 111-175	Satellite Television Extension and Localism Act of 2010													
Enacted 05-27-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
S. 3333														
Estimate: Congress	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
17 P.L. 111-177	Extending Immunities to the Office of the High Representative in Bosnia and Herzegovina and the International Civilian Office in Kosovo Act of 2010													
Enacted 06-08-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
H.R. 5139														
Estimate: Congress	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
18 P.L. 111-190	To amend the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 to extend the operation of such Act, and for other purposes													
Enacted 06-09-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
H.R. 5330														
Estimate: Congress	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		

STATUTORY ESTIMATES OF PAY-AS-YOU-GO LEGISLATION *

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		2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010-15	2010-20
19 P.L. 111-191	To amend the Oil Pollution Act of 1990 to authorize advances from Oil Spill Liability Trust Fund for the Deepwater Horizon oil spill.													
Enacted 06-15-2010	Net PAYGO impact	50	0	-50	0	0	0	0	0	0	0	0	0	0
S. 3473														
Estimate: Congress	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
20 P.L. 111-192	Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010.													
Enacted 06-25-2010	Net impact on the on-budget deficit	-569	2,460	-1,266	-1,253	-981	-776	-467	-171	558	1,233	1,063	-2,385	-169
H.R. 3962	Less:													
Estimate: Congress	Current policy adjustment	2,708	3,640	0	0	0	0	0	0	0	0	0	6,348	6,348
	Net PAYGO impact	-3,277	-1,180	-1,266	-1,253	-981	-776	-467	-171	558	1,233	1,063	-8,733	-6,517
	Five-year PAYGO scorecard		-1,747	-1,747	-1,747	-1,747	-1,747							
	Ten-year PAYGO scorecard		-652	-652	-652	-652	-652	-652	-652	-652	-652	-652		
21 P.L. 111-195	Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010													
Enacted 07-01-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
H.R. 2194														
Estimate: Congress	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
22 P.L. 111-196	National Flood Insurance Program Extension Act of 2010													
Enacted 07-02-2010	Net PAYGO impact	50	0	0	-50	0	0	0	0	0	0	0	0	0
H.R. 5569														
Estimate: Congress	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
23 P.L. 111-197	Airport and Airway Extension Act of 2010, Part II													
Enacted 07-02-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
H.R. 5611														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
24 P.L. 111-198	Homebuyer Assistance and Improvement Act of 2010													
Enacted 07-02-2010	Net PAYGO impact	19	124	2	-27	-13	-126	24	4	-6	-6	-6	-21	-11
H.R. 5623														
Estimate: Congress	Five-year PAYGO scorecard		-4	-4	-4	-4	-4							
	Ten-year PAYGO scorecard		-1	-1	-1	-1	-1	-1	-1	-1	-1	-1		
25 P.L. 111-199	Formaldehyde Standards for Composite Wood Products Act													
Enacted 07-07-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
S. 1660														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
26 P.L. 111-200	Congressional Award Program Reauthorization Act of 2009													
Enacted 07-07-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
S. 2865														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		

STATUTORY ESTIMATES OF PAY-AS-YOU-GO LEGISLATION *

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		2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010-15	2010-20
27 P.L. 111-203	Dodd-Frank Wall Street Reform and Consumer Protection Act													
Enacted 07-21-2010	Net PAYGO impact	-1,613	215	1,386	4,593	4,570	5,317	5,449	5,020	4,646	-16,141	-16,840	14,468	-3,398
H.R. 4173														
Estimate: OMB	Five-year PAYGO scorecard		2,894	2,894	2,894	2,894	2,894							
	Ten-year PAYGO scorecard		-340	-340	-340	-340	-340	-340	-340	-340	-340	-340		
28 P.L. 111-205	Unemployment Compensation Extension Act of 2010													
Enacted 07-22-2010	Net impact on the on-budget deficit	8,545	24,684	218	214	148	76	56	2	0	0	0	33,885	33,943
H.R. 4213 (S.A. 4425)	Less:													
Estimate: Congress	Emergency requirement	8,545	24,684	218	214	148	76	56	2	0	0	0	33,885	33,943
	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
	Five year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
29 P.L. 111-207	Cruise Vessel Security and Safety Act of 2010													
Enacted 07-27-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
H.R. 3360														
Estimate: Congress	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
30 P.L. 111-210	Approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, and for other purposes.													
Enacted 07-27-2010	Net PAYGO impact	0	2	0	0	0	-153	153	0	-3	-7	0	-151	-8
H.J. Res. 83														
Estimate: Congress	Five-year PAYGO scorecard		-30	-30	-30	-30	-30							
	Ten-year PAYGO scorecard		-1	-1	-1	-1	-1	-1	-1	-1	-1	-1		
31 P.L. 111-211	Indian Arts and Crafts Amendments Act of 2010 and Tribal Law and Order Act of 2010													
Enacted 07-29-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
H.R. 725														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
32 P.L. 111-216	Airline Safety and Federal Aviation Administration Extension Act of 2010													
Enacted 08-01-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
H.R. 5900														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
33 P.L. 111-220	Fair Sentencing Act of 2010													
Enacted 08-03-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
S. 1789														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
34 P.L. 111-221	National September 11 Memorial & Museum Commemorative Medal Act of 2010													
Enacted 08-06-2010	Net PAYGO impact	0	-2	-2	-1	0	5	0	0	0	0	0	0	0
H.R. 4684														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		

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		2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010-15	2010-20
35 P.L. 111-225	Cell Phone Contraband Act of 2010													
Enacted 08-10-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
S. 1749														
Estimate: Congress	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
	To modernize the air traffic control system, improve the safety, reliability, and availability of transportation by air in the United States, provide for modernization of the air traffic control system, reauthorize the Federal Aviation Administration, and for other purposes[2]													
36 P.L. 111-226														
Enacted 08-10-2010	Net impact on the on-budget deficit	-13	22,364	803	-1,737	-4,963	-6,180	-4,267	-2,749	-1,863	-1,396	-1,368	10,274	-1,369
H.R. 1586 (S.A. 4575)	Less:													
Estimate: Congress	Repeal of prior emergency requirement	-13	-111	-216	-666	-3,731	-4,757	-2,781	-1,292	-438	0	0	-9,494	-14,005
	Net PAYGO impact	0	22,475	1,019	-1,071	-1,232	-1,423	-1,486	-1,457	-1,425	-1,396	-1,368	19,768	12,636
	Five-year PAYGO scorecard		3,954	3,954	3,954	3,954	3,954							
	Ten-year PAYGO scorecard		1,264	1,264	1,264	1,264	1,264	1,264	1,264	1,264	1,264	1,264		
37 P.L. 111-227	United States Manufacturing Enhancement Act of 2010													
Enacted 08-11-2010	Net PAYGO impact	0	169	103	26	0	-305	305	0	-17	286	0	-7	-5
H.R. 4380														
Estimate: Congress	Five-year PAYGO scorecard		-1	-1	-1	-1	-1							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
38 P.L. 111-228	General and Special Risk Insurance Funds Availability Act of 2010													
Enacted 08-11-2010	Net PAYGO impact	-94	0	0	0	0	0	0	0	0	0	0	-94	-94
H.R. 5872														
Estimate: Congress	Five-year PAYGO scorecard		-19	-19	-19	-19	-19							
	Ten-year PAYGO scorecard		-9	-9	-9	-9	-9	-9	-9	-9	-9	-9		
	To increase the flexibility of the Secretary of Housing and Urban Development with respect to the amount of premiums charged for FHA single family housing mortgage insurance, and for other purposes.													
39 P.L. 111-229														
Enacted 08-11-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
H.R. 5981														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
40 P.L. 111-230	Making emergency supplemental appropriations for border security for the fiscal year ending September 30, 2010, and for other purposes.													
Enacted 08-13-2010	Net PAYGO impact	0	0	-136	-140	-143	0	0	0	0	0	0	-419	-419
H.R.6080														
Estimate: OMB	Five-year PAYGO scorecard		-84	-84	-84	-84	-84							
	Ten-year PAYGO scorecard		-42	-42	-42	-42	-42	-42	-42	-42	-42	-42		
	To authorize the Secretary of Agriculture to terminate certain easements held by the Secretary on land owned by the Village of Caseyville, Illinois, and to terminate associated contractual arrangements with the Village.													
41 P.L. 111-231														
Enacted 08-16-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
H.R. 531														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		

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42 P.L. 111-232	Star-Spangled Banner Commemorative Coin Act													
Enacted 08-16-2010	Net PAYGO impact	0	0	-5	3	0	0	0	0	0	0	0	-2	-2
H.R. 2097														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
43 P.L. 111-237	Firearms Excise Tax Improvement Act of 2010													
Enacted 08-16-2010	Net PAYGO impact	82	-32	-30	-11	-6	-155	151	-2	-1	-1	-1	-152	-6
H.R. 5552														
Estimate: Congress	Five-year PAYGO scorecard		-30	-30	-30	-30	-30							
	Ten-year PAYGO scorecard		-1	-1	-1	-1	-1	-1	-1	-1	-1	-1		
44 P.L. 111-239	Mandatory Price Reporting Act of 2010													
Enacted 09-27-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
S. 3656														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
45 P.L. 111-240	Small Business Jobs Act of 2010													
Enacted 09-27-2010	Net impact on the on-budget deficit	0	83,938	-11,175	-13,920	-11,272	-44,124	8,275	-5,049	-3,543	-2,669	-2,499	3,445	-2,035
H.R. 5297	Less:													
Estimate: Congress	Current policy adjustment	0	2,789	1,845	-1,529	-966	-702	-543	-343	-194	-94	-44	1,436	218
	Net PAYGO impact	0	81,149	-13,020	-12,391	-10,306	-43,422	8,818	-4,706	-3,349	-2,575	-2,455	2,009	-2,253
	Five-year PAYGO scorecard		402	402	402	402	402							
	Ten-year PAYGO scorecard		-225	-225	-225	-225	-225	-225	-225	-225	-225	-225		
46 P.L. 111-241	Multinational Species Conservation Funds Semipostal Stamp Act of 2010													
Enacted 09-30-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
H.R. 1454														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
47 P.L. 111-248	To improve the operation of certain facilities and programs of the House of Representatives, and for other purposes.													
Enacted 09-30-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
H.R. 5682														
Estimate: Congress	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
48 P.L. 111-253	To award a congressional gold medal to Dr. Muhammad Yunus, in recognition of his contributions to the fight against global poverty.													
Enacted 10-05-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
S. 846														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
49 P.L. 111-254	To grant the congressional gold medal, collectively, to the 100th Infantry Battalion and the 442nd Regimental Combat Team, United States Army, in recognition of their dedicated service during World War II.													
Enacted 10-05-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
S. 1055														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		

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50 P.L. 111-255	Improving Access to Clinical Trials Act of 2009													
Enacted 10-05-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
S. 1674														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
51 P.L. 111-259	Intelligence Authorization Act for Fiscal Year 2010													
Enacted 10-07-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
H.R. 2701														
Estimate: Congress	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
52 P.L. 111-260	Twenty-First Century Communications and Video Accessibility Act of 2010													
Enacted 10-08-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
S. 3304														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
53 P.L. 111-261	To authorize the Secretary of the Interior to lease certain lands in Virgin Islands National Park, and for other purposes.													
Enacted 10-08-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
H.R. 714														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
54 P.L. 111-262	5-Star Generals Commemorative Coin Act													
Enacted 10-08-2010	Net PAYGO impact	0	0	0	-10	0	10	0	0	0	0	0	0	0
H.R. 1177														
Estimate: Congress	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
55 P.L. 111-263	Federal Supply Schedules Usage Act of 2010													
Enacted 10-08-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
S. 2868														
Estimate: Congress	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
56 P.L. 111-266	Security Cooperation Act of 2010													
Enacted 10-08-2010	Net PAYGO impact	0	0	-6	0	0	0	0	0	0	0	0	-6	-6
S. 3847														
Estimate: OMB	Five-year PAYGO scorecard		-1	-1	-1	-1	-1							
	Ten-year PAYGO scorecard		-1	-1	-1	-1	-1	-1	-1	-1	-1	-1		
57 P.L. 111-268	Combat Methamphetamine Enhancement Act of 2010													
Enacted 10-12-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
H.R. 2923														
Estimate: Congress	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		

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58 P.L. 111-273	Secure and Responsible Drug Disposal Act of 2010													
Enacted 10-12-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
S. 3397														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
59 P.L. 111-274	Plain Writing Act of 2010													
Enacted 10-13-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
H.R. 946														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
60 P.L. 111-275	Veterans' Benefits Act of 2010													
Enacted 10-13-2010	Net PAYGO impact	0	0	-154	-70	-115	-55	74	74	77	79	82	-394	-8
H.R. 3219														
Estimate: Congress	Five-year PAYGO scorecard		-79	-79	-79	-79	-79							
	Ten-year PAYGO scorecard		-1	-1	-1	-1	-1	-1	-1	-1	-1	-1		
61 P.L. 111-281	Coast Guard Authorization Act of 2010													
Enacted 10-15-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
H.R. 3619														
Estimate: Congress	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
62 P.L. 111-285	To extend the deadline for Social Services Block Grant expenditures of supplemental funds appropriated following disasters occurring in 2008.													
Enacted 11-24-2010	Net impact on the on-budget deficit	0	20	10	0	0	0	0	0	0	0	0	30	30
S. 3774	Less:													
Estimate: OMB	Emergency requirement	0	20	10	0	0	0	0	0	0	0	0	30	30
	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
63 P.L. 111-286	The Physician Payment and Therapy Relief Act of 2010													
Enacted 11-30-2010	Net impact on the on-budget deficit	0	1,057	-88	-122	-126	-129	-131	-134	-138	-141	-146	592	-99
H.R. 5712	Less:													
Estimate: OMB	Current policy adjustment	0	1,004	0	0	0	0	0	0	0	0	0	1,004	1,004
	Net PAYGO impact	0	53	-88	-122	-126	-129	-131	-134	-138	-141	-146	-412	-1,103
	Five-year PAYGO scorecard		-82	-82	-82	-82	-82							
	Ten-year PAYGO scorecard		-110	-110	-110	-110	-110	-110	-110	-110	-110	-110		
64 P.L. 111-287	International Adoption Simplification Act													
Enacted 11-30-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
S. 1376														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		

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* Uses Congressional estimates referenced in enacted legislation or OMB estimates if there are no references to the Congressional estimates.

		2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010-15	2010-20
65 P.L. 111-291	Claims Resolution Act of 2010													
Enacted 12-08-2010	Net PAYGO impact	0	2,057	-729	-442	206	362	411	282	102	-2,055	-193	1,453	-1
H.R. 4783														
Estimate: Congress	Five-year PAYGO scorecard		291	291	291	291	291							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
66 P.L. 111-292	Telework Enhancement Act of 2010													
Enacted 12-09-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
H.R. 1722														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
67 P.L. 111-293	Help Haitian Adoptees Immediately to Integrate Act of 2010													
Enacted 12-09-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
H.R. 5283														
Estimate: Congress	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
68 P.L. 111-294	Animal Crush Video Prohibition Act of 2010													
Enacted 12-09-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
H.R. 5566														
Estimate: Congress	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
69 P.L. 111-296	Healthy, Hunger-Free Kids Act of 2010													
Enacted 12-13-2010	Net impact on the on-budget deficit	0	-51	-50	279	-2,138	297	291	286	273	265	259	-1,662	-287
S. 3307	Less:													
Estimate: Congress	Repeal of prior emergency requirement	0	0	0	0	-2,476	0	0	0	0	0	0	-2,476	-2,476
	Net PAYGO impact	0	-51	-50	279	338	297	291	286	273	265	259	814	2,189
	Five-year PAYGO scorecard		163	163	163	163	163							
	Ten-year PAYGO scorecard		219	219	219	219	219	219	219	219	219	219		
70 P.L. 111-302	Coin Modernization, Oversight, and Continuity Act of 2010													
Enacted 12-14-2010	Net PAYGO impact	0	-25	-25	-25	-25	-25	-25	-25	-25	-25	-25	-127	-253
H.R. 6162														
Estimate: OMB	Five-year PAYGO scorecard		-25	-25	-25	-25	-25							
	Ten-year PAYGO scorecard		-25	-25	-25	-25	-25	-25	-25	-25	-25	-25		
71 P.L. 111-303	American Eagle Palladium Bullion Coin Act of 2010													
Enacted 12-14-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
H.R. 6166														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
72 P.L. 111-307	Asian Carp Prevention and Control Act													
Enacted 12-14-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
S. 1421														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		

STATUTORY ESTIMATES OF PAY-AS-YOU-GO LEGISLATION *

(In millions of dollars; positive amounts portray net increases in deficits and negative amounts portray net decreases in deficits)

* Uses Congressional estimates referenced in enacted legislation or OMB estimates if there are no references to the Congressional estimates.

		2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010-15	2010-20
73 P.L. 111-308	Federal Buildings Personnel Training Act of 2010													
Enacted 12-14-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
S. 3250														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
74 P.L. 111-309	Medicare and Medicaid Extenders Act of 2010													
Enacted 12-15-2010	Net impact on the on-budget deficit	0	12,035	7,038	299	-742	-1,849	-2,893	-3,626	-4,037	-4,336	-4,662	16,782	-2,772
H.R. 4994	Less:													
Estimate: Congress	Current policy adjustment		9,624	4,881	0	0	0	0	0	0	0	0	14,505	14,505
	Net PAYGO impact		2,412	2,157	299	-742	-1,849	-2,893	-3,626	-4,037	-4,336	-4,662	2,278	-17,276
	Five-year PAYGO scorecard		456	456	456	456	456							
	Ten-year PAYGO scorecard		-1,728	-1,728	-1,728	-1,728	-1,728	-1,728	-1,728	-1,728	-1,728	-1,728		
75 P.L. 111-312	Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010													
Enacted 12-17-2010	Net impact on the on-budget deficit	0	472,010	375,820	88,347	-11,276	-4,321	-7,734	-8,067	-5,470	-3,273	-1,993	920,580	894,044
H.R. 4853	Less:													
Estimate: OMB	Current policy adjustment	0	143,100	210,606	56,445	-570	98	-342	-536	-313	-161	-76	409,679	408,251
	Emergency requirement	0	328,910	165,214	31,902	-10,706	-4,419	-7,392	-7,531	-5,157	-3,112	-1,917	510,901	485,793
	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
76 P.L. 111-313	Truth in Fur Labeling Act of 2010													
Enacted 12-18-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
H.R. 2480														
Estimate: Congress	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
77 P.L. 111-315	To amend the Water Resources Development Act of 2000 to extend and modify the program allowing the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the evaluation of permits, and for other purposes.													
Enacted 12-18-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
H.R. 6184														
Estimate: Congress	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
78 P.L. 111-318	Social Security Number Protection Act of 2010													
Enacted 12-18-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
S. 3789														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
79 P.L. 111-325	Regulated Investment Company Modernization Act of 2010													
Enacted 12-22-2010	Net PAYGO impact	0	-17	-8	-4	-6	-14	-21	-26	-30	-29	-15	-49	-170
H.R. 4337														
Estimate: OMB	Five-year PAYGO scorecard		-10	-10	-10	-10	-10							
	Ten-year PAYGO scorecard		-17	-17	-17	-17	-17	-17	-17	-17	-17	-17		

STATUTORY ESTIMATES OF PAY-AS-YOU-GO LEGISLATION *

(in millions of dollars; positive amounts portray net increases in deficits and negative amounts portray net decreases in deficits)

* Uses Congressional estimates referenced in enacted legislation or OMB estimates if there are no references to the Congressional estimates.

		2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010-15	2010-20
80 P.L. 111-331	Truth in Caller ID Act of 2009													
Enacted 12-22-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
S. 30														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
81 P.L. 111-332	National Foundation on Fitness, Sports, and Nutrition Establishment Act													
Enacted 12-22-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
S. 1275														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
82 P.L. 111-338	FOR VETS Act of 2010													
Enacted 12-22-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
S. 3784														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
83 Private Law 111-2	For the relief of Hotaru Nakama Ferschke.													
Enacted 12-22-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
S. 1774														
Estimate: Congress	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
84 P.L. 111-343	To require the Federal Deposit Insurance Corporation to fully insure Interest on Lawyers Trust Accounts.													
Enacted 12-29-2010	Net PAYGO impact	0	12	10	1	-3	-5	-6	-8	-3	0	0	15	-2
H.R. 6398														
Estimate: Congress	Five-year PAYGO scorecard		3	3	3	3	3							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
85 P.L. 111-344	Omnibus Trade Act of 2010													
Enacted 12-29-2010	Net PAYGO impact	0	122	115	25	5	-2,475	2,475	0	0	0	-717	-2,208	-450
H.R. 6517														
Estimate: Congress	Five-year PAYGO scorecard		-442	-442	-442	-442	-442							
	Ten-year PAYGO scorecard		-45	-45	-45	-45	-45	-45	-45	-45	-45	-45		
86 P.L. 111-345	Restore Online Shoppers' Confidence Act													
Enacted 12-29-2010	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
S. 3386														
Estimate: OMB	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
87 P.L. 111-347	James Zadroga 9/11 Health and Compensation Act of 2010													
Enacted 1-2-2011	Net PAYGO impact	0	-242	106	170	56	-191	1,398	-346	-466	-461	-457	-101	-433
H.R. 847														
Estimate: Congress	Five-year PAYGO scorecard		-20	-20	-20	-20	-20							
	Ten-year PAYGO scorecard		-43	-43	-43	-43	-43	-43	-43	-43	-43	-43		

STATUTORY ESTIMATES OF PAY-AS-YOU-GO LEGISLATION *

(In millions of dollars; positive amounts portray net increases in deficits and negative amounts portray net decreases in deficits)

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		2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010-15	2010-20
88 P.L. 111-348 Enacted 1-4-2011 H.R. 81 Estimate: OMB	To amend the High Seas Driftnet Fishing Moratorium Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of sharks.													
	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
89 P.L. 111-352 Enacted 1-4-2011 H.R. 2142 Estimate: OMB	GPRA Modernization Act of 2010													
	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
90 P.L. 111-353 Enacted 1-4-2011 H.R. 2751 Estimate: OMB	FDA Food Safety Modernization Act													
	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
91 P.L. 111-358 Enacted 1-4-2011 H.R. 5116 Estimate: Congress	America COMPETES Reauthorization Act of 2010													
	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
92 P.L. 111-370 Enacted 1-4-2011 H.R. 6510 Estimate: OMB	To direct the Administrator of General Services to convey a parcel of real property in Houston, Texas, to the Military Museum of Texas, and for other purposes.													
	Net PAYGO impact	0	0	0	0	0	0	0	0	0	0	0	0	0
	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
93 P.L. 111-372 Enacted 1-4-2011 S. 118 Estimate: Congress	Section 202 Supportive Housing for the Elderly Act of 2010													
	Net PAYGO impact	0	5	0	0	0	0	0	0	0	0	0	5	5
	Five-year PAYGO scorecard		1	1	1	1	1							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
94 P.L. 111-373 Enacted 1-4-2011 S. 841 Estimate: OMB	Pedestrian Safety Enhancement Act of 2010													
	Net PAYGO impact	0	2	0	0	0	0	0	0	0	0	0	2	2
	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		0	0	0	0	0	0	0	0	0	0		
95 P.L. 111-377 Enacted 1-4-2011 S. 3447 Estimate: Congress	Post-9/11 Veterans Educational Assistance Improvements Act of 2010													
	Net PAYGO impact	0	-16	-28	69	10	-36	-83	-121	-153	-176	-200	-1	-734
	Five-year PAYGO scorecard		0	0	0	0	0							
	Ten-year PAYGO scorecard		-73	-73	-73	-73	-73	-73	-73	-73	-73	-73		

STATUTORY ESTIMATES OF PAY-AS-YOU-GO LEGISLATION *

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	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010-15	2010-20
96 P.L. 111-382													
Enacted 1-4-2011													
S. 4036													
Estimate: OMB													
To clarify the National Credit Union Administration authority to make stabilization fund expenditures without borrowing from the Treasury.													
Net PAYGO impact	0	-25	-25	-20	-15	-11	-9	-8	-7	-6	-5	-96	-131
Five-year PAYGO scorecard	-19	-19	-19	-19	-19	-19							
Ten-year PAYGO scorecard	-13	-13	-13	-13	-13	-13	-13	-13	-13	-13	-13		
97 P.L. 111-383													
Enacted 1-7-2011													
H.R. 6523													
Estimate: Congress													
Ike Skelton National Defense Authorization Act for Fiscal Year 2011													
Net PAYGO impact	0	3,973	-3,568	-6	1	2	4,370	141	-4,511	1	1	-2	0
Five-year PAYGO scorecard	0	0	0	0	0	0							
Ten-year PAYGO scorecard	0	0	0	0	0	0	0	0	0	0	0		

Note: Components may not sum to totals due to rounding.

[1] Revised May 27, 2010 to reflect current policy adjustment.

[2] H.R. 1586 is listed with its original bill title, which does not reflect the substitute amendment to provide funding to States for education jobs and Medicaid assistance.

[FR Doc. 2011–1064 Filed 1–19–11; 8:45 am]

BILLING CODE C

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (11–005)]

NASA Advisory Council; Space Operations Committee; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council (NAC) Space Operations Committee.

DATES: Tuesday, February 8, 2011, 8 a.m.–5 p.m., Local Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 7C61, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Jacob Keaton, Space Operations Mission Directorate, National Aeronautics and Space Administration Headquarters, Washington, DC 20546, 202/358–1507, *jacob.keaton@nasa.gov.*

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following topics:

—International Space Station Program Update

—Space Shuttle Program Update

—Space Communication and Navigation Program Update

—Heavy Lift Development Update

—Commercial Crew Development Program Update

—Recommendation Preparation and Discussion

The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will need to show a valid picture identification such as a driver's license to enter the NASA Headquarters building (West Lobby—Visitor Control Center), and must state that they are attending the NASA Advisory Council Space Operations Committee meeting in the Space Operations Center room 7C61 before receiving an access badge. All non-U.S citizens must fax a copy of their passport, and print or type their name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number, and expiration date, U.S. Social Security Number (if applicable), and place and date of entry into the U.S., fax to Jacob Keaton, NASA Advisory Council Space Operations Committee Executive Secretary, FAX: (202) 358–3934, by no later than Tuesday, February 1, 2011. To expedite admittance, attendees with U.S. citizenship can provide identifying information no later than 12 p.m., local time, February 4, 2011, by contacting Jacob Keaton via e-mail at *jacob.keaton@nasa.gov* or by telephone at (202) 358–1507 or fax: (202) 358–3934.

Dated: January 13, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–1152 Filed 1–19–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (11–006)]

NASA Advisory Council; Commercial Space Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Commercial Space Committee to the NASA Advisory Council.

DATES: Tuesday, February 8, 2011, 2 p.m.–3:30 p.m., Local Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Glennan Conference Center, Room 1Q39, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John Emond, Office of Chief Technologist, National Aeronautics and Space Administration, Washington, DC 20546, Phone 202–358–1686, fax: 202–358–3878, *john.l.emond@nasa.gov.*

SUPPLEMENTARY INFORMATION: In recognition of an upcoming meeting of the NASA Advisory Council, this Commercial Space Committee meeting will focus on potential observations, findings, and recommendations of the Committee to the NASA Advisory Council regarding NASA's implementation of programs to enable development of commercially viable space transportation capabilities. This deliberation will reflect on fact-finding presentations the Committee has received to date. The Committee may also explore other areas of commercial activities apart from commercial launch and transportation systems in their discussion.

The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will need to show a valid picture identification such as a driver's license to enter the NASA Headquarters building (West Lobby—Visitor Control Center), and must state that they are attending the NASA Advisory Council Commercial Space Committee meeting in the Glennan Conference Center room 1Q39 before receiving an access badge. All non-U.S citizens must fax a copy of their passport, and print or type their name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number, and expiration date, U.S. Social Security Number (if applicable), and place and date of entry into the U.S., fax to John Emond, NASA Advisory Council Commercial Space Committee Executive Secretary, FAX: (202) 358–3878, by no later than Tuesday, February 1, 2011. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting John Emond via e-mail at *john.l.emond@nasa.gov* or by telephone at (202) 358–1686 or fax: (202) 358–3878.

Dated: January 13, 2011.

P. Diane Rausch,

Advisory Committee Management Office, National Aeronautics and Space Administration.

[FR Doc. 2011–1153 Filed 1–19–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

[IRPS 11–1]

Guidelines for the Supervisory Review Committee

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final Interpretative Ruling and Policy Statement 11–1, "Supervisory Review Committee" (IRPS 11–1).

SUMMARY: This policy statement combines two Interpretative Ruling and Policy Statements (IRPSs) and adds denials of technical assistance grant (TAG) reimbursements to the types of determinations that credit unions may appeal to NCUA's Supervisory Review Committee. This new IRPS will replace the earlier IRPSs addressing the Supervisory Review Committee.

DATES: This IRPS is effective January 20, 2011. Comments must be received by February 22, 2011.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *NCUA Web site: http://www.ncua.gov/news/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include "[Your name] Comments on IRPS 11–1" in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays

between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Dave Marquis, Executive Director or Justin M. Anderson, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, or telephone: (703) 518–6320 (Dave Marquis) or (703) 518–6540 (Justin Anderson).

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act), Public Law 103–325, § 309(a), 108 Stat. 2160 (1994), the NCUA Board (Board) adopted guidelines that established an independent appellate process to review material supervisory determinations, entitled "Supervisory Review Committee" (IRPS 95–1). 60 FR 14795 (March 20, 1995). Through IRPS 95–1, NCUA established a Supervisory Review Committee (Committee) consisting of three senior staff members to hear appeals of material supervisory determinations. IRPS 95–1 defined material supervisory determinations to include determinations on composite CAMEL ratings of 3, 4 and 5, all component ratings of those composite ratings, significant loan classifications and adequacy of loan loss reserves. The Board noted in the preamble to IRPS 95–1, however, that it would consider expanding the disputes covered by the Committee's review process at a later date. 60 FR 14795, 14796 (March 20, 1995). In 2002, the Board amended IRPS 95–1 by issuing IRPS 02–1, which added Regulatory Flexibility designation determinations to the list of material supervisory determinations credit unions may appeal to the Committee.

B. Technical Assistance Grant Reimbursement Denials Amendment

Under Part 705 of NCUA's regulations, qualifying credit unions can apply for loans or Technical Assistance Grants (TAGs) from the Community Development Revolving Loan Fund for Credit Unions. As outlined in the 2010 NCUA Office of Small Credit Union Initiatives' (OSCUI) Technical Assistance Grant Guidelines (*http://www.ncua.gov/Resources/CreditUnionDevelopment/Files/Programs/Grants/2010/GeneralGuidelines.pdf*), qualifying credit unions that have applied for and been granted a TAG may purchase goods or spend the funds, up to the amount of the grant in accordance with the purpose of the grant as articulated in the credit union's application. After making expenditures, a credit union must submit copies of receipts and proof of payment to NCUA for reimbursement. The Director of OSCUI may deny a request for reimbursements if the credit union fails to remit the necessary documentation, the expenditure is not in furtherance of the purpose of the grant, or the expenditure is for a restricted category of purchases currently as identified in the 2010 Technical Assistance Grant Guidelines. Prior to this IRPS, the decision of the Director of OSCUI was final and credit unions did not have a forum to appeal the decision within NCUA. This interim final IRPS will allow credit unions that disagree with the Director of OSCUI's determination to appeal the decision to NCUA's Supervisory Review Committee.

While the Board recognizes that the Riegle Act requires NCUA to set up a Supervisory Review Committee to hear appeals of material supervisory determinations, the Board notes that there is nothing in the Riegle Act that prohibits it from allowing the Committee to hear appeals of other issues. Although denials of TAG reimbursements are clearly not a material supervisory determination, the Board believes these determinations are important enough to warrant formal appeals to the Committee. As such, any credit union that disagrees with the Director of OSCUI's determination may, within 30 days from the date of the denial, appeal the determination to the Committee. The Committee will typically make a decision on a TAG reimbursement denial appeal within 30 days from the date the committee receives the appeal. The Committee will, however, adjudicate material supervisory determination appeals before TAG denial appeals if it is necessary to ensure material supervisory determination appeals are adjudicated expeditiously as required by the Riegle Act. Committee decisions on TAG appeals are final; they are not appealable to the NCUA Board.

C. Replacement of IRPS 95–1 and 02–1

In order to centralize all applicable guidance on the Committee and ensure ease of understanding by credit unions, the Board is combining IRPS 95–1 and 02–1 into interim final IRPS 11–1, which will also include the TAG reimbursement denial amendments. Interim final IRPS 11–1 will supersede and replace the previous two IRPS on the Committee. The Board also made some minor changes to the IRPS: Position titles are made current; the requirement for quarterly meetings is deleted (meetings will be held on an as needed basis); and to make timing of appeal of Committee decisions to the NCUA Board consistent, all decisions appealable to the Board are from the date of receipt of decision.[1]

D. Interim Final IRPS

The Board is issuing this IRPS as an interim final IRPS pursuant to 5 U.S.C. § 553(b)(3)(A), which allows agencies to issue rules without notice and comment in the case of interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice. IRPS11–1 is an interpretation of agency procedure granting credit unions an appeal mechanism for denials of TAG reimbursements.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe a significant economic impact agency rulemaking may have on a substantial number of small credit unions. For purposes of this analysis, credit unions under $1 million in assets are considered small credit unions.

This interim final IRPS expands the types of determinations that credit unions may appeal to the NCUA's Supervisory Review Committee and combines two previous IRPS. This interim final IRPS imposes no additional financial, regulatory or other burden on credit unions. NCUA has determined and certifies that this interim final IRPS will not have a significant impact on a substantial number of small credit unions. Accordingly, NCUA has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that this interim final IRPS does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism

[1] Under IRPS 95–1, decisions were appealable 30 days from the date a Committee decision was issued and under IRPS 02–1 decisions were appealable 60 days from the appellant's receipt of a decision.

principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This interim final IRPS applies to all credit unions that appeal NCUA material supervisory determinations before the NCUA Supervisory Committee, but does not have 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. NCUA has determined that this interim final IRPS does not constitute a policy that has federalism implications for purposes of the executive order.

Assessment of Federal Regulations and Policies on Families

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

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA. 5 U.S.C. 551. The Office of Management and Budget is currently reviewing this IRPS, but NCUA does not believe the IRPS is a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the National Credit Union Administration Board on January 13, 2011.

Mary F. Rupp,

Secretary of the Board.

Accordingly, for the reasons set forth in the preamble, IRPS 11–1 is established as follows:

[Note: The following ruling will not appear in the Code of Federal Regulations.]

1. Authority: Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325.

2. IRPS 11–1 is established as follows:

Interpretive Ruling and Policy Statement 11–1—Supervisory Review Committee

Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act) requires that NCUA establish an independent intra-agency appellate process to review material supervisory determinations. The NCUA Board hereby establishes a Supervisory Review Committee (Committee) to implement Section 309.

It is NCUA policy to maintain good communication with all credit unions it supervises. Credit unions, examiners and regional and central office staff are encouraged to resolve disagreements informally and expeditiously. The NCUA Board expects that most disputes will be handled in that manner. The Committee and other appeals processes are available for certain disputes that cannot be resolved informally.

A—Committee Structure, Scope and Procedures

The Committee shall consist of three regular members of the NCUA's senior staff as appointed by the NCUA Chairman. None of the members shall be currently serving as a Regional Director, Associate Regional Director, Executive Director, Director of the Office of Small Credit Union Initiatives, or Senior Policy Advisor or Chief of Staff to a Board Member. One member shall be designated by the NCUA Chairman as chairperson. All three Committee members shall serve for one year terms and may be reappointed for additional terms. Each member of the Committee shall have one vote and a quorum (two members) shall be present at each Committee meeting. Meetings may be held in person or via teleconference. A majority vote of the full Committee (two votes) is required for action on an appeal. Meetings will be scheduled, as appropriate, by the chairperson on an as needed basis.

Appeals of material supervisory determinations made by NCUA may be made by all federally insured credit unions (federal credit unions (FCUs) and federally-insured, state chartered credit unions (FISCUs). Appeals of denials of Technical Assistance Grant (TAG) reimbursements may be made by any "Participating Credit Union" as defined by 12 CFR 705.3(b).

Material supervisory determinations are limited to: (1) Composite CAMEL ratings of 3, 4, and 5 and all component ratings of those composite ratings; (2) adequacy of loan loss reserve provisions; (3) loan classifications on loans that are significant as determined by the appealing credit union; and (4) revocations of Regulatory Flexibility Program (RegFlex) authority. Subject to the requirements discussed below, credit unions may also appeal to the Committee a decision of the Director of the Office of Small Credit Union Initiatives (OSCUI) to deny Technical Assistance Grant (TAG) reimbursements.

An FCU, other than a corporate FCU, must contact the regional office regarding the examiner's decision within 30 days of the examiner's final determination. The decision must be appealed to (postmarked or received by) the Committee either 30 days after a regional determination or 60 days after the regional office has been contacted if it has not made a determination.

An FISCU, other than a corporate FISCU, must contact the Regional Office within 30 days of the NCUA examiner's final decision. The Region will verify that the determination being appealed was made by an NCUA examiner. If the decision was made by the state, the appeal will be turned over to the state for appropriate action. If the decision was made by the NCUA examiner, the dispute will be handed by the Region and become appealable to the Committee either 30 days after a regional determination or 60 days after the regional office has been contacted if it has not made a determination. The Committee chairperson will reverify that the determination was made by NCUA. Regional staff and the Committee will notify and consult with the state supervisory authority in appropriate cases.

All federally insured corporate credit unions (FCUs and FISCUs) must contact the Office of Corporate Credit Unions concerning its examiner's final determination and then the Committee within the same time frames. Staff from the Office of Corporate Credit Unions and the Committee will consult with the state supervisory authority in appropriate cases involving corporate FISCUs.

If a Regional Director revokes a credit union's RegFlex authority, in whole or in part, upon written notice to the credit union, the credit union may appeal the revocation to the Committee within 60 days from the date of the Region's determination. The RegFlex revocation is effective as soon as the credit union receives the notice and it remains in effect pending a decision from the Committee.

All "Participating Credit Unions" must appeal a determination of the Director of OSCUI to deny a TAG reimbursement to the Committee within 30 days from the date of the denial.

The board of directors of the appealing credit union must authorize that the appeal be filed. Appeals must be submitted in writing and mailed or delivered to Chairman, Supervisory Review Committee, NCUA, 1775 Duke Street, Alexandria, VA 22314–3428.

Appeals may be made by letter, and must include the name of the appellant credit union, the determination or denial being appealed and the reasons for the appeal. Appellants are encouraged to submit all information and supporting documentation relevant to the matter in dispute.

Appellants are entitled to a personal appearance before the Committee. The Committee chairperson reserves the right, however, to attempt to work out the dispute through teleconference.

The determination or denial remains in effect pending appeal. The appeal does not prevent the NCUA from taking any action, either formal or informal, that it deems appropriate during the pendency of the appeal.

The Committee may request additional information from the appellant and/or the Regional Office, Office of Corporate Credit Unions, or OSCUI within 15 days of its receipt of the appeal. The information must be submitted to the Committee within 15 days of receipt of the Committee request. The Committee shall make a determination on the appeal within 30 days from the date of the receipt of an appeal by the Committee or of its receipt of any requested additional information. These time requirements are subject to adjustment by the Committee, whether on its own or upon request of the appellant or the Region or other office

involved. If time constraints do not permit all appeals to be adjudicated within the above time frames, the Committee will adjudicate material supervisory determination appeals before appeals of TAG reimbursement denials regardless of the order in which the Committee received the appeals.

Committee decisions on the denial of a TAG reimbursement are the final decisions of NCUA and are not appealable to the NCUA Board. If a RegFlex revocation is the basis of the appeal, the credit union may appeal the Committee's decision to the NCUA Board within 60 days from the appellant's receipt of the Committee's decision. All other appealable decisions must be appealed to the NCUA Board within 30 days of the appellant's receipt by the party of the Committee's decision.

B—Other Appeals

Procedures for various formal and informal adjudicative and non-adjudicative actions and proceedings not covered by the Supervisory Review Committee are found in Parts 709 (creditor claim appeals), 745 (share insurance appeals), 792 (Freedom of Information Act appeals) and 747 (appeals of various administrative and enforcement actions) of the NCUA Rules and Regulations (12 CFR 709, 745, 792, and 747). These parts should be reviewed to determine the procedures which apply for a particular appeal. In addition, the NCUA Board serves as the final administrative decision maker for major disputes that are not otherwise covered by this IRPS or Parts 709, 745, 792 or 747. These include disputes over chartering, insurance applications, field of membership expansion, merger, certain corporate credit union matters, charter changes and letters of understanding and agreement. These issues should first be pursued through the appropriate Regional Office or the Office of Corporate Credit Unions. Appeals concerning these matters should be addressed to the NCUA Board and submitted through the appropriate Regional Office or the Office of Corporate Credit Unions.

C—Retaliation

Alleged acts of retaliation should be reported to NCUA's Inspector General, who is authorized by Congress, under the Inspector General Act, to receive and investigate complaints and other information regarding abuse in agency programs and operations.

Any retaliation by NCUA staff against a credit union making any type of appeal will subject the employee to appropriate disciplinary or remedial action by the appropriate supervisor. Such disciplinary or remedial action may include oral or written warning or admonishment, reprimand, suspension or separation from employment, change in assigned duties, or disqualification from a particular assignment, including prohibition from participating in any examination of the credit union that was the subject of the retaliation.

[FR Doc. 2011–1090 Filed 1–19–11; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Proposed Collection: Comment Request

ACTION: Notice.

SUMMARY: The National Endowment for the Arts, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program 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)(A)]. This program helps 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 collection requirements on respondents can be properly assessed. Currently, the National Endowment for the Arts, on behalf of the Federal Council on the Arts and the Humanities, is soliciting comments concerning renewal of the Application for Domestic Indemnity. A copy of this collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below on or before April 1, 2011. The National Endowment for the Arts is particularly interested in comments which:

—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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting the electronic submissions of responses.

ADDRESSES: Alice Whelihan, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 726, Washington, DC 20506–0001, telephone (202) 682–5574 (this is not a toll-free number), fax (202) 682–5603.

Kathleen Edwards,

Director, Administrative Services.

[FR Doc. 2011–1097 Filed 1–19–11; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that one meeting of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending time is approximate):

International Activities (application review): February 15, 2011, by teleconference. This meeting, from 2:30 p.m. to 3:30 p.m. EST will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of November 10, 2009, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, U.S.C.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Date: January 13, 2011.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 2011–1029 Filed 1–19–11; 8:45 am]

BILLING CODE 7537–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities; Arts and Artifacts Indemnity Panel Advisory Committee; Meeting

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of Meeting.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 730, from 9:30 a.m. to 5 p.m., on Monday, February 7, 2011.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after April 1, 2011.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July l9, l993, I have determined that the meeting would fall within exemption (4) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact Advisory Committee Management Officer, Michael P. McDonald, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call 202–606–8322.

Michael P. McDonald,

Advisory Committee Management Officer.

[FR Doc. 2011–1089 Filed 1–19–11; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346–LR; ASLBP No. 11–907–01–LR–BD01]

FirstEnergy Nuclear Operating Company; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and the Commission's regulations, *see, e.g.,* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

FirstEnergy Nuclear Operating Company

(Davis-Besse Nuclear Power Station, Unit 1)

This proceeding involves an application by FirstEnergy Nuclear Operating Company (FENOC) for a twenty-year renewal of operating license NPF–003, which authorizes FENOC to operate Davis-Besse Nuclear Power Station, Unit 1, located near Toledo, Ohio. The current operating license expires on April 22, 2017. In response to an October 25, 2010 Notice of Opportunity for Hearing published in the **Federal Register** (75 FR 65528), a petition to intervene was submitted by Beyond Nuclear, Citizens Environmental Alliance of Southwestern Ontario, Don't Waste Michigan, and Green Party of Ohio.

The Board is comprised of the following administrative judges:

William J. Froehlich, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Nicholas G. Trikouros, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. William E. Kastenberg, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007 (72 FR 49139).

Issued at Rockville, Maryland, this 13th day of January 2011.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2011–1139 Filed 1–19–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting: February 16, 2011—Las Vegas, NV, the U.S. Nuclear Waste Technical Review Board Will Meet To Discuss DOE Activities Related to Managing Spent Nuclear Fuel and High-Level Radioactive Waste

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, the U.S. Nuclear Waste Technical Review Board will meet in Las Vegas, Nevada, on February 16, 2011, to continue its exploration of technical aspects of the U.S. Department of Energy's (DOE) activities related to managing and disposing of spent nuclear fuel and high-level radioactive waste. The Board will consider technical lessons that can be gained from DOE efforts to develop a permanent repository for spent fuel and high-level radioactive waste over the last two decades. The Board also will review current DOE activities related to implementation of the Nuclear Waste Policy Act.

The Board meeting will be held at the Marriott Suites Convention Center; 325 Convention Center Drive, Las Vegas, Nevada 89109; (Tel) 702–650–2000; (Fax) 702–650–9466. A block of rooms has been reserved at the hotel for meeting attendees. To ensure receiving the meeting rate, reservations must be made by January 21, 2011. To make reservations, go to *http://www.marriott.com/hotels/travel/lasst-las-vegas-marriott/?toDate=2/18/11&groupCode=nucnuca&fromDate=2/14/11&app=resvlink* or call 800–244–3364 or 702–650–2000.

A detailed agenda will be available on the Board's Web site at *http://www.nwtrb.gov* approximately one week before the meeting. The agenda also may be obtained by telephone request at that time. The meeting will be open to the public, and opportunities for public comment will be provided.

The meeting will begin at 8:30 a.m. in the Lake Mead/Red Rock Salon on the 17th floor of the Marriot Suites Convention Center. Time has been set aside at the end of the day for public comments. Those wanting to speak are encouraged to sign the "Public Comment Register" at the check-in table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record.

Transcripts of the meeting will be available on the Board's Web site, by e-mail, on computer disk, and on library-loan in paper form from Davonya Barnes of the Board's staff no later than March 21, 2011.

The Board was established as an independent federal agency to provide objective expert advice to Congress and the Secretary of Energy on technical issues and to review the technical validity of DOE activities related to implementing the Nuclear Waste Policy Act. Board members are experts in their fields and are appointed to the Board by the President from a list of candidates submitted by the National Academy of Sciences. The Board is required to report to Congress and the Secretary no fewer than two times each year. Board reports, correspondence, congressional testimony, and meeting transcripts and

materials are posted on the Board's Web site: *http://www.nwtrb.gov.*

For information on the meeting agenda, contact Karyn Severson. For information on lodging or logistics, contact Linda Coultry; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201–3367; (tel) 703–235–4473; (fax) 703–235–4495.

Dated: January 12, 2011.

Daniel S. Metlay,

Acting Executive Director, U.S. Nuclear Waste Technical Review Board.

[FR Doc. 2011–1088 Filed 1–19–11; 8:45 am]

BILLING CODE 6820–AM–P

POSTAL REGULATORY COMMISSION

[Docket No. MT2011–3; Order No. 649]

Market Test of Marketing Mail Made Easy

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service proposal to conduct a 2-year market test involving the sale of Marketing Mail Made Easy. This document describes the proposed test, addresses procedural aspects of the filing, and invites public comment.

DATES: *Comment deadline:* February 4, 2011; *reply comment deadline:* February 15, 2011.

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, 202–789–6820 or *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: On January 12, 2011, the Postal Service filed a notice, pursuant to 39 U.S.C. 3641, announcing its intent to initiate a market test of an experimental market dominant product, Marketing Mail Made Easy (MMME).[1] The market test will begin on or about February 27, 2011 and continue for up to 2 years.

The Postal Service explains that MMME is designed to encourage small and medium-sized businesses to utilize the mail to promote and market their businesses at an affordable cost, and with reduced barriers to entry. MMME mail must be prepared according to the simplified address option for Standard Mail saturation. Permits, permit fees, or annual accounting fees will not be required. The product will be limited to locally-entered and locally-paid mail to be delivered to every household on chosen corresponding local delivery routes, with a daily limit of 5,000 pieces entered per office. *Id.* at 1.

The Postal Service states that the market test price for MMME mail will be equivalent to the price for Standard Mail saturation flats weighing less than 3.3 ounces and entered at the Destination Delivery Unit. The current price is 14.2 cents per piece. *Id.* at 4.

The Postal Service's Notice describes the market test in more detail. It discusses customer demand for the product, a detailed product description, pricing and potential benefits, and the section 3461 statutory criteria for market tests. A data collection plan also is proposed. *Id.* at 2–7.

The Commission establishes Docket No. MT2011–3 for consideration of matters raised by the Notice. Interested persons may submit comments on whether the Postal Service's filing in the captioned docket is consistent with the policies of 39 U.S.C. 3641. Comments are due no later than February 4, 2011. Reply comments are due not later than February 15, 2011. The filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Larry Fenster to serve as Public Representative in this docket.

It is ordered:

1. The Commission establishes Docket No. MT2011–3 for consideration of the matters raised by the Notice.

2. Pursuant to 39 U.S.C. 505, Larry Fenster is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments by interested persons are due no later than February 4, 2011.

4. Reply comments are due no later than February 15, 2011.

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

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–1096 Filed 1–19–11; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of the United States Postal Service of Market Test of Experimental Product—Marketing Mail Made Easy, January 12, 2011 (Notice).

POSTAL SERVICE

Market Test of Experimental Product: "Marketing Mail Made Easy"

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of a market test of an experimental product in accordance with statutory requirements.

DATES: January 20, 2011.

FOR FURTHER INFORMATION CONTACT: Brandy A. Osimokun, 202–268–2982.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice pursuant to 39 U.S.C. 3641(c)(1) that it will begin a market test of its "Marketing Mail Made Easy" experimental product on or around February 27, 2011. The Postal Service has filed with the Postal Regulatory Commission a notice setting out the basis for the Postal Service's determination that the market test is covered by 39 U.S.C. 3641 and describing the nature and scope of the market test. Documents are available at *http://www.prc.gov,* Docket No. MT2011–3.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 2011–1155 Filed 1–19–11; 8:45 am]

BILLING CODE 7710–12–P

RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

[Doc. No. 11–001]

Agenda and Notice Meeting of the Recovery Independent Advisory Panel; Correction

AGENCY: Recovery Accountability and Transparency Board.

ACTION: Notice; correction.

SUMMARY: The Recovery Accountability and Transparency Board (Board) published a document in the **Federal Register** of January 10, 2011, concerning agenda and notice of meeting of the Recovery Independent Advisory Panel (RIAP). The document contained incorrect addresses.

FOR FURTHER INFORMATION CONTACT: Glen Walker, Executive Director, Recovery Independent Advisory Panel, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006; Telephone 202–254–7900.

Correction

In the **Federal Register** of January 10, 2011, Vol. 76, No. 6, on page 1472, in the first column, correct the **ADDRESSES**

caption to read: Miller Building, Conference Rooms West 1 & 2, 11 Bladen Street, Annapolis, MD.

Dated: January 12, 2011.

Ivan J. Flores,

Paralegal Specialist, Recovery Accountability and Transparency Board.

[FR Doc. 2011–1109 Filed 1–19–11; 8:45 am]

BILLING CODE 6821–15–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17a–3; SEC File No. 270–026; OMB Control No. 3235–0033.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 17a–3 (17 CFR 240.17a–3), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–3 under the Securities Exchange Act of 1934 establishes minimum standards with respect to business records that broker-dealers registered with the Commission must make and keep current. These records are maintained by the broker-dealer (in accordance with a separate rule), so they can be used by the broker-dealer and reviewed by Commission examiners, as well as other regulatory authority examiners, during inspections of the broker-dealer.

The collections of information included in Rule 17a–3 is necessary to provide Commission, self-regulatory organization ("SRO") and state examiners to conduct effective and efficient examinations to determine whether broker-dealers are complying with relevant laws, rules, and regulations. If broker-dealers were not required to create these baseline, standardized records, Commission, SRO and state examiners could be unable to determine whether broker-dealers are in compliance with the Commission's antifraud and anti-manipulation rules, financial responsibility program, and other Commission, SRO, and State laws, rules, and regulations.

As of October 1, 2010 there were 5,057 broker-dealers registered with the Commission. The Commission estimates that these broker-dealer respondents incur a total burden of 2,723,970 hours per year to comply with Rule 17a–3. Approximately 1,464,777 of those hours are attributable to paragraph 17a–3(a)(17), and about 1,259,193 hours are attributable to the rest of Rule 17a–3. Paragraph 17a–3(a)(17) contains requirements to provide customers with account information (approximately 683,969 hours) and requirements to update customer account information (approximately 777,436 hours).

In addition, Rule 17a–3 contains ongoing operation and maintenance costs for broker-dealers including the cost of postage to provide customers with account information, and costs for equipment and systems development. The Commission estimates that under Rule 17a–3(a)(17), approximately 35,627,958 customers will need to be provided with information regarding their account on a yearly basis. The Commission estimates that the postage costs associated with providing those customers with copies of their account record information would be approximately $10,688,387 per year (35,627,958 × $0.30).[1] The staff estimates that the ongoing equipment and systems development costs relating to Rule 17a–3 for the industry would be about $23,514,452 per year. Consequently, the total cost burden associated with Rule 17a–3 would be approximately $34,202,839 per year.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to: Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: January 12, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–1073 Filed 1–19–11; 8:45 am]

BILLING CODE 8011–01–P

[1] Estimates of postage costs are derived from past conversations with industry representatives and have been adjusted to account for inflation and increases in postage costs.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63707; File No. SR–NYSEArca–2011–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca US LLC To Establish a $5 Strike Price Program

January 12, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on January 11, 2011, NYSE Arca US LLC (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 adopt Commentary .10 to NYSE Arca Rule 6.4 to allow the Exchange to list and trade series in intervals of $5 or greater where the strike price is more than $200 in up to five (5) option classes on individual stocks. The text of the proposed rule change is available at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* at the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to adopt Commentary .10 to Rule 6.4 to allow the Exchange to list and trade series in intervals of $5 or greater where the strike price is more than $200 in up to five (5) option classes on individual stocks ("$5 Strike Price Program") to provide investors and traders with additional opportunities and strategies to hedge high priced securities, based on a recently approved rule change of NASDAQ OMX PHLX ("Phlx").[3] The Exchange also proposes to adopt a provision recently adopted for Phlx that permits the Exchange to list $5 strike prices on any other option classes designated by other securities exchanges that employ a $5 Strike Program.[4]

Currently, Rule 6.4(f) permits strike price intervals of $10 or greater where the strike price is greater than $200.[5] The Exchange is proposing to add the proposed $5 Strike Program as an exception to the $10 or greater language in Rule 6.4(f). The proposal would allow the Exchange to list series in intervals of $5 or greater where the strike price is more than $200 in up to five (5) option classes on individual stocks. The Exchange specifically proposes to create new Commentary .10 to Rule 6.4 to provide:

> The Exchange may list series in intervals of $5 or greater where the strike price is more than $200 in up to five (5) option classes on individual stocks. The Exchange may list $5 strike prices above $200 in any other option classes if those classes are specifically designated by other securities exchanges that employ a similar $5 Strike Program under their respective rules.

The Exchange believes the $5 Strike Price Program would offer investors a greater selection of strike prices at a lower cost. For example, if an investor wanted to purchase an option with an expiration of approximately one month, a $5 strike interval could offer a wider choice of strike prices, which may result in reduced outlays in order to purchase the option. By way of illustration, using Google, Inc. ("GOOG") as an example, if GOOG were trading at $610[6] with approximately one month remaining until expiration, the front month (one month remaining) at-the-money call option (the 610 strike) might trade at approximately $17.50 and the next highest available strike (the 620 strike) might trade at approximately $13.00. By offering a 615 strike an investor would be able to trade a GOOG front month call option at approximately $15.25, thus providing an additional choice at a different price point.

Similarly, if an investor wanted to hedge exposure to an underlying stock position by selling call options, the investor may choose an option term with two months remaining until expiration. An additional $5 strike interval could offer additional and varying yields to the investor. For example if Apple, Inc. ("AAPL") were trading at $310[7] with approximately two months remaining until expiration, the second month (two months remaining) at-the-money call option (the 310 strike) might trade at approximately $14.50 and the next highest available strike (the 320) strike might trade at $9.90. If at expiration the price of AAPL closed at $310, the 310 strike call would have yielded a return of 4.67% and the 320 strike call would have yielded a return of 3.20% over the holding period. If the 315 strike call were available, that series might be priced at approximately $12.10 (a yield of 3.93% over the holding period) and would have had a lower risk of having the underlying stock called away at expiration than that of the 310 strike call.

The Exchange is also proposing to adopt a provision that options may be listed and traded in series that are listed by other securities exchanges that employ a similar $5 Strike Price Program, pursuant to the rules of the other securities exchange. Similar reciprocity currently is permitted with the Exchange's $1 Strike Program, $.50 Strike Program and $2.50 Strike Price Program.[8]

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of classes on individual stocks $5 Strike Price Program.

The proposed $5 Strike Price Program would provide investors increased opportunities to improve returns and manage risk in the trading of equity options that overlie high priced stocks. In addition, the proposed $5 Strike Price Program would allow investors to establish equity options positions that are better tailored to meet their investment, trading and risk management requirements.

2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the $5 Strike Price Program proposal will provide the investing public and other market participants increased opportunities because a $5 series in high priced stocks will provide market participants additional opportunities to hedge high priced securities. This will allow investors to better manage their risk exposure, and the Exchange believes the proposed $5 Strike Price Program would benefit investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities. While the $5 Strike Price Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal is limited to a fixed number of classes. Further, the Exchange does not believe that the proposal will result in a material proliferation of additional series because it is limited to a fixed number of classes and the Exchange does not believe that the additional price points will result in fractured liquidity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[3] *See* Securities Exchange Act Release No. 63654 (January 6, 2011) (order approving SR–Phlx–2010–158.

[4] *See* Securities Exchange Act Release No. 63658, (January 6, 2011) (notice of filing and immediate effectiveness of SR–Phlx–2011–02).

[5] Commentary .05 permits strike intervals of $2.50 or greater where the strike price is $25 or less, and strike price intervals of $5 or greater where the strike price is greater than $25.

[6] The prices listed in this example are assumptions and not based on actual prices. The assumptions are made for illustrative purposes only using the stock price as a hypothetical.

[7] The prices listed in this example are assumptions and not based on actual prices. The assumptions are made for illustrative purposes only using the stock price as a hypothetical.

[8] *See* Exchange Rule 6.4, Commentary .03 and .04 at (a) and (b)

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the $5 Strike Price Program is substantially similar to that of another exchange that is already effective and operative.[13] Therefore, the Commission designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day prefiling requirement in this case.

[13] *See supra* notes 3 and 4.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2011–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2011–02. 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2011–02 and should be submitted on or before February 10, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–1075 Filed 1–19–11; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63712; File No. SR–Phlx–2011–01]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Fee Cap on Dividend, Merger and Short Stock Interest Strategies

January 12, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on January 3, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I 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 the combined fee cap on equity option transaction charges on dividend,[3] merger,[4] and short stock interest [5] strategies.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For purposes of this proposal, the Exchange defines a "dividend strategy" as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed prior to the date on which the underlying stock goes ex-dividend. *See e.g.,* Securities Exchange Act Release No. 54174 (July 19, 2006), 71 FR 42156 (July 25, 2006) (SR–Phlx–2006–40).

[4] For purposes of this proposal, the Exchange defines a "merger strategy" as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock.

[5] For purposes of this proposal, the Exchange defines a "short stock interest strategy" as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the combined fee cap on equity option transaction charges for dividend, merger and short stock interest strategies ("Cap"). The Exchange believes that offering a Cap for members and member organizations would equalize the utilization of the Cap while continuing to attract additional liquidity and order flow to the Exchange and allow the Exchange to remain competitive with other options exchanges in connection with these types of options strategies.

Currently, the Exchange has a $25,000 Cap per member organization [6] per month when such members [7] are trading for their own proprietary account. The Exchange proposes to establish a different Cap for members and assess the greater of the two Caps, a member or member organization Cap. The Exchange proposes to allow a member an alternate $10,000 per month Cap per member.

By way of example, if a member organization had five members who were transacting equity options, specifically dividends, mergers and short stock interest strategies, at the end of the month the Exchange would assess the greater of $50,000 per month ($10,000 per member) or $25,000 per month. In this case the member organization would be assessed up to the Cap of $50,000. If on the other hand a member organization had one member who was transacting equity options, specifically dividends, mergers and short stock interest strategies, at the end of the month the Exchange would assess up to the Cap of $25,000 per month.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [8] in general, and furthers the objectives of Section 6(b)(4) of the Act [9] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities. The Exchange believes that the Cap is reasonable and relates to the volume transacted by a member organization. The Exchange believes this fee structure allows the Exchange to assess fees and apply the Cap more equitably as between smaller and larger member organizations at the Exchange.

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) of the Act [10] and paragraph (f)(2) of Rule 19b–4 thereunder,[11] because it establishes a due, fee, or other charge imposed by the Exchange.

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–2011–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–01. 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

[6] *See* NASDAQ OMX PHLX Rule 1(o) which states that a "member organization" shall mean a corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization, transacting business as a broker or a dealer in securities and which has the status of a member organization by virtue of (i) admission to membership given to it by the Membership Department pursuant to the provisions of Rules 900.1 or 900.2 or the By-Laws or (ii) the transitional rules adopted by the Exchange pursuant to Section 12–12 of the By-Laws. References to officer or partner, when used in the context of a member organization, shall include any person holding a similar position in any organization other than a corporation or partnership that has the status of a member organization.

[7] *See* NASDAQ OMX PHLX Rule 1(n) which states that a "member" shall mean a permit holder which has not been terminated in accordance with the By-Laws and Rules of the Exchange.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

should refer to File Number SR–Phlx–2011–01 and should be submitted on or before February 10, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–1081 Filed 1–19–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63711; File No. SR–ODD–2011–01]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Accelerated Delivery of Supplement to the Options Disclosure Document Reflecting Certain Changes to Disclosure Regarding Credit Default Options in, and Making Certain Technical Amendments to, the June 2007 Supplement to the Options Disclosure Document

January 12, 2011.

On October 25, 2010, The Options Clearing Corporation ("OCC") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Rule 9b–1 under the Securities Exchange Act of 1934 ("Act"),[1] five preliminary copies of a supplement to amend and restate the June 2007 Supplement to its options disclosure document ("ODD") to reflect certain changes to disclosure regarding credit default options.[2] The supplement also proposes certain technical amendments.[3] On December 21, 2010, the OCC submitted to the Commission five definitive copies of the January 2011 Supplement.[4]

The ODD currently contains general disclosures on the characteristics and risks of trading standardized options. The June 2007 Supplement amended the ODD to provide disclosure regarding credit default options in response to the Commission's approval of Chicago Board Options Exchange's ("CBOE") proposal to list and trade credit default options.[5] In November 2010, the Commission approved a proposed rule change that, among other things, permits the CBOE to list credit default options that contemplate only a single credit event.[6] The current proposed January 2011 Supplement amends the June 2007 Supplement disclosure to accommodate the listing of credit default options that contemplate only a single credit event, as now permitted under CBOE rules.[7] In addition, the supplement proposes certain technical amendments, as described below, to the June 2007 Supplement. The January 2011 Supplement also restates the June 2007 Supplement, as amended, in its entirety.

Specifically, the proposed supplement to the June 2007 Supplement deletes the summary of the disclosure regarding the characteristics and risks of credit default options because this summary had previously been added to the ODD by the May 2010 Supplement. In addition, the proposed supplement amends the June 2007 Supplement to clarify that a listing options market has the ability to specify only a single credit event for automatic exercise of a series of credit default options, in addition to multiple credit events which were already disclosed in the June 2007 Supplement. Further, the OCC is proposing to make technical changes to the June 2007 Supplement by replacing the term "booklet" with "Booklet," and to clarify the place in the ODD where the section entitled "Credit Default Options and Credit Default Basket Options" is inserted. The proposed supplement is intended to be read in conjunction with the more general ODD, which discusses the characteristics and risks of options generally.[8]

Rule 9b–1(b)(2)(i) under the Act[9] provides that an options market must file five copies of an amendment or supplement to the ODD with the Commission at least 30 days prior to the date definitive copies are furnished to customers, unless the Commission determines otherwise, having due regard to the adequacy of information disclosed and the public interest and protection of investors.[10] In addition, five copies of the definitive ODD, as amended or supplemented, must be filed with the Commission not later than the date the amendment or supplement, or the amended ODD, is furnished to customers. The Commission has reviewed the proposed supplement and amendment and finds, having due regard to the adequacy of the information disclosed and the public interest and protection of investors, that they may be furnished to customers as of the date of this order.

It is therefore ordered, pursuant to Rule 9b–1 under the Act,[11] that definitive copies of the January 2011 Supplement and amendment to the ODD (SR–ODD–2011–01), reflecting changes to disclosure regarding credit default options and technical changes to the ODD, may be furnished to customers as of the date of this order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–1080 Filed 1–19–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63709; File No. SR–FINRA–2011–001]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide Additional Time To Report Certain Reportable TRACE Transactions and Waive Certain Transaction Reporting Fees

January 12, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

[12] 17 CFR 200.30–3(a)(12).

[1] 17 CFR 240.9b–1.

[2] *See* letter from Jean M. Cawley, Senior Vice President and Deputy General Counsel, OCC, to Sharon Lawson, Senior Special Counsel, Division of Trading and Markets ("Division"), Commission, dated October 22, 2010.

[3] *See id.*

[4] *See* letter from Jean M. Cawley, Senior Vice President and Deputy General Counsel, OCC, to Sharon Lawson, Senior Special Counsel, Division, Commission, dated December 20, 2010.

[5] *See* Securities Exchange Act Release No. 55871 (June 6, 2007), 72 FR 32372 (June 12, 2007) (SR–CBOE–2006–84) (order approving CBOE's proposed rules to list and trade credit default options); and Securities Exchange Act Release No. 56275 (August 17, 2007), 72 FR 47097 (August 22, 2007) (SR–CBOE–2007–26) (order approving CBOE's proposed rules to list and trade credit default basket options).

[6] *See* Securities Exchange Act Release No. 63352 (November 19, 2010), 75 FR 73155 (November 29, 2010) (SR–CBOE–2010–046) (order approving proposed rule change to amend certain rules pertaining to credit options).

[7] The proposed January 2011 Supplement amends and restates the June 2007 Supplement to the February 1994 version of the booklet entitled "Characteristics and Risks of Standardized Options."

[8] The Commission notes that the options markets must continue to ensure that the ODD is in compliance with the requirements of Rule 9b–1(b)(2)(i) under the Act, 17 CFR 240.9b–1(b)(2)(i), including when changes regarding credit default options are made in the future. Any future changes to the rules of the options markets concerning credit default options would need to be submitted to the Commission under Section 19(b) of the Act. 15 U.S.C. 78s(b).

[9] 17 CFR 240.9b–1(b)(2)(i).

[10] This provision permits the Commission to shorten or lengthen the period of time which must elapse before definitive copies may be furnished to customers.

[11] 17 CFR 240.9b–1.

[12] 17 CFR 200.30–3(a)(39).

("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 4, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as "establishing or changing a due, fee or other charge" under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to provide additional time (until February 28, 2011) for members to trade report certain TRACE transactions and waive transaction reporting fees concomitant with such transactions reported by that date. The proposed rule change would not make any change to the text of FINRA rules.

The proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

On September 28, 2009, the SEC approved SR–FINRA–2009–010 [5] which, among other things, amended the FINRA Rule 6700 Series to: (1) Expand TRACE to include Agency Debt Securities [6] as TRACE-Eligible Securities [7] and primary market transactions as Reportable TRACE Transactions; [8] (2) delete the criterion that TRACE-Eligible Securities must be "depository eligible securities under NASD Rule 11310(d)," effectively introducing TRACE reporting obligations for securities not assigned a common industry recognized identifier ("CUSIP"); and (3) require members to report transactions in Agency Debt Securities and primary market transactions. This rule change to the FINRA Rule 6700 Series, as amended, became effective on March 1, 2010.[9]

Due to operational and technical challenges introduced by trade reporting in securities not assigned a CUSIP, changes were needed to firms' processes as well as to the TRACE system to facilitate TRACE trade reporting for those securities. TRACE-related changes were implemented by FINRA on December 1, 2010. FINRA is filing this proposed rule change to provide limited relief from the new TRACE trade reporting requirements (and transaction reporting fee obligations) for those Reportable TRACE Transactions in securities not identified by a CUSIP effected from March 1, 2010 (the effective date of SR–FINRA–2009–010) through November 30, 2010 ("Covered Reportable TRACE Transactions"). FINRA is providing additional time (until February 28, 2011) for members to trade report Covered Reportable TRACE Transactions and waiving transaction reporting fees concomitant with such transactions reported by that date.[10]

FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[11] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.

FINRA believes that the proposed rule change is appropriate in recognition of the operational and technical challenges introduced by trade reporting in securities not assigned a CUSIP. Therefore, delaying members' trade reporting obligations until February 28, 2011 for Covered Reportable TRACE Transactions and waiving the transaction reporting fees applicable to such transactions provides a balanced resolution while requiring that all Covered Reportable TRACE Transactions are ultimately reported to FINRA.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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.

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 is effective upon filing pursuant to Section 19(b)(3)(A) of the Act [12] and subparagraph (f)(2) of Rule 19b–4 thereunder,[13] because it establishes a due, fee, or other charge imposed on its members by FINRA.

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] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 60726 (September 28, 2009), 74 FR 50991 (October 2, 2009) (Order Approving File No. SR–FINRA–2009–010).

[6] *See* Rule 6710(l) for the definition of "Agency Debt Security."

[7] *See* Rule 6710(a) for the definition of "TRACE-Eligible Security."

[8] Rule 6710 (Definitions) provides that "Reportable TRACE Transaction" means any transaction in a TRACE-Eligible Security except transactions that are not reported as specified in Rule 6730(e). *See* FINRA Rule 6710(c).

[9] *See Regulatory Notice* 09–57 (September 29, 2009) (SEC Approves Amendments Expanding TRACE to Include Agency Debt Securities and Primary Market Transactions).

[10] Specifically, members will not be required to pay a Trade Reporting Fee or "As Of" Trade Late Fee under Rule 7730(b) (Transaction Reporting Fees) with respect to Covered Reportable TRACE Transactions if such transactions are reported to TRACE by February 28, 2011.

[11] 15 U.S.C. 78*o*–3(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 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–FINRA–2011–001 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–FINRA–2011–001. 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2011–001 and should be submitted on or before February 10, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–1078 Filed 1–19–11; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63708; File No. SR–NYSEAmex–2011–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC To Establish a $5 Strike Price Program

January 12, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on January 11, 2011, NYSE Amex LLC (the "Exchange" or "NYSE Amex") 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 adopt Commentary .12 to NYSE Amex Rule 903 to allow the Exchange to list and trade series in intervals of $5 or greater where the strike price is more than $200 in up to five (5) option classes on individual stocks. The text of the proposed rule change is available at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov*, at the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[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

The purpose of this proposed rule change is to adopt Commentary .12 to Rule 903 to allow the Exchange to list and trade series in intervals of $5 or greater where the strike price is more than $200 in up to five (5) option classes on individual stocks ("$5 Strike Price Program") to provide investors and traders with additional opportunities and strategies to hedge high priced securities, based on a recently approved rule change of NASDAQ OMX PHLX ("Phlx").[3] The Exchange also proposes to adopt a provision recently adopted for Phlx that permits the Exchange to list $5 strike prices on any other option classes designated by other securities exchanges that employ a $5 Strike Program.[4]

Currently, Commentary .05 to Rule 903 permits strike price intervals of $10 or greater where the strike price is greater than $200.[5] The Exchange is proposing to add the proposed $5 Strike Program as an exception to the $10 or greater language in Rule 903 Commentary .05. The proposal would allow the Exchange to list series in intervals of $5 or greater where the strike price is more than $200 in up to five (5) option classes on individual stocks. The Exchange specifically proposes to create new Commentary .12 to Rule 903 to provide:

> The Exchange may list series in intervals of $5 or greater where the strike price is more than $200 in up to five (5) option classes on individual stocks. The Exchange may list $5 strike prices above $200 in any other option classes if those classes are specifically designated by other securities exchanges that employ a similar $5 Strike Program under their respective rules.

The Exchange believes the $5 Strike Price Program would offer investors a greater selection of strike prices at a lower cost. For example, if an investor wanted to purchase an option with an expiration of approximately one month, a $5 strike interval could offer a wider choice of strike prices, which may result in reduced outlays in order to purchase the option. By way of illustration, using Google, Inc. ("GOOG") as an example, if

[3] *See* Securities Exchange Act Release No. 63654 (January 6, 2011) (order approving SR–Phlx–2010–158).

[4] *See* Securities Exchange Act Release No. 63658 (January 6, 2011) (notice of filing and immediate effectiveness of SR–Phlx–2011–02).

[5] Commentary .05 permits strike intervals of $2.50 or greater where the strike price is $25 or less, and strike price intervals of $5 or greater where the strike price is greater than $25.

GOOG were trading at $610[6] with approximately one month remaining until expiration, the front month (one month remaining) at-the-money call option (the 610 strike) might trade at approximately $17.50 and the next highest available strike (the 620 strike) might trade at approximately $13.00. By offering a 615 strike an investor would be able to trade a GOOG front month call option at approximately $15.25, thus providing an additional choice at a different price point.

Similarly, if an investor wanted to hedge exposure to an underlying stock position by selling call options, the investor may choose an option term with two months remaining until expiration. An additional $5 strike interval could offer additional and varying yields to the investor. For example if Apple, Inc. ("AAPL") were trading at $310[7] with approximately two months remaining until expiration, the second month (two months remaining) at-the-money call option (the 310 strike) might trade at approximately $14.50 and the next highest available strike (the 320) strike might trade at $9.90. If at expiration the price of AAPL closed at $310, the 310 strike call would have yielded a return of 4.67% and the 320 strike call would have yielded a return of 3.20% over the holding period. If the 315 strike call were available, that series might be priced at approximately $12.10 (a yield of 3.93% over the holding period) and would have had a lower risk of having the underlying stock called away at expiration than that of the 310 strike call.

The Exchange is also proposing to adopt a provision that options may be listed and traded in series that are listed by other securities exchanges that employ a similar $5 Strike Price Program, pursuant to the rules of the other securities exchange. Similar reciprocity currently is permitted with the Exchange's $1 Strike Program, $.50 Strike Program and $2.50 Strike Price Program.[8]

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of classes on individual stocks $5 Strike Price Program.

The proposed $5 Strike Price Program would provide investors increased opportunities to improve returns and manage risk in the trading of equity options that overlie high priced stocks. In addition, the proposed $5 Strike Price Program would allow investors to establish equity options positions that are better tailored to meet their investment, trading and risk management requirements.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act")[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes the $5 Strike Price Program proposal will provide the investing public and other market participants increased opportunities because a $5 series in high priced stocks will provide market participants additional opportunities to hedge high priced securities. This will allow investors to better manage their risk exposure, and the Exchange believes the proposed $5 Strike Price Program would benefit investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities. While the $5 Strike Price Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal is limited to a fixed number of classes. Further, the Exchange does not believe that the proposal will result in a material proliferation of additional series because it is limited to a fixed number of classes and the Exchange does not believe that the additional price points will result in fractured liquidity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the $5 Strike Price Program is substantially similar to that of another exchange that is already effective and operative.[13] Therefore, the Commission designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[6] The prices listed in this example are assumptions and not based on actual prices. The assumptions are made for illustrative purposes only using the stock price as a hypothetical.

[7] The prices listed in this example are assumptions and not based on actual prices. The assumptions are made for illustrative purposes only using the stock price as a hypothetical.

[8] *See* Exchange Rule 903, Commentary .06 at a. and d.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day prefiling requirement in this case.

[13] *See supra* notes 3 and 4.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2011–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2011–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2011–03 and should be submitted on or before February 10, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–1077 Filed 1–19–11; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions to OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, *Attn:* Desk Officer for SSA, *Fax:* 202–395–6974, *E-mail address: OIRA_Submission@omb.eop.gov;*

(SSA), Social Security Administration, DCBFM, *Attn:* Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, *Fax:* 410–965–6400, *E-mail address: OPLM.RCO@ssa.gov*.

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than March 21, 2011. Individuals can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

1. Petition to Obtain Approval of a Fee for Representing a Claimant before the Social Security Administration—20 CFR 404.1720 and 404.1725; 20 CFR 416.1520 and 416.1525–0960–0104. A Social Security claimant's representative, whether an attorney or a non-attorney, uses Form SSA–1560–U4 to petition SSA for authorization to charge and collect a fee. A claimant may also use the form to agree or disagree with the requested fee amount or other information the representative provides on the form. The SSA official responsible for setting the fee uses the information from the form to determine a reasonable fee amount representatives may charge for their services. Primary respondents are attorneys and non-attorneys who represent Social Security claimants.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 48,110.

Frequency of Response: 1.

Average Burden per Response: 30 minutes.

Estimated Annual Burden: 24,055 hours.

2. Annual Earnings Test Direct Mail Follow-Up Program Notices—20 CFR 404.452–404.455—0960–0369. SSA developed the Annual Earnings Test Direct Mail Follow-up Program to improve beneficiary reporting on work and earnings during the year, and earnings information at the end of the year. SSA may reduce benefits payable under the *Social Security Act* when an individual has wages or self-employment income exceeding the annual exempt amount. SSA identifies beneficiaries likely to receive more than the annual exempt amount, and requests more frequent estimates of earnings from them. When applicable, SSA also requests a future year estimate to reduce overpayments due to earnings. SSA sends letters (SSA–L9778, L9779, L9781, L9784, L9785, and L9790) to beneficiaries requesting earnings information the month prior to reaching full retirement age. We send each beneficiary a tailored letter, which includes relevant earnings data from SSA records. The Annual Earnings Test Direct Mail Follow-up Program helps to ensure Social Security payments are correct. The respondents are working Social Security beneficiaries.

Type of Request: Revision of an OMB-approved information collection.

[15] 17 CFR 200.30–3(a)(12).

Collection instrument	Number of respondents	Frequency of response	Estimated burden per response (minutes)	Total annual burden (hours)
Form SSA–L9778	42,630	1	10	7,105
Form SSA–L9779	158,865	1	10	26,478
Form SSA–L9781	472,437	1	10	78,740
Form SSA–L9784	1,270	1	10	212
Form SSA–L9785	15,870	1	10	2,645
Form SSA–L9790	45,000	1	10	7,500
Totals	736,072			122,680

II. SSA has submitted the information collections listed below to OMB for clearance. Your comments on the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than February 22, 2011. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above e-mail address.

1. Request for Review of Hearing Decision/Order—20 CFR 404.967–404.981, 416.1467–416.1481—0960–0277. Claimants have a statutory right under the *Social Security Act* and current regulations to request review of an administrative law judge's (ALJ) hearing decision or dismissal of a hearing request on Title II and Title XVI claims. Claimants may request Appeals Council review by filing a written request using Form HA–520. SSA uses the information to establish the claimant filed her or his request for review within the prescribed time and to ensure the claimant completed the requisite steps permitting the Appeals Council review. The Appeals Council uses the information to: (1) Document the claimant's reason(s) for disagreeing with the ALJ's decision or dismissal; (2) determine whether the claimant has additional evidence to submit; and (3) determine whether the claimant has a representative or wants to appoint one. The respondents are claimants requesting review of an ALJ's decision or dismissal of hearing.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 145,000.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 24,167 hours.

2. Development for Participation in a Vocational Rehabilitation or Similar Program—20 CFR 404.316(c), 404.337(c), 404.352(d), 404.1586(g), 404.1596, 404.1597(a), 404.327, 404.328, 416.1338(c)(d), 416.1320(d), 416.1331(a)–(b), and 416.1338—0960–0282. State Disability Determination Services (DDS) must determine if Social Security disability payment recipients, whose disability ceased and who participate in vocational rehabilitation programs, may continue to receive disability payments. To do this, DDSs need information about the recipients, the types of program participation, and the services they receive under the rehabilitation program. SSA uses Form SSA–4290 to collect this information. The respondents are State employment networks, vocational rehabilitation agencies, or other providers of educational or job training services.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 3,000.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 750 hours.

3. Acknowledgement of Receipt (Notice of Hearing)—20 CFR 404.938 & 416.1438—0960–0671. SSA uses Forms HA–504 and HA–504–OP1 to inform claimants of a scheduled hearing. Claimants complete the form to acknowledge they will attend the hearing or to ask the ALJ to reschedule the hearing. The ALJ uses the information to prepare for the scheduled hearing or to reschedule the hearing to a different date or location. The only difference between the two forms is the exclusion of the video teleconferencing option on the HA–504–OP1. We exclude video teleconferencing when it is not feasible, based on certain circumstances, for the ALJ's use. The respondents are applicants for Social Security benefits who request a hearing to appeal an unfavorable entitlement or continued eligibility determination.

Type of Request: Revision of an OMB-approved information collection.

Version of the HA–504	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
HA–504 (with teleconferencing)	70,000	1	30	35,000
HA–504–OP1	630,000	1	30	315,000
Total	700,000			350,000

Dated: January 13, 2011.

Elizabeth A. Davidson,

Center Director, Center for Reports Clearance Office of Documents Management, OPLM, BFM.

[FR Doc. 2011–1028 Filed 1–19–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 7303]

60-Day Notice of Proposed Information Collection: DS–60, Affidavit Regarding a Change of Name, OMB Control Number 1405–0133

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Affidavit Regarding a Change of Name.
- *OMB Control Number:* 1405–0133.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, CA/PPT.
- *Form Number:* DS–60.
- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents:* 202,920 per year.
- *Estimated Number of Responses: 202,*920 per year.
- *Average Hours per Response:* 15 minutes.
- *Total Estimated Burden:* 50,730 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from January 20, 2011.

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

- *E-mail: PPTFormsOfficer@state.gov.*
- *Mail (paper, disk, or CD–ROM submissions):* Passport Forms Management Officer, U.S. Department of State, Office of Program Management and Operational Support, 2100 Pennsylvania Avenue, NW., Room 3031, Washington, DC 20037.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Passport Forms Management Officer, U.S. Department of State, Office of Program Management and Operational Support, 2100 Pennsylvania Avenue, NW., Room 3031, Washington, DC 20037, who may be reached on 202–663–2457 or at *PPTFormsOfficer@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The Affidavit Regarding a Change of Name is submitted in conjunction with an application for a U.S. passport. It is used by Passport Services to collect information for the purpose of establishing that a passport applicant has adopted a new name without formal court proceedings or by marriage and has publicly and exclusively used the adopted name over a period of time (at least five years).

Methodology: When needed, the Affidavit Regarding a Change of Name is completed at the time a U.S. citizen applies for a U.S. passport.

Dated: January 11, 2011.

Brenda Sprague,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2011–1186 Filed 1–19–11; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 7304]

60-Day Notice of Proposed Information Collection: DS–10, Birth Affidavit, OMB Control Number 1405–0132

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Birth Affidavit.
- *OMB Control Number:* 1405–0132.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, CA/PPT/FO/FC.
- *Form Number:* DS–10.
- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents:* 154,850 per year.
- *Estimated Number of Responses:* 154,850 per year.
- *Average Hours per Response:* 15 minutes.
- *Total Estimated Burden:* 38,713 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from January 20, 2011.

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

- *E-mail: PPTFormsOfficer@state.gov.*
- *Mail (paper, disk, or CD–ROM submissions):* Passport Forms Management Officer, U.S. Department of State, Office of Program Management and Operational Support, 2100 Pennsylvania Avenue, NW., Room 3031, Washington, DC 20037.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Passport Forms Management Officer, U.S. Department of State, Office of Program Management and Operational Support, 2100 Pennsylvania Avenue, NW., Room 3031, Washington, DC 20037, who may be reached on 202–663–2457 or at *PPTFormsOfficer@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed

collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The Birth Affidavit is submitted in conjunction with an application for a U.S. passport and is used by Passport Services to collect information for the purpose of establishing the citizenship of a passport applicant who has not submitted an acceptable United States birth certificate with his/her passport application.

Methodology: When needed, a Birth Affidavit is completed at the time a U.S. citizen applies for a U.S. passport.

Dated: January 11, 2011.

Brenda Sprague,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2011–1187 Filed 1–19–11; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 7305]

Bureau of Educational and Cultural Affairs Request for Proposals: The Design, Development, Installation, Operation, and Final Disposition of a U.S. Pavilion at the International Exposition Yeosu Korea 2012

Announcement Type: New.

Key Dates

Application Deadline: Tuesday, March 15, 2011.

Executive Summary

The Bureau of Educational and Cultural Affairs (ECA) of the Department of State (Department) requests proposals from private U.S. individuals, firms, associations and organizations (for-profit or non-profit) for the design, development, installation, operation (including managing sponsorship donations and sponsorship fulfillment), and final disposition of a U.S. Pavilion at the International Exposition Yeosu Korea 2012, whose theme is "The Living Ocean and Coast." The U.S. Pavilion will be situated in an approximately 1,183-square-meter module within the International Pavilions building. The Department intends to sign a Memorandum of Agreement (MOA) with the proposer submitting the proposal most advantageous to the U.S. Government, authorizing that project manager to proceed with the design, development, installation, and operation of the U.S. Pavilion, and the Department would subsequently sign a Participation Contract with the Korea Expo Organizing Committee.

The Department is not authorized to provide funding for the U.S. Pavilion at Expo 2012 Yeosu Korea. The Department is authorized, however, to raise funds for the U.S. Pavilion at Expo 2012 Yeosu Korea from the private sector and will secure pledges from prospective donors (Sponsors) that have been vetted within the Department for potential conflict of interest. The Department is seeking proposals, with detailed budget estimates based on $10 (ten) million in sponsorship, and a second alternate proposal showing the project scaled back to $7 (seven) million. Sponsors have agreed to follow through on pledges by donating pledged amounts to the successful proposer, who will manage sponsorship engagement (including sponsorship donations and sponsorship fulfillment).

The successful proposer will need to have secured IRS recognition as a tax exempt organization, as well as an IRS declaration that contributions are deductible—and to have provided documentation to this effect to the Department—before the Department will sign an MOA.

Total cost for a U.S. presence at Expo 2012 Yeosu Korea is estimated to be $10 million. This will include all costs associated with the design, fabrication, installation, operation (including staffing), and final disposition of the U.S. Pavilion, as well as all support for a U.S. Commissioner General. The successful proposer will consult closely with and follow the direction of State Department officials and the Commissioner General with respect to Pavilion content and programming. The successful proposer should also consult with a design proposal review team that includes non-USG Pavilion experts plus non-USG Korea experts, such as the Korea-America Foundation or U.S. academics in Korea studies. The U.S. Pavilion shall be considered on loan to the U.S. Government for the duration of the Expo (May 12–August 12, 2012). The loan shall be treated as a gift to the U.S. Government.

Proposals from non-U.S. citizens or non-U.S.-owned firms or organizations shall be deemed *ineligible for consideration.*

I. Funding Opportunity Description

Authority

Overall authority for Department support for U.S. participation in international expositions is contained in Section 102(a)(3) of the Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2452(a)(3)), also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." Pursuant to this authority, and internal delegations of authority, ECA is the Department bureau responsible for coordinating U.S. participation in Expo 2012 Yeosu Korea. Consequently, ECA will take the lead, with the assistance of U.S. Mission to Korea, to represent the U.S. Government in dealings with the Organizing Committee of Expo 2012 Yeosu Korea.

Purpose

The Government of the Republic of Korea has invited the United States to participate in the International Exposition Yeosu Korea 2012 and the U.S. Government has advised the Korean Government of its intention to participate with an official U.S. Pavilion, subject to our ability to raise sufficient private sector funds. Expo 2012 Yeosu Korea will be held on specially constructed exhibition grounds. The Expo opens on May 12, 2012 and closes on August 12, 2012.

Expo 2012 Yeosu Korea is a small-scale international exposition or "world's fair" recognized by the International Expositions Bureau (BIE), an international treaty organization established to sanction and monitor international exhibitions of long duration (over three weeks) and significant scale. Invitations to world's fairs are extended from the host government to other governments. The United States is not a member of the BIE, and the U.S. Commissioner General—selected by the Department of State—will therefore not be a formal member of the Steering Committee of the College of Commissioners General for Expo 2012 Yeosu Korea.

With a projected eight million visitors, Expo 2012 Yeosu Korea offers

an excellent opportunity to educate and inform foreign audiences about the United States and its scientific and technological innovations relating to the theme of the Yeosu Expo—oceans and coasts—as well as to promote broad U.S. commercial interests around the world. U.S. participation in Expo 2012 Yeosu Korea will confirm the strength and importance of U.S.-Korean bilateral ties and promote mutual understanding between the people of Korea and the United States.

The Organizing Committee for Expo 2012 Yeosu explains the overall theme of the Expo "The Living Ocean and Coast." as follows: "Diversity of Resources and Sustainable Activities defines the guiding principle that should inform all future actions regarding our oceans. Only with sustainable use, in other words finding the balance between production and consumption, while preserving diversity of resources, species and culture, can the oceans and coasts continue to live."

The theme for the U.S. Pavilion should be directly linked to the overall theme of the Expo. ECA welcomes proposals for a Pavilion to showcase American expertise and innovation in some or all of the following areas: preservation of marine ecosystems; protection of the marine environment and marine biodiversity; bio- and nanotechnology; impacts of climate change on the oceans, including ocean acidification; education in sound environmental practices in the marine environment; new resources technology in energy, marine mineral resource management, sustainable aquaculture and fisheries; and the cultural, artistic and scientific interaction between the sea and people. Other Pavilion themes related to the overall Expo theme may also be proposed. The design concept for the U.S. Pavilion should appeal to a general, non-expert audience; proposals should therefore include entertaining elements for all ages as well as academic/expository aspects.

U.S. Direction

The U.S. Pavilion at Expo 2012 Yeosu Korea will be an official representation of the Government of the United States of America; the Department of State must therefore ensure that the U.S. Pavilion is nonpolitical in nature, of the highest possible quality, and balanced and representative of the diversity of American political, social and cultural life. The Pavilion must maintain the highest level of scholarly integrity and meet the highest standards of artistic achievement and academic excellence. It should also be entertaining and interactive. The project manager, working for the selected proposer, must submit both early concept plans and final detailed ex plans, blue prints, schematics graphics, and audio-visual productions for review and prior approval by ECA. Any work undertaken by the project manager without prior ECA approval will be done at the sole risk of the proposer and may require remedial work at the proposer's sole expense. The project manager is strongly encouraged to seek outside experts to review potential Pavilion content and to review early concepts with local audiences to make sure that the proposed elements will resonate with the target Korean audience.

The U.S. Pavilion will be used to promote U.S. commercial interests as well as to highlight outstanding U.S. scientific and technological achievements. The proposed design for the U.S. Pavilion should include functional space for three purposes: An exhibit area, an administrative area, and hospitality facilities. The Pavilion layout should also include provisions for sponsorship recognition. Firms or companies subcontracted for design and other content creation must be U.S.-owned.

Further information on Expo 2012 Yeosu Korea can be found at the official Expo Web site: *http://www.expo2012.or.kr/eng/ain.asp.*

Funding Limitations

Section 204 of Public Law 106–113 (22 U.S.C. 2452b) limits the support the Department may provide for U.S. participation in international expositions such as Expo 2012 Yeosu Korea. This Request for Proposals is intended to help identify a private U.S. individual, firm, association or organization interested in and capable of providing a complete Pavilion at Expo 2012 Yeosu Korea as a gift to the United States Government. Under section 204, the Department is not authorized to provide funding for the U.S. Pavilion at Expo 2012 Yeosu Korea. The Department is authorized, however, to raise funds for the U.S. Pavilion at Expo 2012 Yeosu Korea from the private sector. All such donations will be collected by the successful proposer once a Memorandum of Agreement has been signed.

Costs

The U.S. Pavilion will be situated in an approximate 1,183-square-meter module provided at no-cost by the Expo Organizing Committee. A mezzanine floor may be installed within the 7.2-meter height of the module. It is estimated that a representative U.S. presence in that space will cost $10 (ten) million. Costs would include, but not be limited to:

- *Design and construction* of the Pavilion space; incorporation of appropriate internal and external crowd control features;
- *Design* of the Pavilion; development of the story line;
- *Managing sponsorship engagement* by defining Sponsor packages based on pledge factors, accepting sponsor pledges solicited by the Department, and managing sponsorship fulfillment;
- *Production* of exhibits, audio-visual materials, films, DVDs, videos, posters, and other promotional materials needed for the exhibit;
- *Managing all administrative, personnel, operations, and Pavilion costs,* including salaries, benefits, staff housing expenses, contracting and supplier costs, and consulting fees, as well as funding associated with student guides, escorts, and representational gifts;
- *Protocol team for the creation and staffing* of hospitality facilities devoted to hosting all dignitaries visiting the U.S. Pavilion;
- *Promotion and advertisement* of the U.S. Pavilion;
- *Media engagement* and planning of communication strategy of the U.S. Pavilion, including the development of a Web site;
- *Transport,* travel, insurance, postage and shipping fees;
- *Security,* namely, development and implementation of a security program for the U.S. Pavilion in consultation with the Department of State and appropriate Korean authorities;
- *Cultural and informational programs* associated with the Pavilion, including, but not limited to, production of U.S. National Day activities as well as other cultural programs;
- *Funding* for all expenses associated with the U.S. Commissioner General; and
- *Tear-down,* including removal of exhibits and return of the module space in the condition required by the Expo Organizing Committee. Final disposition plan must be approved by ECA.

Design/Fabrication

The successful proposer will need to design and fabricate the Pavilion, administrative area, and hospitality facilities of the U.S. Pavilion. The space provided by the Yeosu Organizing Committee is approximately 1,183 square meters in size. A floor plan showing the space provided by the organizers can be sent to proposers by the Department upon request. The

Pavilion should follow the theme of "The Living Ocean and Coast" and should be highly interactive and engaging. Proposals should show how the proposer would intend to portray this storyline. A written description should be augmented by artist renderings. Proposals will be reviewed and evaluated by Department officials.

Operations

The successful proposer will be responsible for full operation of the U.S. Pavilion. This would include, but not be limited to, such areas as protocol, public affairs, sponsorship fulfillment, cultural programming, student guide services, communications, operations, security, cleaning, and maintenance. Office space must be adequate for the proposed number of staff. A proposed staffing plan should be provided in the response to this RFP.

Student Guides

Proposals must include a plan for managing student guides at the U.S. Pavilion. All student guides must be U.S. citizens, from a diverse set of backgrounds and U.S. States, and fluent in Korean with two or more years of college-level language training or equivalent ability gained through family or residence in Korea. It would be advantageous if the student guide (also called Student Ambassador) program were run in conjunction with a U.S.-based college or university.

Expo Guidelines

Interested parties may obtain copies of the General Regulations and Participation Guide from the Expo 2012 Yeosu Korea offices in Korea at:

The Organizing Committee for Expo 2012 Yeosu Korea, 75 Yulgok-no Jongno-Gu Seoul 110–793, Korea. Tel: +82–1577–2012/+82–2–740–4500. *http://www.expo2012.or.kr/eng//main.asp*.

II. Award Information

Type of Award: MOA. The Department's level of involvement in this program is listed under number I above.

Approximate Number of Awards: 1.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by individuals, firms, associations, and public and private organizations (non-profit or for-profit). Non-profit organizations must meet the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3). For-profit organizations must be prepared to establish a non-profit entity, which also meets these provisions, to manage the project if it is the successful proposer. The successful proposer will need to have secured IRS recognition as a tax exempt organization, as well as an IRS declaration that contributions are deductible—and to have provided documentation to this effect to the Department—before the Department will sign an MOA.

IV. Application and Submission Information

IV.1 Contact Information To Request an Application Package

Please contact the Office of Citizen Exchanges, ECA/PE/C, U.S. Department of State, SA–5, 2200 C Street, NW., Washington, DC 20522; fax: 202–632–9355; or e-mail *Yeosu2012@state.gov* for assistance. Please refer to Citizen Exchanges Yeosu Expo when making your request.

IV.2 Proposals

Proposals should be provided in a narrative of *no more than twenty (20) pages 8½″ x 11″ in size, no smaller than 12-point font, single-spaced,* plus a detailed budget, with necessary attachments and/or exhibits. The narrative and additional documents should outline in as much detail as possible the plans for providing a U.S. Pavilion at Expo 2012 Yeosu Korea. Proposals should address the following:

- Willingness to adhere to the General Regulations of Expo 2012 Yeosu Korea as stipulated by the Expo Organizing Committee, including restrictions and limitations related to construction;
- Track record of working with Pavilions and on the proposed theme;
- Experienced staff with language facility;
- Clear concept for the exhibit plan and storyline, including designs;
- Detailed budget showing breakdown of budget items required for each aspect of the project development and implementation;
- Detailed organizational chart indicating all necessary positions and start dates, including but not limited to operations, communications, protocol, Sponsor fulfillment, and student guides;
- Timeline detailing each step in the design, construction, and breakdown of the U.S. Pavilion as well as the development of the U.S. Pavilion content; and
- Agreement to consult closely with and follow the direction of State Department officials and the Commissioner General.

Proposals should state clearly that all materials developed specifically for the project will be subject to prior review and approval by ECA. In addition, proposals should state that all contracts or sub-contracts contemplated to be awarded by the proposer to further the purposes of the U.S. Pavilion which are in excess of $50,000 will be reviewed and approved by ECA prior to their award.

IV.3 Application Deadline and Methods of Submission

Application Deadline Date: Tuesday, March 15, 2011.

Reference: Citizen Exchanges Yeosu Expo.

Submitting Applications

Due to heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.,* DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, *etc.*) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven calendar days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically.

The original and ten copies of the application should be sent to:

U.S. Department of State, SA–5, Bureau of Educational and Cultural Affairs, Ref.: Citizen Exchanges Yeosu Expo, ECA/PE/C, 2200 C Street, NW., Washington, DC 20522.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) format on a PC-formatted CD–ROM.

V. Application Review Information

V.1 Review Process

ECA will review all proposals for technical eligibility. Proposals will be deemed *ineligible* if they are not submitted by a U.S. citizen, U.S.-owned corporation or U.S.-based organization, and do not fully adhere to the General Regulations of Expo 2012 Yeosu Korea and the guidelines stated herein. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines.

The ECA program office will review all eligible proposals, as will relevant elements of the U.S. Mission in the Republic of Korea and a panel of senior U.S. Government employees. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements, including but not limited to the State Department Bureaus of East Asian and Pacific Affairs and Oceans and International Environmental and Scientific Affairs, as well as U.S. diplomatic officers in Korea, and private sector experts. The final decision on which proposal is most advantageous to the U.S. Government will be at the sole discretion of the Department's Assistant Secretary for Educational and Cultural Affairs.

V.2 Review Criteria

Technically eligible proposals will be reviewed according to the criteria stated below. These criteria are *not* rank-ordered and *all* carry equal weight in the evaluation.

1. *Program planning to achieve Pavilion objectives:* Proposals should clearly demonstrate how the planned Pavilion will: Educate and inform foreign audiences about the United States and its scientific and technological innovations relating to the oceans and coasts; promote broad U.S. commercial interests around the world, and specifically address the theme and General Regulations of the Expo. The proposal should also include a clearly articulated media engagement plan and communications strategy for the Pavilion. Pavilion objectives should be reasonable, feasible, and flexible. The proposal should contain a detailed timeline and budget that demonstrate substantive undertakings and logistical capacity.

2. *Institutional Capacity/Record/Ability:* Proposals should describe personnel and institutional resources, which should be adequate and appropriate to achieve the Pavilion's goals. Proposals should demonstrate an institutional record of successful Pavilion activities, including responsible fiscal management and governance practices, and full compliance with all applicable BIE Expo requirements.

3. *Multiplier effect/impact:* Proposals should clearly state how Pavilion content and related activities will strengthen long-term mutual understanding between the United States and Korea.

4. *Support of Diversity:* Proposals should demonstrate involvement of participants from traditionally underrepresented groups including, but not limited to, women, racial and ethnic minorities, and people with disabilities.

5. *Monitoring and Project Evaluation Plan:* Proposals should include a plan to measure the impact of the proposed U.S. Pavilion, cultural programs, and information programs.

6. *Sponsorship Management:* Proposals should include a plan to manage sponsor engagement and sponsorship fulfillment.

7. *Cost-effectiveness:* Proposals should include a proposed action plan and timeline for all aspects of the project with associated, detailed budget estimates based on a $10 (ten) million budget, as well as a second alternate plan showing the ability for the project to be scaled back to $7 (seven) million.

VI. Award Administration Information

Award Notices

The successful proposer will sign an MOA with the Department. Unsuccessful proposers will receive notification of the results of the application review from the ECA program office coordinating this competition.

Reporting Requirements

The project manager must provide ECA with a hard copy original plus two copies of the following reports:

1. Program and financial reports every 90 (ninety) calendar days after the signature of the MOA.

2. Program and financial reports no more than 90 (ninety) calendar days after the expiration of the award.

VII. Agency Contacts

For questions about this announcement, contact: The Office of Citizen Exchanges, ECA/PE/C, Yeosu Expo, Bureau of Educational and Cultural Affairs, U.S. Department of State, SA–5, 2200 C Street, NW., Washington, DC 20522; Fax: 202–632–9355; E-mail: *Yeosu2012@state.gov.*

Correspondence with ECA concerning this Request for Proposals (RFP) should reference Citizen Exchanges Yeosu Expo.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFP deadline for submission of proposals has passed, ECA staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this Request for Proposals are binding and may not be modified orally by any ECA representative. Amendments to this RFP, if any, will be issued in writing. Explanatory information provided by ECA that contradicts published language will not be binding. Issuance of this RFP does not constitute an intention to agree to work with any private sector project manager at Expo 2012 Yeosu Korea. ECA reserves the right to select the successful proposer for Expo 2012 Yeosu Korea and to approve all elements of the Pavilion and project. All decisions made based on indications of interest submitted in response to this RFP will be made solely by ECA and are final.

Dated: January 14, 2011.

Ann Stock,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–1185 Filed 1–19–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7242]

The Advisory Committee on the 100,000 Strong Initiative

AGENCY: Department of State.

ACTION: Notice of intent to establish an advisory committee.

The Secretary of State announces the intent to establish the Advisory Committee on the 100,000 Strong Initiative, in accordance with the Federal Advisory Committee Act.

Nature and Purpose: The Committee will provide information and advice on the implementation of the 100,000 Strong Initiative in the private sector through recommendations on program standards, promotion of the initiative and commercial diplomacy pertaining to increasing the number of students studying abroad in China and encouraging increasing access to these programs for underrepresented groups. The objective of the Committee is to bring to the United States Government an additional source of expertise, knowledge and insight to deepen and broaden the knowledge base available to the State Department and elsewhere in

the government on these issues. The Committee will advise exclusively on the 100,000 Strong Initiative and will not advise on Congressionally-funded State Department educational or cultural exchange programs.

Other Information: It is anticipated that the advisory committee will meet twice per year. More information on the 100,000 Strong Initiative may be found at *http://www.state.gov/p/eap/regional/100000_strong/index.htm.* The Department of State affirms that the advisory committee is necessary and in the public interest.

For Further Information, Please Contact: Carola McGiffert at (202) 647–1029.

Dated: January 12, 2011.

Carola McGiffert,

Senior Advisor.

[FR Doc. 2011–1157 Filed 1–19–11; 8:45 am]

BILLING CODE 4710–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance Viroqua Municipal Airport; Viroqua, WI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to authorize the release of 0.93 acres of the airport property at the Viroqua Municipal Airport, Viroqua, WI. The Wisconsin Department of Transportation (WisDOT) is seeking airport property for right of way along U.S. Highway 14/61. The FAA issued a categorical exclusion on December 23, 2010.

The acreage being released is not needed for aeronautical use as currently identified on the Airport Layout Plan. The acreage comprising this parcel was originally acquired with local funds by the City of Viroqua. The airport will receive the appraised fair market value of $495,909 for the land. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the Federal Register 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before February 22, 2011.

ADDRESSES: Ms. Sandra E. DePottey, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone Number (612) 713–4350/FAX Number (612) 713–4364. Documents reflecting this FAA action may be reviewed at this same location or at the Wisconsin Department of Transportation, 4802 Sheboygan Ave., Room 701, Madison, WI 53707.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra E. DePottey, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone Number (612) 713–4350/FAX Number (612) 713–4364. Documents reflecting this FAA action may be reviewed at this same location or at the Wisconsin Department of Transportation, 4802 Sheboygan Ave., Room 701, Madison, WI 53707.

SUPPLEMENTARY INFORMATION: Following is a description of the subject airport property to be released at Viroqua Municipal Airport in Viroqua, Wisconsin and described as follows:

A parcel of land located in part of the northeast quarter of the Northeast Quarter of Section 30 in the City of Viroqua, all in Township 13 North, Range 4 West, Vernon County WI.

Said parcel subject to all easements, restrictions, and reservations of record.

Issued in Minneapolis, MN on December 23, 2010.

Steve Obenauer,

Manager, Minneapolis Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2011–1072 Filed 1–19–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Interstate 64 Corridor, Virginia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The Federal Highway Administration is issuing this notice to advise the public of its intent to prepare an Environmental Impact Statement (EIS) in cooperation with the Virginia Department of Transportation for potential transportation improvements along the Interstate 64 corridor in Virginia.

FOR FURTHER INFORMATION CONTACT: John Simkins, Senior Environmental Specialist, Federal Highway Administration, Post Office Box 10249, Richmond, Virginia 23240–0249; e-mail: *John.Simkins@dot.gov;* telephone: (804) 775–3342.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the Virginia Department of Transportation (VDOT), will prepare an EIS for potential transportation improvements along the Interstate 64 corridor in Virginia. The approximate limits of the study are Interstate 664 in Hampton and Interstate 95 in Richmond. The EIS will evaluate the no-build alternative as well as a range of alternatives to meet the purpose and need.

The FHWA and VDOT are seeking input as part of the scoping process to assist in determining and clarifying issues relative to the study. Letters describing the study and soliciting input will be sent to the appropriate federal, state, and local agencies, and other interested parties as part of the scoping process. An agency scoping meeting as well as a public scoping meeting are planned and will be announced by VDOT. Notices of public meetings and public hearings will be given through various forums providing the time and place of the meeting along with other relevant information. The Draft EIS will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this study is identified and taken into account, comments and suggestions are invited from all interested parties. Comments and questions concerning this study should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: January 13, 2011.

John Simkins,

Senior Environmental Specialist.

[FR Doc. 2011–1132 Filed 1–19–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 449 (Sub-No. 3X)]

Western Kentucky Railway, LLC—Abandonment Exemption—in Webster, Union, Caldwell and Crittenden Counties, KY

Western Kentucky Railway, LLC (WKRL) filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon all 5 of its remaining lines of railroad in Webster, Union, Caldwell, and Crittenden Counties, KY.[1] The lines are described as follows: (1) Between milepost 48.0 at Dekoven and milepost 62.5 at Blackford; (2) between milepost 0.0 at Blackford and milepost 3.8 at Pyro Wye and between milepost 3.8 and milepost 8.5 at Clay; (3) between milepost 0.0 at Costain Prep Plant and milepost 9.5 at Providence; (4) the Wheatcroft loop track, which connects line 2 and line 3 described above, between milepost 0.8 +/− on line 3 and running north towards milepost 5.6 +/− and milepost 6.0 +/− on line 2; and (5) between milepost 0.0 at Costain Prep Plant and milepost 5.5 at Caney Creek. The line traverses United States Postal Service Zip Codes 42404, 42450, 42459, and 42604.

WKRL has certified that: (1) No local traffic has moved over the lines for at least 2 years; (2) there is no overhead traffic on the subject lines because the subject lines are not "through lines"; (3) no formal complaint filed by a user of rail service on the lines (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the lines either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

Where, as here, the carrier is abandoning its entire line, the Board does not normally impose labor protection under 49 U.S.C. 10502(g), unless the evidence indicates the existence of: (1) A corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. *See Honey Creek R.R.–Aban. Exemption.–in Henry County, Ind.,* AB 865X (STB served Aug. 20, 2004); *Wellsville, Addison & Galeton R.R.–Aban.,* 354 I.C.C. 744 (1978); and *Northampton and Bath R.R.–Aban.,* 354 I.C.C. 784 (1978). Because HCR does not appear to have a corporate affiliate or parent that will continue similar operations or that could benefit from the proposed abandonment, employee protection conditions will not be imposed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 26, 2011, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 31, 2011. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 9, 2011, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to WKRL's representative: Eric M. Hocky, Thorp Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

WKRL has filed a combined environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by February 1, 2011. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), WKRL shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by WKRL's filing of a notice of consummation by January 20, 2012, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 13, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–1184 Filed 1–19–11; 8:45 am]

BILLING CODE 4915–01–P

[1] WKRL originally filed its notice of exemption on December 29, 2010. However, on January 7, 2011, WKRL supplemented its notice to include a description of the Wheatcroft loop track, which was omitted in its original filing. Accordingly, January 7, 2011, is the official filing date.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

FEDERAL REGISTER

Vol. 76 Thursday

No. 13 January 20, 2011

Part II

Commodity Futures Trading Commission

17 CFR Part 39
Risk Management Requirements for Derivatives Clearing Organizations; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 39

RIN 3038–AC98

Risk Management Requirements for Derivatives Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission) is proposing regulations to implement Title VII and Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Proposed regulations would establish the regulatory standards for compliance with derivatives clearing organization (DCO) Core Principles C (Participant and Product Eligibility), D (Risk Management), E (Settlement Procedures), F (Treatment of Funds), G (Default Rules and Procedures), and I (System Safeguards). For DCOs that are designated by the Financial Stability Oversight Council as systemically important DCOs (SIDCOs), the Commission is proposing heightened standards in the area of system safeguards supporting business continuity and disaster recovery and a provision that would implement the Commission's special enforcement authority over SIDCOs. The Commission also is proposing certain additional amendments including replacement of the current part 39 appendix A, Application Guidance and Compliance With Core Principles, with an application form for entities seeking to register as DCOs, technical amendments to reorganize part 39 of the Commission's regulations, and amendments to supplement reporting and public information requirements proposed in a previous rulemaking.

DATES: Submit comments on or before March 21, 2011.

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

- Agency Web site, via its Comments Online process: *http://comments.cftc.gov*. Follow the instructions for submitting comments through the Web site.
- Mail: David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- Hand Delivery/Courier: Same as mail above.
- Federal eRulemaking Portal: *http://www.Regulations.gov.* Follow the instructions for submitting comments. Please submit comments by only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov*. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under FOIA.

FOR FURTHER INFORMATION CONTACT: John C. Lawton, Deputy Director, 202–418–5480, *jlawton@cftc.gov;* Phyllis P. Dietz, Associate Director, 202–418–5449, *pdietz@cftc.gov,* Robert B. Wasserman, Associate Director, 202–418–5092, *rwasserman@cftc.gov* (System Safeguards); and Jonathan Lave, Special Counsel, 202–418–5983, *jlave@cftc.gov,* Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581; and Julie A. Mohr, Associate Director, 312–596–0568, *jmohr@cftc.gov;* and Anne C. Polaski, Special Counsel, 312–596–0575, *apolaski@cftc.gov,* Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 525 West Monroe Street, Chicago, Illinois 60661.

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[1] Commission regulations referred to herein are found at 17 CFR Ch. 1 (2010). They are accessible on the Commission's Web site at *http://www.cftc.gov.*

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I. Background

A. Title VII of the Dodd-Frank Act

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

Section 725(c) of the Dodd-Frank Act amended Section 5b(c)(2) of the CEA, which sets forth core principles with which a DCO must comply to be registered and to maintain registration as a DCO.

The core principles were added to the CEA by the Commodity Futures Modernization Act of 2000 (CFMA).[5] The Commission did not adopt implementing rules and regulations, but instead promulgated guidance for DCOs on compliance with the core principles.[6] Under section 5b(c)(2), as amended by the Dodd-Frank Act, Congress expressly confirmed that the Commission may adopt implementing rules and regulations pursuant to its rulemaking authority under section 8a(5) of the CEA.[7]

The Commission continues to believe that each DCO should be afforded an appropriate level of discretion in determining how to operate its business within the statutory framework. At the same time, the Commission recognizes that specific, bright-line regulations may be necessary in order to facilitate DCO compliance with a given core principle and, ultimately, to protect the integrity of the U.S. clearing system. Accordingly, in developing the proposed regulations, the Commission has endeavored to strike an appropriate balance between establishing general prudential standards and prescriptive requirements.

In this notice of proposed rulemaking, the Commission proposes to adopt regulations to implement six DCO core principles. Those core principles, all of which were amended by the Dodd-Frank Act, are C (Participant and Product Eligibility), D (Risk Management), E (Settlement Procedures), F (Treatment of Funds), G (Default Rules and Procedures), and I (System Safeguards).

B. Title VIII of the Dodd-Frank Act

Section 802(b) of the Dodd-Frank Act states that the purpose of Title VIII is to mitigate systemic risk in the financial system and promote financial stability. Section 804 authorizes the Financial Stability Oversight Council (Council) to designate entities involved in clearing and settlement as systemically important.[8]

Section 805(a) of the Dodd-Frank Act allows the Commission to prescribe regulations for those DCOs that the Council has determined are systemically important. The Commission is proposing to adopt enhanced requirements for SIDCOs regarding system safeguards for business continuity and disaster recovery in proposed § 39.30.

Section 807(c) of the Dodd-Frank Act provides the Commission with special enforcement authority over SIDCOs, which the Commission is proposing to implement in proposed § 39.31.

C. Dodd-Frank Act Rulemaking Initiative

This proposed rulemaking is the last in a series of proposed rulemakings issued for the purpose of implementing the DCO core principles.[9] Through the proposed regulations, the Commission seeks to enhance legal certainty for DCOs, clearing members, and market participants by providing a regulatory framework to support DCO risk management practices overall and, in turn, strengthen the financial integrity of the futures markets and swap markets subject to Commission oversight.

With this in mind, the Commission also is proposing to establish greater uniformity and transparency in the DCO application process by adopting a registration application form that will facilitate greater efficiency and consistency in processing submissions. The Commission is further proposing certain technical amendments to update and conform provisions of part 39 to the CEA, as amended by the Dodd-Frank Act.

The Commission requests comment on all aspects of the rules proposed herein, as well as comment on the specific provisions and issues highlighted in the discussion below.

II. Discussion

A. Registration Procedures

As proposed in an earlier notice of proposed rulemaking, the Commission intends to continue to voluntarily apply a 180-day time frame for review of DCO registration applications, but eliminate the 90-day expedited review period for such applications.[10] Related to this, the Commission is now proposing additional revisions to the requirements for DCO registration in order to clarify the application submission and review process and to achieve greater efficiency for both applicants and the Commission.

The Commission is proposing to revise appendix A to part 39, "Application Guidance and Compliance With Core Principles," by removing the current content and substituting in its

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

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

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

[5] *See* Commodity Futures Modernization Act of 2000, Pub. L. 106–554, 114 Stat. 2763 (2000).

[6] *See* 17 CFR part 39, app. A.

[7] Section 8a(5) of the CEA authorizes the Commission to promulgate such regulations "as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of [the CEA]." 7 U.S.C. 12a(5).

[8] *See* Advance Notice of Proposed Rulemaking Regarding Authority to Designate Financial Market Utilities as Systemically Important, available at *http://www.treasury.gov/initiatives/Pages/FSOC-index.aspx.*

[9] *See e.g.,* 75 FR 78185 (Dec. 15, 2010) (Core Principles J, Reporting; K, Recordkeeping; L, Public Information; and M, Information Sharing); 75 FR 77576 (Dec. 13, 2010) (Core Principles A, Compliance; H, Rule Enforcement; N, Antitrust Considerations; and R, Legal Risk); 75 FR 63732 (Oct. 18, 2010) (Core Principle P, Conflicts of Interest); and 75 FR 63113 (Oct. 14, 2010) (Core Principle B, Financial Resources).

[10] *See* 75 FR at 77586. Although the CEA does not require the Commission to review DCO applications within a prescribed time period or subject to any prescribed procedures, the Commission adopted a 90-day expedited review period and, in the alternative, the 180-day time period and procedures specified in section 6(a) of the CEA for review of applications for designation of a contract market.

place Form DCO, which would be comprised of two parts: (i) An application cover sheet for basic information about the DCO applicant, its ownership structure, officers, and application contact information, and (ii) instructions for a series of accompanying exhibits that would contain information demonstrating compliance with each of the DCO core principles. An application for DCO registration would consist of the completed Form DCO, including all applicable exhibits, and any supplemental information submitted to the Commission.[11]

The Commission's objective in adopting an application form is to streamline the DCO registration process, having learned from experience that the general guidance contained in the current appendix A does not provide sufficiently specific instructions to applicants. As a result, the registration process has been prolonged in some cases because of the need for Commission staff to provide applicants with additional guidance about the nature of the information that is required in order for the Commission to conclude that the applicant has demonstrated its ability to comply with the core principles.

The Commission proposes to amend § 39.3(d), "Guidance for applicants and registrants," and redesignate it as § 39.3(a)(2). The amended provision would state that any person seeking to register as a DCO would be required to submit a completed Form DCO as provided in appendix A to part 39, including all applicable exhibits. Use of the Form DCO also would be required for amendments to a pending application or requests for an amendment to an existing DCO registration. Section 39.3(a)(2) would clarify that an applicant, upon its own initiative, could file additional information that might be necessary or helpful to the Commission in processing the application. The Commission strongly encourages prospective applicants to submit any additional information that could be useful to the Commission.

The proposed appendix A containing the Form DCO is set forth in this notice of proposed rulemaking. The Commission requests comment on the potential benefits and disadvantages of requiring the use of a standardized application. In addition, the Commission requests comment on the content of the proposed application including specific exhibits.

Proposed § 39.3(a)(3) would clarify that the filing of a completed Form DCO would be a minimum requirement and would not create a presumption that the application is materially complete[12] or that supplemental information will not be required by the Commission. At any time during the application review process, the Commission may request that the applicant submit supplemental information in order for the Commission to process the application.

Under proposed § 39.3(a)(4), an applicant would be required to promptly amend its Form DCO if it discovered a material omission or error, or if there is a material change in any information already provided to the Commission.

Proposed § 39.3(a)(5) would largely incorporate applicable language of § 40.8(a), which identifies those parts of a DCO application that are available to the public.[13] Those parts are: the first page of the cover sheet, proposed rules (Exhibit A–1), the applicant's regulatory compliance chart (Exhibit A–2), a narrative summary of the applicant's proposed clearing activities (Exhibit A–3), documents establishing the applicant's legal status (Exhibit A–8), documents setting forth the applicant's corporate and governance structure (Exhibits A–7 and Q), and any other part of the application not covered by a request for confidential treatment subject to FOIA and filed in accordance with the requirements of § 145.9 of the Commission's regulations.[14] The Commission notes that it expects to continue its practice of posting DCO applications on its Web site for a public comment period (typically 30 days).

Proposed § 39.3(b)(1) would stay the running of the 180-day review period if an application was materially incomplete, consistent with the Commission's authority with respect to the designation of a contract market under section 6(a) of the CEA. The delegation provision of current § 39.3(g) would be redesignated as paragraph (b)(2). This provision authorizes the Director of the Division of Clearing and Intermediary Oversight or the Director's designee, with the concurrence of the General Counsel or the General Counsel's designee, to notify an applicant that the application is materially incomplete and the running of the 180-day period is stayed.

The Commission requests comment on all aspects of the proposed amendments to § 39.3, including the costs associated with the application process and possible means for streamlining the process further.

B. Implementation of DCO Core Principles

1. Participant and Product Eligibility

Core Principle C, as amended by the Dodd-Frank Act,[15] requires each DCO to establish appropriate admission and continuing eligibility standards for members of, and participants in, the DCO,[16] including sufficient financial resources and operational capacity to meet the obligations arising from participation. Core Principle C further requires that such participation and membership requirements be objective, be publicly disclosed, and permit fair and open access. Core Principle C also requires that each DCO establish and implement procedures to verify compliance with each participation and membership requirement, on an ongoing basis. With respect to product eligibility, Core Principle C requires that each DCO establish appropriate standards for determining the eligibility of agreements, contracts, or transactions submitted to the DCO for clearing.[17] The Commission is proposing to adopt

[11] In separate rulemakings, the Commission is proposing applications for designation as a contract market and registration as a swap execution facility. This approach is similar to the SEC's use of the Form CA for securities clearing agency applications, available at *https://www.sec.gov*.

[12] Section 6(a) of the CEA, 7 U.S.C. 8(a), provides that the Commission must approve or deny an application for designation of a contract market within 180 days of the filing of the application. However, "[i]f the Commission notifies the person that its application is materially incomplete and specifies the deficiencies in the application, the running of the 180-day period shall be stayed from the time of such notification until the application is resubmitted in completed form."

[13] *See* 75 FR 67282 (Nov. 2, 2010) (provisions common to registered entities).

[14] *See* 5 U.S.C. 552 and § 145.9 of the Commission's regulations (regarding petitions for confidential treatment of information submitted to the Commission).

[15] Section 5b(c)(2)(C) of the CEA; 7 U.S.C. 7a–1(c)(2)(C) (Core Principle C).

[16] Core Principle C, as well as the other core principles that are discussed herein, refer to "members of, and participants in" a DCO. The Commission interprets this phrase to mean persons with clearing privileges, and has used the term "clearing member" in describing the requirements of each core principle and in the text of the proposed regulations described herein. In a separate notice of proposed rulemaking, the Commission has proposed to amend the definition of "clearing member" in § 1.3(c) to mean "any person that has clearing privileges such that it can process, clear and settle trades through a derivatives clearing organization on behalf of itself or others. The derivatives clearing organization need not be organized as a membership organization." *See* 75 FR at 77585.

[17] Prior to amendment by the Dodd-Frank Act, Core Principle C provided that

[t]he applicant shall establish—

(i) appropriate admission and continuing eligibility standards (including appropriate minimum financial requirements) for members of and participants in the organization; and

(ii) appropriate standards for determining eligibility of agreements, contracts, or transactions submitted to the applicant.

§ 39.12 to establish requirements that a DCO would have to meet in order to comply with Core Principle C.

(a) Participant eligibility.

As noted above, Core Principle C requires that a DCO's admission and continuing eligibility standards for clearing members must be objective and publicly disclosed.[18] Proposed § 39.12(a) would codify these requirements, and would make clear that such requirements must be risk-based.

(i) Fair and open access.

Core Principle C mandates that participation requirements must "permit fair and open access."[19] It also mandates that clearing members must have "sufficient financial resources and operational capacity to meet obligations arising from participation in the derivatives clearing organization."[20] Although there is potential for tension between these goals, the Commission believes that they can be harmonized. Proposed § 39.12 is designed to ensure that participation requirements do not unreasonably restrict any entity from becoming a clearing member while, at the same time, limiting risk to the DCO and its clearing members. The Commission believes that more widespread participation could reduce the concentration of clearing member portfolios and diversify risk. It could also increase competition by allowing more entities to become clearing members.

Proposed § 39.12(a)(1) would require a DCO to establish participation requirements that permit fair and open access. To achieve fair and open access, proposed § 39.12(a)(1)(i) would prohibit a DCO from adopting a particular restrictive participation requirement if it could adopt a less restrictive requirement that would not materially increase risk to the DCO or its clearing members.

Proposed § 39.12(a)(1)(ii) would require a DCO to permit a market participant to become a clearing member if it met the DCO's participation requirements. Proposed § 39.12(a)(1)(iii) would prohibit participation requirements that have the effect of excluding or limiting clearing membership of certain types of market participants unless the DCO can demonstrate that the restriction is necessary to address credit risk or deficiencies in the participants' operational capabilities that would prevent them from fulfilling their obligations as clearing members. Section 39.12(a)(1)(iv) would prohibit a DCO from requiring that clearing members must be swap dealers. Section 39.12(a)(1)(v) would prohibit a DCO from requiring that clearing members maintain a swap portfolio of any particular size, or that clearing members meet a swap transaction volume threshold.

The access and participation requirements discussed above meet or exceed international recommendations.[21]

(ii) Financial resources.

Core Principle C mandates that participation requirements must ensure that clearing members have "sufficient financial resources and operational capacity to meet obligations arising from participation in the [DCO]."[22] Proposed § 39.12(a)(2)(i) would require a DCO to establish participation requirements that require clearing members to have access to sufficient financial resources to meet obligations arising from participation in the DCO in extreme but plausible market conditions. The financial resources could include a clearing member's capital, a guarantee from a clearing member's parent, or a credit facility funding arrangement. The proposed regulation would further specify that, for purposes of proposed § 39.12(a)(2), "capital" would mean adjusted net capital as defined in § 1.17 of the Commission's regulations, for futures commission merchants (FCMs), and net capital as defined in SEC rule 15c3–1, for broker-dealers, or any similar risk adjusted capital calculation for all other prospective clearing members.

The Commission invites comment regarding whether a guarantee or a credit facility funding arrangement is sufficiently reliable and liquid such that it should be considered as a resource that would be available to meet obligations arising from participation in a DCO in extreme but plausible market conditions.

Proposed § 39.12(a)(2)(ii) would require a DCO to establish capital requirements that are based on objective, transparent, and commonly accepted standards that appropriately match capital to risk. The proposed regulation would require capital requirements to be scalable so that they are proportional to the risks posed by clearing members.

With respect to persons that seek clearing membership in order to clear swaps, proposed § 39.12(a)(2)(iii) would specify that a DCO is not permitted to set a minimum capital requirement of more than $50 million.

If the capital requirement is satisfied by a prospective clearing member, the DCO is prohibited from making a determination that the prospective clearing member does not satisfy its scalable capital requirements. Proposed §§ 39.12(a)(2)(ii) and 39.12(a)(2)(iii), considered together, would require a DCO to admit any person to clearing membership for the purpose of clearing swaps, if the person had $50 million in capital, but would permit a DCO to require each clearing member to hold capital proportional to its risk exposure.[23] Thus, if a clearing member's risk exposure were to increase in a non-linear manner, the DCO could increase the clearing member's corresponding scalable capital requirement in a non-linear manner.

The Commission requests comment on whether establishing a capital threshold is an effective approach to promoting fair and open access. If it is, the Commission further requests views on whether the $50 million figure is an appropriate amount and, if not, what alternative amount might be more appropriate.

(iii) Operational requirements.

Proposed § 39.12(a)(3) would require a DCO to establish participation requirements that ensure that clearing members have adequate operational

[18] Section 5b(c)(2)(C)(iii) of the CEA; 7 U.S.C. 7a–1(c)(2)(C)(iii) (Core Principle C).

[19] *Id.*

[20] *Id.*

[21] In November 2004, the Task Force on Securities Settlement Systems, jointly established by the Committee on Payment and Settlement Systems (CPSS) of the central banks of the Group of Ten countries and the Technical Committee of the International Organization of Securities Commissions (IOSCO), issued Recommendations for Central Counterparties. CPSS & Technical Comm. of IOSCO *Recommendations for Central Counterparties,* CPSS Publ'n No. 64 (Nov. 2004), available at *http://www.bis.org/publ/cpss64.pdf* (CPSS–IOSCO Recommendations). CPSS–IOSCO Recommendation 2 provides, in part, that "[a] CCP's participation requirements should be objective, publicly disclosed, and permit fair and open access." The CPSS–IOSCO Recommendations further state that

> [t]o avoid discriminating against classes of participants and introducing competitive distortions, participation requirements should be objective and avoid limiting competition through unnecessarily restrictive criteria, thereby permitting fair and open access within the scope of services offered by the CCP. [footnote omitted] Participation requirements that limit access on grounds other than risks should be avoided.

(CPSS–IOSCO Recommendations, pg. 16). The Commission notes that CPSS and IOSCO are currently reviewing the CPSS–IOSCO Recommendations, which may be revised.

[22] Section 5b(c)(2)(C)(i)(I) of the CEA; 7 U.S.C. 7a–1(c)(2)(C)(i)(I).

[23] Conversely, as discussed, *infra,* in section II.B.2.g.i, proposed § 39.13(h)(1)(i) would require a DCO to impose risk limits on a clearing member to prevent a clearing member from carrying positions where the risk exposure of those positions exceeded a threshold specified by the DCO relative to the financial resources of the clearing member, the DCO, or both.

capacity to meet obligations arising from participation in the DCO. The requirements would have to include, at a minimum, the ability to process expected volumes and values of transactions cleared by the clearing member within required time frames, including at peak times and on peak days; the ability to fulfill collateral, payment, and delivery obligations imposed by the DCO; and the ability to participate in default management activities under the rules of the DCO and in accordance with § 39.16 of the Commission's regulations.

(iv) Monitoring, reporting, and enforcement.

Strong participation requirements will not limit risk if clearing members do not satisfy the requirements on an ongoing basis. Accordingly, Core Principle C requires each DCO to "establish and implement procedures to verify, on an ongoing basis, the compliance of each participation and membership requirement of the derivatives clearing organization." [24] Proposed § 39.12(a)(4) would codify this requirement.

A DCO cannot effectively monitor clearing members if it is not adequately informed about their financial status. Proposed § 39.12(a)(5) would address this concern. Specifically, proposed § 39.12(a)(5)(i) would require a DCO to require all of its clearing members, including non-FCMs, to file periodic financial reports with the DCO that contain any financial information that the DCO determines is necessary to assess whether participation requirements are met on an ongoing basis. A DCO would have to require its clearing members that are FCMs to file the financial reports that are specified in § 1.10 of the Commission's regulations with the DCO. The proposed regulation also would require a DCO to review these financial reports for risk management purposes. Proposed § 39.12(a)(5)(i) would further require a DCO to require its clearing members that are not FCMs to make the periodic financial reports that they file with the DCO available to the Commission upon the Commission's request. Proposed § 39.12(a)(5)(ii) would require a DCO to adopt rules that require a clearing member to provide to the DCO, in a timely manner, information that concerns any financial or business developments that could materially affect the clearing member's ability to continue to comply with participation requirements.

Finally, proposed § 39.12(a)(6) would require a DCO to have the ability to enforce compliance with its participation requirements. In particular, the DCO would be required to establish procedures for the suspension and orderly removal of clearing members that no longer meet the DCO's participation requirements.

(b) Product eligibility.

Core Principle C requires each DCO to establish "appropriate standards for determining the eligibility of agreements, contracts, or transactions submitted to the [DCO] for clearing." [25] Proposed § 39.12(b)(1) would require a DCO to establish appropriate requirements for determining the eligibility of agreements, contracts, or transactions submitted to the DCO for clearing, taking into account the DCO's ability to manage the risks associated with such agreements, contracts, or transactions. Factors to be considered in determining product eligibility would include, but would not be limited to: (i) trading volume; (ii) liquidity; (iii) availability of reliable prices; (iv) ability of market participants to use portfolio compression [26] with respect to a particular swap product; (v) ability of the DCO and clearing members to gain access to the relevant market for purposes of creating and liquidating positions; (vi) ability of the DCO to measure risk for purposes of setting margin requirements; and (vii) operational capacity of the DCO and clearing members to address any unique risk characteristics of a product.

Section 2(h)(1)(B) of the CEA requires a DCO to adopt rules providing that all swaps with the same terms and conditions submitted to the DCO for clearing are economically equivalent within the DCO and may be offset with each other within the DCO. Section 2(h)(1)(B) further requires a DCO to provide for non-discriminatory clearing of a swap executed bilaterally or on or subject to the rules of an unaffiliated designated contract market (DCM) or swap execution facility (SEF). Proposed § 39.12(b)(2) would codify these requirements in the Commission's regulations.

Proposed § 39.12(b)(3) would require a DCO to select contract unit sizes that maximize liquidity, open access, and risk management. To the extent appropriate to further these objectives, the proposed regulation would require a DCO to select contract units for clearing purposes that may be smaller than the contract units in which trades submitted for clearing were executed. The contract unit size of a particular swap executed bilaterally may reflect the immediate circumstances of the two parties to the transaction. Once submitted for clearing, it may be possible to split the trade into smaller units without compromising the interests of the two original parties. Smaller units can promote liquidity by permitting more parties to trade the product, facilitate open access by permitting more clearing members to clear the product, and aid risk management by enabling a DCO, in the event of a default, to have more potential counterparties for liquidation.

Finally, proposed § 39.12(b)(4) would require each DCO that clears swaps to have rules stating that upon acceptance of a swap by the DCO for clearing, (i) the original swap is extinguished, (ii) it is replaced by equal and opposite swaps between clearing members and the DCO, (iii) all terms of the cleared swaps must conform to templates established under DCO rules, and (iv) if a swap is cleared by a clearing member on behalf of a customer, all terms of the swap, as carried in the customer account on the books of the clearing member, must conform to the terms of the cleared swap established under the DCO's rules.

The purpose of this provision is to encourage the standardization of swaps and to avoid any differences between the terms of a swap as carried at the DCO level and as carried at the clearing member level. Any such differences would raise both customer protection and systemic risk concerns. From a customer protection standpoint, if the terms of the swap at the customer level differ from those at the clearing level, then the customer position cannot really be said to have been cleared. If the customer position differs from the cleared position, the customer may not receive the full transparency and liquidity benefits of clearing. Similarly, from a systemic perspective, any differences could diminish overall price discovery and liquidity. Standardizing the terms of a swap upon clearing would facilitate trading and promote the mitigation of risk for all participants in the swap markets. Furthermore, standardization would support the requirement in section 2(h)(1)(B) of the CEA and proposed § 39.12(b)(2) that a DCO must adopt rules providing that all swaps with the same terms and conditions submitted to the DCO are

[24] *See* section 5b(c)(2)(C)(ii) of the CEA; 7 U.S.C. 7a–1(c)(2)(C)(ii). Based on context, the Commission interprets the phrase "compliance of each participation and membership requirement" to mean compliance "with" each participation and membership requirement.

[25] Section 5b(c)(2)(C)(i)(II) of the CEA; 7 U.S.C. 7a–1(c)(2)(C)(i)(II).

[26] Portfolio compression is a mechanism by which superfluous transactions among two or more counterparties are compressed, terminated and replaced with a smaller number of transactions of decreased notional principal value in an effort to reduce the risk, cost, and inefficiency of maintaining unnecessary transactions on the counterparties' books.

economically equivalent within the DCO and may be offset with each other.

2. Risk Management Requirements

Core Principle D, as amended by the Dodd-Frank Act,[27] requires each DCO to ensure that it possesses the ability to manage the risks associated with discharging the responsibilities of the DCO through the use of appropriate tools and procedures. It further requires each DCO to measure its credit exposures to each clearing member not less than once during each business day and to monitor each such exposure periodically during the business day. Core Principle D also requires each DCO to limit its exposure to potential losses from defaults by clearing members, through margin requirements and other risk control mechanisms, to ensure that its operations would not be disrupted and that nondefaulting clearing members would not be exposed to losses that nondefaulting clearing members cannot anticipate or control. Finally, Core Principle D requires that the margin that the DCO requires from each clearing member must be sufficient to cover potential exposures in normal market conditions and that each model and parameter used in setting such margin requirements must be risk-based and reviewed on a regular basis.[28] The Commission is proposing to adopt § 39.13 to establish requirements that a DCO would have to meet in order to comply with Core Principle D.

(a) General.

Proposed § 39.13(a) would require a DCO to ensure that it possesses the ability to manage the risks associated with discharging its responsibilities through the use of appropriate tools and procedures. The specific requirements that are addressed in the remainder of proposed § 39.13, in addition to margin requirements, describe various tools and procedures that the Commission believes are necessary to ensure that DCOs are able to effectively manage the risks that are inherent in their roles as central counterparties. Many of those requirements reflect the current practices of most or all DCOs, and others may describe enhancements that would assist existing and new DCOs in mitigating their risks as they assume new responsibilities in connection with the clearing of swaps.

(b) Risk management framework.

Proposed § 39.13(b) would require a DCO to establish and maintain written policies, procedures, and controls, approved by its Board of Directors, which establish an appropriate risk management framework that, at a minimum, clearly identifies and documents the range of risks to which the DCO is exposed, addresses the monitoring and management of the entirety of those risks, and provides a mechanism for internal audit. Those risks may include, but are not limited to, legal risk, credit risk, liquidity risk, custody and investment risk, concentration risk, default risk, operational risk, market risk, and business risk. A DCO would be required to regularly review its risk management framework and update it as necessary.

The Commission believes that a DCO should adopt a comprehensive and documented risk management framework that addresses all of the various types of risks to which it is exposed, including the manner in which they may relate to each other. A DCO's risk management framework should be subject to the approval of its Board of Directors, as the Board is ultimately responsible for managing a DCO's risks. The Commission is proposing to leave it to the discretion of each DCO to determine the frequency with which it reviews its risk management framework as long as it is reviewed on a regular basis.

(c) Chief risk officer.

Proposed § 39.13(c) would require a DCO to have a chief risk officer who would be responsible for the implementation of the risk management framework and for making appropriate recommendations regarding the DCO's risk management functions to the DCO's Risk Management Committee or Board of Directors, as applicable. In a separate rulemaking, the Commission has proposed to adopt § 39.13(d) to require DCOs to have a Risk Management Committee with defined composition requirements and specified minimum functions.[29]

DCOs generally have a chief risk officer or an individual who performs such a function, and the Commission believes this is a "best practice." Although Core Principle D does not specifically require a DCO to have a chief risk officer, the Commission believes that given the importance of the risk management function, each DCO should have a member of senior management who is responsible for overseeing the implementation of the DCO's comprehensive risk management framework and making appropriate recommendations regarding risk management issues to the DCO's Risk Management Committee (for matters within its jurisdiction) or directly to the Board.

The CEA, as amended by the Dodd-Frank Act, requires a DCO to have a chief compliance officer with defined responsibilities.[30] These requirements have been addressed in a separate rulemaking.[31] Given the importance of the risk management function and the comprehensive nature of the responsibilities of the chief compliance officer as defined in the statute, the Commission expects that the chief risk officer and the chief compliance officer would be two different individuals.

(d) Measurement of credit exposure.

Proposed § 39.13(e) would require a DCO to measure and monitor its credit exposures to its clearing members. The proposed regulation uses the term "credit exposure" in order to be consistent with the statutory language of Core Principle D. In this context, "credit exposure" does not refer to an extension of credit by the DCO to a clearing member. Rather, it refers to any amounts that a clearing member would owe to a DCO if the clearing member were to default in its obligations to the DCO. It includes both current exposures and potential future exposures.

Specifically, § 39.13(e) would require a DCO to: (1) Measure its credit exposure to each clearing member and mark to market such clearing member's open positions at least once each business day; and (2) monitor its credit exposure to each clearing member periodically during each business day. Proposed § 39.13(e) goes hand in hand with proposed § 39.14(b), which addresses daily settlements based on a DCO's measurement of its credit exposures to its clearing members.[32]

(e) Limitation of exposure to potential losses from defaults.

Proposed § 39.13(f) would require a DCO, through margin requirements and other risk control mechanisms, to limit its exposure to potential losses from defaults by its clearing members to ensure that: (1) Its operations would not be disrupted; and (2) nondefaulting clearing members would not be exposed to losses that nondefaulting clearing members cannot anticipate or control. The language of proposed § 39.13(f) is virtually identical to the language in

[27] Section 5b(c)(2)(D) of the CEA; 7 U.S.C. 7a–1(c)(2)(D) (Core Principle D).

[28] Prior to amendment by the Dodd-Frank Act, Core Principle D provided that "[t]he applicant shall have the ability to manage the risks associated with discharging the responsibilities of a derivatives clearing organization through the use of appropriate tools and procedures."

[29] *See* 75 FR at 63750. In that proposed rulemaking, the provisions relating to the Risk Management Committee were designated as § 39.13(g). In the final rulemaking, the provisions will be redesignated as § 39.13(d).

[30] *See* section 5b(i) of the CEA; 7 U.S.C. 7a–1(i).

[31] 75 FR at 77587.

[32] *See infra* section II.B.3.a of this notice.

section 5b(c)(2)(D)(iii) of the CEA, as amended by the Dodd-Frank Act.

(f) Margin requirements.

(i) General.

As specified in section 5b(c)(2)(D)(iv) of the CEA, proposed § 39.13(g)(1) would require that the initial margin that a DCO requires from each clearing member must be sufficient to cover potential exposures in normal market conditions and that each model and parameter used in setting initial margin requirements must be risk-based and reviewed on a regular basis.[33] The Commission has not defined "normal market conditions" in the proposed regulation. Current international recommendations define "normal market conditions" as "price movements that produce changes in exposures that are expected to breach margin requirements or other risk control mechanisms only 1% of the time, that is, on average on only one trading day out of 100."[34] The Commission invites comment regarding whether a definition of "normal market conditions" should be included in the proposed regulation and, if so, how normal market conditions should be defined.

(ii) Methodology and coverage.

Proposed § 39.13(g)(2) would set forth requirements regarding margin methodology and coverage. First, it would require a DCO to establish initial margin requirements that are commensurate with the risks of each product or portfolio, including any unique characteristics of, or risks associated with, particular products or portfolios. In particular, proposed 39.13(g)(2)(i) would require a DCO that clears credit default swaps (CDS) to appropriately address jump-to-default risk in setting initial margins.[35] With the exception of jump-to-default risk, the Commission has not defined specific risks that a DCO should consider in light of the fact that such risks would be product-specific and portfolio-specific. In addition, there may be risks that might apply to products or portfolios that are cleared in the future that cannot be anticipated at this time. The Commission invites comment regarding whether there are specific risks that should be identified and addressed in the proposed regulation in addition to jump-to-default risk.

Proposed § 39.13(g)(2)(ii) would require a DCO to use margin models that generate initial margin requirements sufficient to cover the DCO's potential future exposures to clearing members based on price movements in the interval between the last collection of variation margin[36] and the time within which the DCO estimates that it would be able to liquidate a defaulting clearing member's positions (liquidation time). A DCO would be required to use a liquidation time that is a minimum of five business days for cleared swaps that are not executed on a DCM, whether the swaps are carried in a customer account subject to section 4d(a) or 4d(f) of the CEA, or a house account.[37] A DCO would be required to use a liquidation time that is a minimum of one business day for all other products that it clears, although it would be required to use longer liquidation times, if appropriate, based on the unique characteristics of particular products or portfolios.

A minimum of one business day is the current standard that DCOs generally apply to futures and options on futures contracts. The Commission believes that a minimum of five business days is appropriate for cleared swaps that are not executed on a DCM in that such a time period may be necessary to close out swap positions in a cost-effective manner.[38] Several clearing organizations currently use a five-day liquidation time in determining margin requirements for certain cleared swaps. The Commission invites comment regarding whether the minimum liquidation times specified in proposed § 39.13(g)(2)(ii) are appropriate, or whether there are minimum liquidation times that are more appropriate.

Proposed § 39.13(g)(2)(iii) would require that the actual coverage of the initial margin requirements produced by a DCO's margin models, along with projected measures of the models' performance, would have to meet a confidence level of at least 99%, based on data from an appropriate historic time period with respect to: (A) Each product that is margined on a product basis; (B) each spread within or between products for which there is a defined spread margin rate, as described in proposed § 39.13(g)(3); (C) each account held by a clearing member at the DCO, by customer origin and house origin, and (D) each swap portfolio, by beneficial owner. These requirements meet or exceed international recommendations.[39]

The Commission recognizes that while some DCOs generally apply a 99% confidence level to some or all products that they clear, other DCOs apply a confidence level of between 95% and 99% with respect to certain products. In addition, certain DCOs may achieve an average confidence level of 99% across all products that they clear, although not every product may meet the 99% confidence level. The Commission invites comment regarding whether a confidence level of 99% is appropriate with respect to all applicable products, spreads, accounts, and swap portfolios.[40]

Proposed § 39.13(g)(2)(iv) does not specify the historic time period that a DCO would have to use when calculating a 99% confidence level for any particular product, account, or portfolio. Rather, it would permit each

[33] The Commission has proposed to define "initial margin" as "money, securities, or property posted by a party to a futures, option, or swap as performance bond to cover potential future exposures arising from changes in the market value of the position." *See* 75 FR at 77585 (proposing § 1.3(lll)).

[34] CPSS–IOSCO Recommendations, pg. 21.

[35] Jump-to-default risk refers to the possibility that a CDS portfolio with large net sales of protection on an underlying reference entity could experience significant losses over a very short period of time following an unexpected event of default by the reference entity.

[36] The Commission has proposed to define "variation margin" as "a payment made by a party to a futures, option, or swap to cover the current exposure arising from changes in the market value of the position since the trade was executed or the previous time the position was marked to market." *See* 75 FR at 77585 (proposing § 1.3(ooo)).

[37] *See infra* section II.B.4.b of this notice, discussing commingling of customer futures and cleared swaps positions.

[38] Pursuant to section(s) 4(c) and/or 4d of the CEA, the Commission has previously issued several orders allowing funds margining cleared swaps to be commingled with funds margining futures and options on futures. In those orders, the Commission permitted such swaps to be margined using liquidation times that were less than five business days. *See, e.g.,* 74 FR 12316 (Mar. 24, 2009) (corn, wheat and soybean swaps); 73 FR 77015 (Dec. 18, 2008) (coffee, sugar and cocoa swaps); and Order of the Commodity Futures Trading Commission, dated Sep. 26, 2008, entitled "Treatment of Funds Held in Connection with the Clearing of Over-the-Counter Products by The Chicago Mercantile Exchange," available at *http://www.cftc.gov/stellent/groups/public/@requestsandactions/documents/ifdocs/cbot4dorder9-26-08.pdf* (ethanol swaps). The Commission intends to grandfather the swaps subject to previously issued orders, such that the relevant liquidation time periods for those swaps would continue to be governed by the terms of the orders.

[39] For example, on September 15, 2010, the European Commission (EC) proposed the European Market Infrastructure Regulation (EMIR), available at *http://ec.europa.eu/internal_market/financial-markets/docs/derivatives/20100915_proposal_en.pdf,* "to ensure implementation of the G20 commitments to clear standardized derivatives [which can be accessed at *http://www.g20.org/Documents/pittsburgh_summit_leaders_statement_250909.pdf*], and that Central Counterparties (CCPs) comply with high prudential standards * * *," among other things, and expressed its intent to be consistent with the Dodd-Frank Act. (EMIR, pg. 2–3). The EMIR requires that margins "* * * shall be sufficient to cover losses that result from at least 99 per cent of the exposures movements over an appropriate time horizon . * * *" (EMIR, Article 39, paragraph 1, pg. 46).

[40] For example, the CPSS–IOSCO Recommendations state that "[m]argin requirements for new and low-volume products might be set at a lower coverage level [than the major products cleared by a CCP] if the potential losses resulting from such products are minimal." (CPSS–IOSCO Recommendations, pg. 23).

DCO to exercise its discretion with respect to the appropriate time periods that should be used in each instance, based on the characteristics, including volatility patterns, as applicable, of the products, spreads, accounts, or portfolios.

(iii) Independent validation.

Historically, many U.S. DCOs have used Chicago Mercantile Exchange's (CME) proprietary risk-based portfolio margining system, Standard Portfolio Analysis of Risk® (SPAN) as the basis for their margin models for futures and options. However, there is at least one other margin model that is currently being used for futures and options, and there are also multiple margin models that DCOs are using for swaps that are currently cleared. As DCOs begin to clear additional swaps it can be anticipated that they will develop new margin models to address the risks of particular products.

Proposed § 39.13(g)(3) would require that, on a regular basis, a DCO's systems for generating initial margin requirements, including the DCO's theoretical models, would have to be reviewed and validated by a qualified and independent party. A validation should include a comprehensive analysis to ensure that such systems and models achieve their intended goals. Although the proposed regulation does not define the term "regular basis," the Commission would expect that, at a minimum, a DCO would obtain such an independent validation prior to implementation of a new margin model and when making any significant change to a model that is in use by the DCO. Significant changes would be those that could materially affect the nature or level of risks to which a DCO would be exposed. The Commission would expect a DCO to obtain an independent validation prior to any significant change that would relax risk management standards. However, if a DCO needed to adopt a significant change in an expedited manner to enhance risk protections, the Commission would expect the DCO to obtain an independent validation promptly after the change was made.

The Commission has not proposed a definition of the term "qualified and independent party." The Commission invites comment regarding whether a qualified and independent party must be a third party or whether there may be circumstances under which an employee of the relevant DCO could be considered to be independent.

(iv) Spread margins.

Proposed § 39.13(g)(4)(i) would permit a DCO to allow reductions in initial margin requirements for related positions (spread margins), if the price risks with respect to such positions were significantly and reliably correlated. Under the proposed regulation, the price risks of different positions would only be considered to be reliably correlated if there was a theoretical basis for the correlation in addition to an exhibited statistical correlation. A non-exclusive list of possible theoretical bases includes the following: (A) The products on which the positions are based are complements of, or substitutes for, each other; (B) one product is a significant input into the other product(s); (C) the products share a significant common input; or (D) the prices of the products are influenced by common external factors. An example of such an external factor might be interest rates. An offset may not be based solely on the fact that the prices of certain products have exhibited a statistical correlation in the past. The DCO would be required to be able to articulate a theoretical explanation for such a correlation. The Commission requests comment regarding the appropriateness of requiring a theoretical basis for the correlation between related positions before reductions in initial margin requirements would be permitted.

Proposed § 39.13(g)(4)(ii) would require a DCO to regularly review its spread margins and the correlations on which they are based.

(v) Price data.

Proposed § 39.13(g)(5) would require a DCO to have a reliable source of timely price data to measure its credit exposure accurately, and to have written procedures and sound valuation models for addressing circumstances where pricing data is not readily available or reliable. Both initial margin and variation margin calculations require timely and reliable price data to be effective. DCOs should rely on prices from continuous, transparent, and liquid markets, wherever possible. It may be difficult to determine current market prices for certain over-the-counter (OTC) products if there is no continuous liquid market or if bid-ask spreads are volatile. In these circumstances, DCOs would need to ensure that they would be able to measure their credit exposures accurately through the use of sound valuation models. The nature of such valuation models would necessarily depend on the particular products and the source of any relevant pricing data.

(vi) Daily review and back tests.

Daily review and periodic back testing are essential to enable a DCO to ensure that its margin models continue to provide adequate coverage of the DCO's risk exposures to its clearing members. Proposed § 39.13(g)(6) would require a DCO to determine the adequacy of its initial margin requirements for each product, on a daily basis, with respect to those products that are margined on a product basis. Proposed § 39.13(g)(7) would require a DCO to conduct certain back tests. The Commission has proposed to define "back test" in a separate rulemaking, as "a test that compares a derivatives clearing organization's initial margin requirements with historical price changes to determine the extent of actual margin coverage."[41] Thus, the back tests required by proposed § 39.13(g)(7), which would require a comparison of initial margin requirements with historical price changes, are distinguished from the daily review required by proposed § 39.13(g)(6), which would require a determination of whether a margin breach had occurred on the particular day under review. For purposes of proposed § 39.13(g)(7)(i) and (ii), proposed § 39.13(g)(7) specifies that, in conducting back tests, a DCO would be required to use historical price change data based on a time period that is equivalent in length to the historic time period used by the applicable margin model for establishing the minimum 99% confidence level or a longer time period. The applicable time period is separately specified for the back tests required by proposed § 39.13(g)(7)(iii), as discussed below.

Proposed § 39.13(g)(7)(i) would require a DCO, on a daily basis, to conduct back tests with respect to products that are experiencing significant market volatility. Specifically, a DCO would be required to test the adequacy of its initial margin requirements and its spread margin requirements for such products that are margined on a product basis.

Proposed § 39.13(g)(7)(ii) would require a DCO, on at least a monthly basis, to conduct back tests to test the adequacy of its initial margin requirements and spread margin requirements for each product that is margined on a product basis. The Commission requests comment regarding whether initial margin requirements for all products should be subject to back tests on a monthly basis or whether some other time period, such as quarterly, would be sufficient to meet prudent risk management standards.

Proposed § 39.13(g)(7)(iii) would require a DCO, on at least a monthly basis, to conduct back tests to test the adequacy of its initial margin

[41] *See* 75 FR at 77585 (proposing definitions in § 39.1(b), to be redesignated as § 39.2).

requirements for each clearing member's accounts, by customer origin and house origin, and each swap portfolio, by beneficial owner, over at least the previous 30 days. The Commission has proposed that the initial margin requirements for such clearing member accounts and swap portfolios must be compared to 30 days of historical data since the composition of such accounts and swap portfolios may change on a daily basis. The Commission anticipates that back tests with respect to such accounts and portfolios would involve a review of the initial margin requirements for each account and portfolio as it existed on each day during the 30-day period. The Commission requests comment regarding whether initial margin requirements for all clearing members' accounts, by origin, and swap portfolios, by beneficial owner, should be subject to back tests on a monthly basis or whether some other time period, such as quarterly (based on the previous quarter's historical data), would be sufficient to meet prudent risk management standards.

(vii) Customer margin.

Proposed § 39.13(g)(8) addresses three different proposed requirements regarding customer margin, including the collection of gross margin for customer accounts, customer initial margin levels, and withdrawals of customer initial margin.[42]

(1) Gross margin for customer accounts.

Proposed § 39.13(g)(8)(i) would require a DCO to collect initial margin on a gross basis for each clearing member's customer account equal to the sum of the initial margin amounts that would be required by the DCO for each individual customer within that account if each individual customer were a clearing member. A DCO would not be permitted to net positions of different customers against one another, but it could collect initial margin for its clearing members' house accounts on a net basis.

The Commission recognizes that gross margining of customer accounts would be a change from current margin practices at certain DCOs. However, the Commission believes that gross margining of customer accounts would more appropriately address the risks posed to a DCO by its clearing members' customers than margining all of a particular clearing member's customer accounts on a net basis. Gross margining would increase the financial resources available to a DCO in the event of a customer default. Moreover, with respect to cleared swaps, the requirement for gross margining of customers' portfolios supports the requirement in proposed § 39.13(g)(2)(iii) that a DCO would have to margin each swap portfolio at a minimum 99% confidence level.

The Commission recently proposed a new § 39.19(c)(1)(iv) under which a DCO would be required, on a daily basis, to report the end-of-day positions for each clearing member, by origin.[43] In connection with the proposed § 39.13(g)(8)(i) requirement for DCOs to collect initial margin for customer accounts on a gross basis, the Commission is proposing to amend proposed § 39.19(c)(1)(iv) to additionally require a DCO, for the customer origin, to report the gross positions of each beneficial owner.

(2) Customer initial margin requirements.

Proposed § 39.13(g)(8)(ii) would require a DCO to require its clearing members to collect customer initial margin from their customers for non-hedge positions at a level that is greater than 100% of the DCO's initial margin requirements with respect to each product and swap portfolio. Such a cushion would enable clearing members to deposit additional margin with a DCO on behalf of their customers, as necessitated by adverse market movements, without the need for the clearing members to make frequent margin calls to their customers.

Historically, DCMs have mandated the amounts of customer initial margin and maintenance margin that their FCM members must collect from their customers.[44] DCMs typically impose customer initial margin requirements that are higher, by a specified percentage, than the initial margin requirements imposed upon clearing FCMs by the relevant DCO, and maintenance margin requirements that are equivalent to the DCO's initial margin requirements. Customer initial margin requirements have typically been between 125% and 140% of a DCO's initial margin requirements.

The Commission believes that DCOs should determine how much margin their FCM clearing members must collect from their customers because a DCO must ensure that its clearing members are able to meet their obligations to the DCO. Moreover, although it may be appropriate for a DCM to determine the customer initial margin requirements for non-clearing FCM members of the DCM, with respect to products traded on the DCM, a DCO may be the only entity in a position to assume any responsibility for setting customer initial margin requirements for cleared swaps that may be traded on SEFs or executed bilaterally.

Proposed § 39.13(g)(8)(ii) would permit a DCO to have reasonable discretion in determining the percentage by which customer initial margins would have to exceed the DCO's initial margin requirements with respect to particular products or swap portfolios. A DCO would be familiar with the risk characteristics of particular products and swap portfolios that it clears, which should enable it to determine the extent of the cushion that a clearing member should have with respect to customer initial margins. However, under the proposed regulation, the Commission may review such percentage levels and require different percentage levels, but not specific margin amounts, if the Commission deems the levels insufficient to protect the financial integrity of the clearing members or the DCO.

The customer initial margin requirement set forth in proposed § 39.13(g)(8)(ii) would only apply with respect to customers' non-hedge positions. Hedge margins are typically equal to maintenance margins.

(3) Withdrawal of customer initial margin.

Proposed § 39.13(g)(8)(iii) would require a DCO to require its clearing members to prohibit their customers from withdrawing funds from their accounts with such clearing members unless the net liquidating value plus the margin deposits remaining in the customer's account after the withdrawal would be sufficient to meet the customer initial margin requirements with respect to the products or portfolios in the customer's account, which were cleared by the DCO. This is consistent with the definition of "Margin Funds Available for Disbursement" in the Margins Handbook prepared by the Joint Audit Committee[45] and, therefore, codifies current practices.

(viii) Time deadlines.

[42] The Commission has proposed to define "customer initial margin" as "initial margin posted by a customer with a futures commission merchant, or by a non-clearing futures commission merchant with a clearing member." *See* 75 FR at 77585 (proposing § 1.3(kkk)).

[43] *See* 75 FR at 78195.

[44] "Maintenance margin" refers to an amount that must be maintained on deposit at all times. If the equity in a customer's account drops below the level of maintenance margin because of adverse price movement, the FCM must issue a margin call to restore the customer's equity to the customer initial margin level.

[45] *See http://www.nfa.futures.org/NFA-compliance/publication-library/margins-handbook.pdf.*

Proposed § 39.13(g)(9) would require a DCO to establish and enforce time deadlines for initial and variation margin payments. If margin payments are not made on time, DCOs and clearing members face uncollateralized risk.

(g) Other Risk Control Mechanisms

(i) Risk limits.

Proposed § 39.13(h)(1)(i) would require a DCO to impose risk limits on each clearing member, by customer origin and house origin, in order to prevent a clearing member from carrying positions where the risk exposure of those positions exceeds a threshold set by the DCO relative to the clearing member's financial resources, the DCO's financial resources, or both. The DCO would have reasonable discretion in determining: (A) the method of computing risk exposure; (B) the applicable threshold(s); and (C) the applicable financial resources, provided however, that the ratio of exposure to capital would have to remain the same across all capital levels. The Commission could review any of these determinations and require different methods, thresholds, or financial resources, as appropriate.

Proposed § 39.13(h)(1)(ii) would allow a DCO to permit a clearing member to exceed the threshold(s) applied pursuant to paragraph (h)(1)(i) provided that the DCO required the clearing member to post additional initial margin that the DCO deemed sufficient to appropriately eliminate excessive risk exposure at the clearing member. The Commission could review the amount of additional initial margin and require a different amount, as appropriate.

(ii) Large trader reports.

Proposed § 39.13(h)(2) would require a DCO to obtain from its clearing members, copies of all reports that such clearing members were required to file with the Commission pursuant to part 17 of the Commission's regulations, *i.e.,* large trader reports. A DCO would be required to obtain such reports directly from the relevant reporting market if the reporting market exclusively listed self-cleared contracts, and were therefore required to file such reports on behalf of clearing members, pursuant to § 17.00(i).

Proposed § 39.13(h)(2) would require a DCO to review the large trader reports that it received from its clearing members, or reporting markets, as applicable, on a daily basis to ascertain the risk of the overall portfolio of each large trader. A DCO would be required to review large trader positions for each large trader, across all clearing members carrying an account for the large trader. A DCO would also be required to take additional actions with respect to such clearing members in order to address any risks posed by a large trader, when appropriate. Such actions would include actions specified in proposed § 39.13(h)(6), as discussed in section II.B.2(g)(vi) below.

(iii) Stress tests.

Proposed § 39.13(h)(3) would require a DCO to conduct certain daily and weekly stress tests. The Commission has proposed to define "stress test" in a separate rulemaking, as "a test that compares the impact of a potential price move, change in option volatility, or change in other inputs that affect the value of a position, to the financial resources of a derivatives clearing organization, clearing member, or large trader, to determine the adequacy of such financial resources." [46] The Commission has not proposed a definition of financial resources in this context, although it would be expected to include, at a minimum, margin on deposit, and with respect to a clearing member, its capital.

Proposed § 39.13(h)(3) would require a DCO to conduct certain types of stress tests with respect to certain large traders on a daily basis and with respect to all clearing member accounts and swap portfolios on at least a weekly basis.

Proposed § 39.13(h)(3)(i) would require a DCO to conduct daily stress tests with respect to each large trader who poses significant risk to a clearing member or the DCO in the event of default, including positions at all clearing members carrying accounts for the large trader. The DCO would have reasonable discretion in determining which traders to test and the methodology used to conduct the stress tests. However, the Commission could review the selection of accounts and the methodology and require changes, as appropriate.

Proposed § 39.13(h)(3)(ii) would require a DCO to conduct stress tests, at least once a week with respect to each account held by a clearing member at the DCO, by customer origin and house origin, and each swap portfolio, by beneficial owner, under extreme but plausible market conditions. The DCO would have reasonable discretion in determining the methodology used to conduct these stress tests. However, the Commission may review the methodology and require any appropriate changes. The Commission requests comment regarding whether all clearing member accounts, by origin, and all swap portfolios should be subject to such stress tests on a weekly basis or whether some other time period, such as monthly, would be sufficient to meet prudent risk management standards.

(iv) Portfolio compression.

Proposed § 39.13(h)(4)(i) would require a DCO to offer multilateral portfolio compression exercises, on a regular basis, for its clearing members that clear swaps, to the extent that such exercises are appropriate for those swaps that it clears. The Commission has not specified the frequency with which DCOs must offer multilateral portfolio compression exercises in proposed § 39.13(h)(4)(i), other than to state that they would have to be offered on a regular basis. The Commission requests comment regarding whether such exercises should be offered monthly, quarterly, or another frequency. In addition, the Commission requests comment regarding whether the frequency of such exercises should vary for different categories of swaps.

Under proposed § 39.13(h)(4)(ii), a DCO must require its clearing members to participate in all multilateral portfolio compression exercises offered by the DCO, to the extent that any swap in the applicable portfolio is eligible for inclusion in the exercise, unless including the swap would be reasonably likely to significantly increase the risk exposure of the clearing member. Proposed § 39.13(h)(4)(iii) would permit a DCO to allow clearing members participating in such exercises to set risk tolerance limits for their portfolios, provided that the clearing member could not set such risk tolerances at an unreasonable level or use such risk tolerances to evade the requirements of proposed § 39.13(h)(4).

(v) Clearing members' risk management policies and procedures.

The Commission believes that in order for a DCO to adequately manage its own risks, it must ensure that its clearing members also have adequate risk management policies and procedures. In order to do this, a DCO must have the authority to obtain documents and information from its clearing members regarding such policies and procedures, and must review their implementation on a periodic basis.

Proposed § 39.13(h)(5) would impose several requirements upon DCOs relating to their clearing members' risk management policies and procedures. Specifically, a DCO must adopt rules that: (a) Require its clearing members to maintain current written risk management policies and procedures; (b) ensure that the DCO has the authority to request and obtain information and documents from its

[46] *See* 75 FR at 77585–86 (proposing definitions in § 39.1(b), to be redesignated as § 39.2).

clearing members regarding their risk management policies, procedures, and practices, including, but not limited to, information and documents relating to the liquidity of their financial resources and their settlement procedures; and (c) require its clearing members to make information and documents regarding their risk management policies, procedures, and practices available to the Commission upon the Commission's request. In addition, a DCO would be required to review the risk management policies, procedures, and practices of each of its clearing members on a periodic basis and document such reviews.

Proposed § 39.13(h)(5) does not define how DCOs would have to conduct clearing member risk management reviews, and has not specified a required frequency of such reviews except to state that they would have to be conducted on a periodic basis. The Commission invites comment regarding whether it should require that a DCO must conduct risk reviews of its clearing members on an annual basis or within some other time frame. The Commission also requests comment regarding whether the Commission should require that such reviews be conducted in a particular manner, *e.g.,* whether there must be an on-site visit or whether any particular testing should be required. In addition, the Commission invites comment regarding whether, and to what extent, a DCO should be permitted to vary the method and depth of such reviews based upon the nature, risk profiles, or other regulatory supervision of particular clearing members.

The risk management reviews contemplated by proposed § 39.13(h)(5) would also support DCOs' compliance with Core Principle C and proposed § 39.12, by providing a means for the DCO and the Commission to ensure that clearing members continue to meet participation requirements relating to risk management.

(vi) Additional authority.

Proposed § 39.13(h)(6) would require a DCO to take additional actions with respect to particular clearing members, when appropriate, based on the application of objective and prudent risk management standards. Such actions would include, but would not be limited to: (i) Imposing enhanced capital requirements; (ii) imposing enhanced margin requirements; (iii) imposing position limits; (iv) prohibiting an increase in positions; (v) requiring a reduction of positions; (vi) liquidating or transferring positions; and (vii) suspending or revoking clearing membership. The Commission believes that a DCO should have the authority to take any of the specified actions or other appropriate actions, and should take such actions, when necessary to address risks posed to the DCO by particular clearing members or their customers. However, a DCO would have the discretion to determine when to take additional actions, and what actions to take, based on its exercise of objective and prudent risk management standards.

3. Settlement Procedures

Core Principle E, as amended by the Dodd-Frank Act,[47] requires a DCO to: (a) Complete money settlements on a timely basis, but not less frequently than once each business day; (b) employ money settlement arrangements to eliminate or strictly limit its exposure to settlement bank risks (including credit and liquidity risks from the use of banks to effect money settlements); (c) ensure that money settlements are final when effected; (d) maintain an accurate record of the flow of funds associated with money settlements; (e) possess the ability to comply with the terms and conditions of any permitted netting or offset arrangement with another clearing organization; (f) establish rules that clearly state each obligation of the DCO with respect to physical deliveries; and (g) ensure that it identifies and manages each risk arising from any of its obligations with respect to physical deliveries.[48] The Commission is proposing to adopt § 39.14 to establish requirements that a DCO would have to meet in order to comply with Core Principle E.

Proposed § 39.14(a) would define "settlement" and "settlement bank" for purposes of § 39.14. In particular, "settlement" is defined in proposed § 39.14(a)(1) to include: (i) Payment and receipt of variation margin for futures, options and swap positions; (ii) payment and receipt of option premiums; (iii) deposit and withdrawal of initial margin for futures, options and swap positions; (iv) all payments due in final settlement of futures, options and swap positions on the final settlement date with respect to such positions; and (v) all other cash flows collected from or paid to each clearing member, including but not limited to, payments related to swaps such as coupon amounts. "Settlement bank" is defined in proposed § 39.14(a)(2) as "a bank that maintains an account either for the [DCO] or for any of its clearing members, which is used for the purpose of transferring funds and receiving transfers of funds in connection with settlements with the [DCO]."

(a) Daily settlements.

The daily settlement of financial obligations arising from the addition of new positions and price changes with respect to all open positions is an essential element of the clearing process at a DCO. Proposed § 39.14(b) would require a DCO to effect a settlement with each clearing member at least once each business day, and to have the authority and operational capacity to effect a settlement with each clearing member, on an intraday basis, either routinely, when thresholds specified by the DCO were breached, or in times of extreme market volatility.

Proposed § 39.14(b) would permit DCOs to exercise their discretion regarding whether they would effect routine intraday settlements or whether they would settle positions on an intraday basis only when certain thresholds were breached or in times of extreme market volatility. Moreover, a DCO would have the discretion to establish any relevant thresholds and to define extreme market volatility in the context of the products and portfolios that it clears. These provisions are consistent with international recommendations.[49]

(b) Settlement banks.

A DCO generally requires its clearing members to effect settlement through one of a specified set of settlement banks. In addition, a DCO itself often has a lead, concentration, or central settlement bank.

Proposed § 39.14(c) would set forth three specific requirements in furtherance of the general requirement that DCOs must employ settlement arrangements to eliminate or strictly limit their exposure to settlement bank risks. First, proposed § 39.14(c)(1) would require a DCO to have documented criteria for those banks that it would use, and that it would permit its clearing members to use, as settlement banks, including criteria addressing the capitalization, creditworthiness, access to liquidity, operational reliability, and regulation or supervision of such banks. Second, proposed § 39.14(c)(2) would require a DCO to monitor each approved

[47] Section 5b(c)(2)(E) of the CEA; 7 U.S.C. 7a–1(c)(2)(E) (Core Principle E).

[48] Prior to amendment by the Dodd-Frank Act, Core Principle E provided that [t]he applicant shall have the ability to—

(i) complete settlements on a timely basis under varying circumstances;

(ii) maintain an adequate record of the flow of funds associated with each transaction that the applicant clears; and

(iii) comply with the terms and conditions of any permitted netting or offset arrangements with other clearing organizations.

[49] *See* CPSS–IOSCO Recommendations, pg. 21; EMIR, Article 39, paragraph 3, pg. 46.

settlement bank on an ongoing basis to ensure that it continues to meet the documented criteria. Finally, proposed § 39.14(c)(3) would require a DCO to monitor the full range and concentration of its exposures to its own and its clearing members' settlement banks [50] and assess its own and its clearing members' potential losses and liquidity pressures in the event that the settlement bank with the largest share of settlement activity were to fail. If action were reasonably necessary in order to eliminate or strictly limit exposures to settlement banks, a DCO would be required to: (i) Maintain settlement accounts at additional settlement banks; (ii) approve additional settlement banks for use by its clearing members; (iii) impose concentration limits with respect to its own or its clearing members' settlement banks; and/or (iv) take any other appropriate actions. The determination of whether any such actions were necessary would be left to the discretion of the DCO in the first instance, but such determination would have to be reasonable.

(c) Settlement finality.

Proposed § 39.14(d) would require that a DCO must ensure that settlement fund transfers are irrevocable and unconditional when the DCO's accounts are debited or credited. In addition, the proposed regulation would require that a DCO's legal agreements with its settlement banks would have to state clearly when settlement fund transfers would occur and a DCO would have to routinely confirm that its settlement banks were effecting fund transfers as and when required by those legal agreements.

(d) Recordkeeping.

Proposed § 39.14(e) would incorporate Core Principle E's requirement that a DCO must maintain an accurate record of the flow of funds associated with each settlement.[51]

(e) Netting arrangements.

Proposed § 39.14(f) would incorporate Core Principle E's requirement that a DCO must possess the ability to comply with each term and condition of any permitted netting or offset arrangement with any other clearing organization.[52]

(f) Physical delivery.

Proposed § 39.14(g) would set forth requirements with respect to contracts, agreements, and transactions that are settled by physical transfers of the underlying instruments or commodities. In particular, the proposed regulation would require a DCO to establish rules clearly stating each obligation that the DCO has assumed with respect to physical deliveries, including whether it has an obligation to make or receive delivery of a physical instrument or commodity, or whether it indemnifies clearing members for losses incurred in the delivery process, and to ensure that the risks of each such obligation are identified and managed. Proposed § 39.14(g) would not require DCOs to assume any particular obligations in connection with physical deliveries, in recognition of the fact that DCOs would need to determine what, if any, obligations to assume on a product-specific basis, in the exercise of prudent risk management standards.

4. Treatment of Funds

Core Principle F, as amended by the Dodd-Frank Act,[53] requires a DCO to:(a) Establish standards and procedures that are designed to protect and ensure the safety of its clearing members' funds and assets; (b) hold such funds and assets in a manner by which to minimize the risk of loss or of delay in the DCO's access to the assets and funds; and (c) only invest such funds and assets in instruments with minimal credit, market, and liquidity risks.[54] The Commission is proposing to adopt § 39.15 to establish requirements that a DCO would have to meet in order to comply with Core Principle F.

(a) Required standards and procedures.

Proposed § 39.15(a) would require a DCO to establish standards and procedures that are designed to protect and ensure the safety of funds and assets belonging to clearing members and their customers.[55]

(b) Segregation of funds and assets.

Proposed § 39.15(b)(1) would require a DCO to comply with the segregation requirements of section 4d of the CEA and Commission regulations thereunder, or any other applicable Commission regulation or order requiring that customer funds and assets be segregated, set aside, or held in a separate account. The Commission has included this language because it is an essential element of the standards and procedures described in proposed § 39.15(a). However, proposed § 39.15(b)(1) would not impose any new requirements on DCOs that are in addition to those required by section 4d of the CEA and those that are currently required, or may in the future be required, by applicable Commission regulations or orders.

Proposed § 39.15(b)(2)(i) would permit a DCO to commingle, and a DCO to permit clearing member FCMs to commingle, customer positions in futures, options on futures, and swaps, and any money, securities, or property received to margin, guarantee, or secure such positions, in an account subject to the requirements of section 4d(f) of the CEA (cleared swap account), pursuant to DCO rules that have been approved by the Commission under § 40.5 of the Commission's regulations. The proposed regulation would establish minimum informational requirements for such rule submissions, consistent with the informational requirements the Commission has previously imposed upon petitioners requesting orders under section 4d of the CEA.

The rule filing would have to be submitted electronically to the Commission, in the form and manner required by the Commission, and would have to include, at a minimum, the following: (A) An identification of the futures, options on futures, and swaps that would be commingled, including contract specifications or the criteria that would be used to define eligible futures, options on futures, and swaps; (B) an analysis of the risk characteristics of the eligible products; (C) a description of whether the swaps would be executed bilaterally and/or executed on a DCM and/or a SEF; (D) an analysis of the liquidity of the respective markets for the futures, options on futures, and swaps that would be commingled, the ability of clearing members and the DCO to offset or mitigate the risks of such products in a timely manner, without compromising the financial integrity of the account, and, as appropriate, proposed means for addressing insufficient liquidity; (E) an analysis of the availability of reliable prices for each of the eligible products; (F) a description of the financial, operational, and managerial standards or requirements for clearing members that would be permitted to commingle the eligible products; (G) a description of the systems and procedures that would be used by the DCO to oversee such clearing members' risk management of the commingled positions; (H) a

[50] A DCO may have multiple exposures to a settlement bank, *e.g.,* if the bank is also a clearing member or extends a credit facility funding arrangement to the DCO.

[51] Section 5b(c)(2)(E)(iv) of the CEA; 7 U.S.C. 7a–1(c)(2)(E)(iv).

[52] Section 5b(c)(2)(E)(v) of the CEA; 7 U.S.C. 7a–1(c)(2)(E)(v).

[53] Section 5b(c)(2)(F) of the CEA; 7 U.S.C. 7a–1(c)(2)(F) (Core Principle F).

[54] Prior to amendment by the Dodd-Frank Act, Core Principle F provided that "[t]he applicant shall have standards and procedures designed to protect and ensure the safety of member and participant funds."

[55] Such "assets" would include any securities or property that clearing members deposit with a DCO in order to satisfy initial margin obligations, which are also sometimes referred to as "collateral." Proposed § 39.15 uses the term "assets" rather than "securities or property" or "collateral" in order to be consistent with the statutory language.

description of the financial resources of the DCO, including the composition and availability of a guaranty fund with respect to the commingled products; (I) a description and analysis of the margin methodology that would be applied to the commingled products, including any margin reduction applied to correlated positions, and any applicable margin rules with respect to both clearing members and customers;[56] (J) an analysis of the ability of the DCO to manage a potential default with respect to any of the commingled products; (K) a discussion of the procedures that the DCO would follow if a clearing member defaulted, and the procedures that a clearing member would follow if a customer defaulted, with respect to any of the commingled products; and (L) a description of the arrangements for obtaining daily position data from each beneficial owner of the commingled products.

Proposed § 39.15(b)(2)(ii) addresses situations where customer positions in futures, options on futures, and cleared swaps could be carried in a futures account subject to section 4d(a) of the CEA. In recent years, the Commission, in its discretion, has issued orders permitting cleared swaps to be carried in a futures account, on a case-by-case basis.[57] Proposed § 39.15(b)(2)(ii) would incorporate the informational requirements of proposed § 39.15(b)(2)(i), but would still require that the Commission issue an order granting permission to commingle customer positions in futures, options on futures, and swaps in a futures account.

Proposed § 39.15(b)(2)(iii)(A) would provide that the Commission may request additional information in support of a rule submission and it may approve the rules in accordance with § 40.5.[58] Proposed § 39.15(b)(2)(iii)(B) would provide that the Commission may request additional information in support of a petition and it may issue an order under section 4d of the CEA in its discretion.

In the case of a rule approval under § 39.15(b)(2)(i), as well as the issuance of an order under § 39.15(b)(2)(ii), the Commission would take action pursuant to section 4d of the CEA (permitting commingling) and section 4(c) of the CEA (exempting the DCO and clearing members from the requirement to hold customer positions in a particular account, as applicable, 4d(a) or 4d(f)).[59]

The Commission requests comment on whether it should take the same approach (rule submission or petition for an order) with respect to the futures account and the cleared swap account and, if so, what that approach should be. In addition, the Commission requests comment on whether the enumerated informational requirements fully capture the relevant considerations for making a determination on either rule approval or the granting of an order, and whether the Commission's analysis should take into consideration the type of account in which the positions would be carried, the particular type of products that would be involved, or the financial resources of the clearing members that would hold such accounts. The Commission further requests comment on what, if any, additional or heightened requirements should be imposed to manage the increased risks introduced to a futures account that also holds cleared swaps.

(c) Holding of funds and assets.

Proposed § 39.15(c) would require that a DCO must hold funds and assets belonging to clearing members and their customers in a manner that minimizes the risk of loss or of delay in the DCO's access to those funds and assets. In furtherance of this objective, the Commission has proposed certain requirements addressing types of assets that a DCO may accept, the valuation of such assets, applicable haircuts, concentration limits, and requirements that would apply if assets were pledged to a DCO but were held in the name of a clearing member, as described below.

(i) Types of assets.

Proposed § 39.15(c)(1) would require a DCO to limit the assets it accepts as initial margin to those that have minimal credit, market, and liquidity risks. The proposed regulation would also state that a DCO may not accept letters of credit as initial margin. The Commission has not specified the assets that a DCO may accept, and with the exception of letters of credit, it has not specified the assets that a DCO may not accept. In general, proposed § 39.15(c)(1) would set forth the criteria of minimal credit, market, and liquidity risks and would leave it to the discretion of each DCO to determine which assets the DCO would accept, subject to their meeting those criteria. The Commission has proposed to prohibit the acceptance of letters of credit because they are unfunded financial resources with respect to which funds might be unavailable when most needed. The Commission expects that DCOs would continue their current practice of re-evaluating the types of assets that they would accept as initial margin as necessitated by changes in market conditions that could affect the credit, market, and liquidity risks of those assets.

(ii) Valuation.

Proposed § 39.15(c)(2) would require a DCO to use prudent valuation practices to value assets posted as initial margin on a daily basis. The Commission has not specified what such valuation practices should entail, as the nature of the valuations would depend on the nature of the particular assets. However, whatever method would be used to determine the value of margin assets, it is crucial that such assets be valued daily, because a DCO cannot evaluate the adequacy of margin coverage on a daily basis without knowing the value of the assets that are components of the margin on deposit. Such daily valuation of margin assets is currently the standard practice of DCOs.

(iii) Haircuts.

Proposed § 39.15(c)(3) would require a DCO to apply appropriate reductions in value to reflect the market and credit risk of the assets that it accepts in satisfaction of initial margin obligations. Such reductions are known as haircuts, and DCOs currently apply haircuts to the margin assets that they accept as initial margin. Haircuts are designed to mitigate the potential future exposure that could result from potential changes in the value of particular assets.

Haircut levels would be dependent on the nature of the particular assets. DCOs would be required to calculate their haircuts taking into account stressed market conditions. Incorporating stressed market conditions into the calculation of haircuts can limit the effects of procyclicality, which refers to changes that are positively correlated with business or credit cycle fluctuations and that may cause or exacerbate financial instability.[60] In

[56] *See supra* section II.B.2.f.ii of this notice, discussing the minimum liquidation time of five business days for margining cleared swaps that are not executed on a DCM.

[57] *See supra* n.38.

[58] Rules submitted for prior approval would be approved unless the rule is inconsistent with the CEA or the Commission's regulations. *See* section 5c(c)(5) of the CEA; 7 U.S.C. 7a–2(c)(5); and 75 FR at 67295.

[59] 7 U.S.C. 6(c). *See infra* section IV. (further discussing the 4(c) exemption and requesting comment).

[60] While changes in collateral values tend to be procyclical, collateral arrangements can increase procyclicality if haircut levels fall during periods of low-market stress and increase during periods of high-market stress. For example, in a stressed market, if a DCO required the posting of additional collateral due to both the decline of asset prices and an increase in haircut levels, it could exacerbate market stress and drive down asset prices further, resulting in additional collateral requirements. This cycle could exert further downward pressure on asset prices in already stressed markets. To limit the effects of this procyclicality, a DCO should establish stable and conservative haircuts that are calibrated to include periods of stressed market conditions.

addition, the proposed regulation would require a DCO to evaluate the appropriateness of its haircuts on at least a quarterly basis.

(iv) Concentration limits.

Proposed § 39.15(c)(4) would require a DCO to apply appropriate limitations on the concentration of assets posted as initial margin, as necessary, in order to ensure the DCO's ability to liquidate those assets quickly with minimal adverse price effects. Any concentration limits would be set by the DCO, in its discretion, depending on the nature of the assets. The proposed regulation would require a DCO to evaluate the appropriateness of its concentration limits, on at least a monthly basis.

(v) Pledged assets.

Some DCOs permit their clearing members to pledge assets for initial margin while retaining those assets in accounts in the names of the pledging clearing members. Proposed § 39.15(c)(5) would require that if such pledged assets were held in an account in the name of a clearing member, the DCO would have to ensure that the assets were unencumbered and that the pledge had been validly created and validly perfected in the relevant jurisdiction, in order to ensure that the DCO had immediate access to those assets.

(d) Permissible investments.

Proposed § 39.15(d) would require that clearing members' funds and assets that are invested by a DCO must be held in instruments with minimal credit, market, and liquidity risks.[61] The proposed regulation further adds that any investment of customer funds or assets by a DCO would have to comply with § 1.25 of the Commission's regulations, which itself is designed to ensure that such investments would be subject to minimal credit, market, and liquidity risks. Moreover, the proposed regulation would apply the limitations contained in § 1.25 to all customer funds and assets, whether they were the funds and assets of futures and options customers subject to the segregation requirements of section 4d(a) of the CEA, or the funds and assets of swaps customers subject to the segregation requirements of section 4d(f) of the CEA.

The proposed regulation does not enumerate the specific instruments in which DCOs may invest clearing members' own funds and assets, leaving it to the discretion of each DCO to determine which instruments have minimal credit, market, and liquidity risks. As regards those assets that DCOs would accept as initial margin, the Commission expects that DCOs would continue their current practice of re-evaluating the instruments in which they would invest clearing members' own funds and assets, as necessitated by changes in market conditions that could affect the credit, market, and liquidity risks of those instruments.

5. Default Rules and Procedures

Core Principle G, as amended by the Dodd-Frank Act,[62] requires each DCO to have rules and procedures designed to allow for the efficient, fair, and safe management of events during which clearing members become insolvent or otherwise default on their obligations to the DCO. In addition, Core Principle G requires each DCO to clearly state its default procedures, make its default rules publicly available, and ensure that it may take timely action to contain losses and liquidity pressures and to continue meeting its obligations.[63] The Commission is proposing to adopt § 39.16 to establish requirements that a DCO would have to meet in order to comply with Core Principle G.

(a) General.

It is essential that DCOs have clearly defined and effective default management rules and procedures in order to protect the defaulting clearing members' customers, non-defaulting clearing members, and the DCO, to the extent possible. Proposed § 39.16(a) would require DCOs to adopt rules and procedures designed to allow for the efficient, fair, and safe management of events during which clearing members become insolvent or default on the obligations of such clearing members to the DCO.[64] Existing DCOs have rules and procedures to address possible defaults.

(b) Default management plan.

Proposed § 39.16(b) would require a DCO to maintain a current written default management plan that delineates the roles and responsibilities of its Board of Directors, its Risk Management Committee, any other committee that has responsibilities for default management, and the DCO's management, in addressing a default, including any necessary coordination with, or notification of, other entities and regulators. The proposed regulation would also require the default management plan to address any differences in procedures with respect to highly liquid contracts (such as certain futures) and less liquid contracts (such as certain swaps). In addition, proposed § 39.16(b) would require a DCO to conduct and document a test of its default management plan on at least an annual basis.

(c) Default procedures.

Proposed § 39.16(c)(1) would require a DCO to adopt procedures that would permit the DCO to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a default on the obligations of a clearing member to the DCO.[65]

Proposed § 39.16(c)(2) would require a DCO to include certain identified procedures in its default rules. In particular, proposed § 39.16(c)(2)(i) would require a DCO to set forth its definition of a default. Proposed § 39.16(c)(2)(ii) would require a DCO to set forth the actions that it is able to take upon a default, which must include the prompt transfer, liquidation, or hedging of the customer or proprietary positions of the defaulting clearing member, as applicable. Proposed § 39.16(c)(2)(ii) would further state that such procedures could also include, in the DCO's discretion, the auctioning or allocation of such positions to other clearing members. Proposed § 39.16(c)(2)(iii) would require a DCO to include in its default rules any obligations that the DCO imposed on its clearing members to participate in auctions, or to accept allocations, of a defaulting clearing member's positions, and specifically would provide that any allocation would have to be proportional to the size of the participating or accepting clearing member's positions at the DCO. For example, certain DCO rules currently address the DCO's authority to auction a defaulting clearing member's

[61] IOSCO Recommendation 7 (custody and investment risks) also states, in part, that "[a]ssets invested by a CCP should be held in instruments with minimal credit, market, and liquidity risks." (CPSS–IOSCO Recommendations, pg. 31).

[62] Section 5b(c)(2)(G) of the CEA; 7 U.S.C. 7a–1(c)(2)(G) (Core Principle G).

[63] Prior to amendment by the Dodd-Frank Act, Core Principle G provided that "[t]he applicant shall have rules and procedures designed to allow for efficient, fair, and safe management of events when members or participants become insolvent or otherwise default on their obligations to the derivatives clearing organization."

[64] Core Principle G specifically refers to events during which clearing members "(I) become insolvent; or (II) otherwise default * * *." However, it is possible that a clearing member could become insolvent and not default on its obligations to the DCO. For example, the insolvency could be a consequence of a clearing member's meeting all such obligations. Nevertheless, the Commission believes that a clearing member should be required to follow certain procedures, beginning with notifying the DCO, if it becomes subject to a bankruptcy petition, receivership proceeding, or the equivalent, and such proposed requirements are contained in proposed § 39.16(d), discussed *infra* in section II.B.5.d.

[65] Similarly, IOSCO Recommendation 6 (Default procedures) states that "[a] CCP's default procedures should be clearly stated, and they should ensure that the CCP can take timely action to contain losses and liquidity pressures and to continue meeting its obligations." (CPSS–IOSCO Recommendations, pg. 27).

swaps to other clearing members that participate in the market for that category of swaps.

Proposed § 39.16(c)(2)(iv) would require that a DCO's default rules address the sequence in which the funds and assets of the defaulting clearing member and the financial resources maintained by the DCO would be applied in the event of a default. The proposed regulation would not specify the sequence in which a DCO would be required to apply its own resources or those of the defaulting clearing member, but it would set forth two related requirements.

First, proposed § 39.16(c)(2)(v) would require that a DCO's default rules contain a provision that customer margin posted by a defaulting clearing member could not be applied in the event of a proprietary default. This is consistent with the segregation requirements of section 4d of the CEA and § 1.20 of the Commission's regulations.

Second, proposed § 39.16(c)(2)(vi) would require that a DCO's default rules contain a provision that proprietary margins posted by a defaulting clearing member would have to be applied in the event of a customer default, if the relevant customer margin were insufficient to cover the shortfall. This is consistent with § 190.08(a)(ii)(J), which defines customer property to include the trading accounts of an FCM, to the extent that other enumerated customer property is insufficient to satisfy all claims of public customers in the bankruptcy of the FCM.

Proposed § 39.16(c)(3) would incorporate the Core Principle G requirement that a DCO must make its default rules publicly available,[66] and it cross-references proposed § 39.21, which has been proposed in a separate rulemaking and which also addresses this requirement.[67]

(d) Insolvency of a clearing member.

Proposed § 39.16(d) would set forth specific procedures that a DCO would have to require its clearing members to follow, and that a DCO itself would have to follow, if a clearing member became the subject of a bankruptcy petition (either voluntary or involuntary), a receivership proceeding, or an equivalent proceeding, *e.g.,* a foreign liquidation proceeding. The Commission believes that such procedures would be necessary in order to provide for "the efficient, fair, and safe management of events" when a clearing member becomes insolvent, as required by Core Principle G.

Proposed § 39.16(d)(1) would require a DCO to adopt rules that would require a clearing member to provide prompt notice to the DCO of such a petition or proceeding. Proposed § 39.13(d)(2) would require a DCO to review the clearing member's continuing eligibility for clearing membership upon receiving such notice. Proposed § 39.16(d)(3) would require a DCO to take any appropriate action, in its discretion, with respect to the clearing member or its positions, including but not limited to liquidation or transfer of positions, and suspension or revocation of clearing membership. Proposed § 39.16(d)(2) does not outline specific review procedures, and § 39.16(d)(3) would leave it to the discretion of the DCO to determine whether any particular action were appropriate with respect to the clearing member.

6. System Safeguards

Core Principle I, as amended by the Dodd-Frank Act,[68] requires each DCO to establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and automated systems that are reliable, secure, and have adequate scalable capacity. Core Principle I also requires each DCO to establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of operations of, and the fulfillment of each obligation and responsibility of, the DCO. Finally, Core Principle I requires each DCO to periodically conduct tests to verify that its backup resources are sufficient to ensure daily processing, clearing, and settlement.[69] The Commission is proposing to adopt § 39.18 to establish requirements that a DCO would have to meet in order to comply with Core Principle I.

(a) General.

Proposed § 39.18 would codify the requirements of Core Principle I and would establish additional standards for a DCO's business continuity and disaster recovery procedures. On July 14, 2010,[70] the Commission published proposed regulations regarding business continuity and disaster recovery applicable to DCOs and DCMs. After consideration of the provisions of the Dodd-Frank Act, the Commission has determined to re-propose the provisions concerning DCOs. The Commission appreciates the comments made with respect to those earlier proposed regulations, and has taken them into account in developing the proposed regulations described below.

(i) Definitions.

Proposed § 39.18(a) would set forth relevant definitions for the system safeguards provisions applicable to DCOs set forth in § 39.18 and the modified system safeguards provisions applicable to SIDCOs set forth in § 39.30, including "recovery time objective" (the time period, after disruption, within which a DCO should be able to achieve recovery and resumption of clearing activities) (RTO), "relevant area" (the geographic area within which a DCO has necessary resources, as well as adjacent communities), and "wide-scale disruption" (an event that causes severe disruption of critical infrastructure, or an evacuation or unavailability of the population, in a relevant area).[71]

(ii) Program of risk analysis.

Because automated systems play a central and critical role in today's electronic financial market environment, oversight of core principle compliance by DCOs with respect to automated systems is an essential part of effective clearing oversight. Sophisticated computer systems are crucial to a DCO's ability to meet its obligations and responsibilities. Safeguarding the reliability, security, and capacity of such systems is also essential to mitigation of systemic risk for the nation's financial sector as a whole.

Proposed § 39.18(b) would require that a DCO maintain a program of risk analysis and oversight with respect to its operations and automated systems to identify and minimize sources of operational risk, establish and maintain resources that allow for the fulfillment of the DCO's obligations and responsibilities in light of those risks, and verify that those resources are

[66] *See* section 5b(c)(2)(G)(ii)(II) of the CEA; 7 U.S.C. 7a–1(c)(2)(G)(ii)(II).

[67] *See* 75 FR at 78197.

[68] Section 5b(c)(2)(I) of the CEA; 7 U.S.C. 7a–1(c)(2)(I) (Core Principle I).

[69] Prior to amendment by the Dodd-Frank Act, Core Principle I provided that

[t]he applicant shall demonstrate that the applicant (i) has established and will maintain a program of oversight and risk analysis to ensure that the automated systems of the applicant function properly and have adequate capacity and security; and (ii) has established and will maintain emergency procedures, and a plan for disaster recovery, and will periodically test backup facilities sufficient to ensure daily processing, clearing, and settlement of transactions.

[70] *See* 75 FR 42633 (July 22, 2010) (July Proposal).

[71] The Commission may consider, in a future rulemaking, placing an expanded version of these definitions (to include, *e.g.,* recovery time objectives with respect to DCMs and other registered entities) in part 1, and, as appropriate, incorporating those definitions by reference in part 39 of its regulations.

adequate to ensure daily processing, clearing, and settlement.

(iii) Elements of program.

Proposed § 39.18(c) would require that the program of risk analysis and oversight address each of six categories: information security, business continuity and disaster recovery (BC–DR), capacity and performance planning, systems operations, systems development and quality assurance, and physical security and environmental controls.

(iv) Standards for program.

DCO compliance with generally accepted standards and best practices with respect to the development, operation, reliability, security, and capacity of automated systems can reduce the frequency and severity of automated system security breaches or functional failures, thereby augmenting efforts to mitigate systemic risk. Accordingly, proposed § 39.18(d) would require that a DCO follow generally accepted standards and industry best practices with respect to the development, operation, reliability, security, and capacity of automated systems.

(v) Business continuity and disaster recovery.

Proposed § 39.18 (e) would require that a DCO maintain a BC–DR plan, procedures, and physical (*e.g.,* buildings, generators, and related physical infrastructure), technological (*e.g.,* computers, replacement parts, and software), and personnel resources (*e.g.,* trained employees or other committed human resources) sufficient to enable timely recovery and resumption of operations, and fulfillment of responsibilities (*e.g.,* daily processing, clearing and settlement of transactions cleared) of the DCO following a disruption. The required recovery time objective would be no later than the next business day. As noted below, proposed § 39.30 would set a more stringent RTO for SIDCOs.

(vi) Location of resources; outsourcing.

Proposed § 39.18(f) would clarify that a DCO could maintain the resources required pursuant to § 39.18(e) on its own or through an outsourcing arrangement with another DCO or other service provider. Proposed § 39.18(f)(i) would provide that an outsourcing DCO would retain complete liability for any failure to meet the specified responsibilities, and must employ personnel with the expertise necessary to enable the DCO to supervise the service provider. Proposed § 39.18(f)(ii) would require that testing include all of the DCO's own and outsourced resources, and verify that such resources will work effectively together.

In response to the July Proposal, a number of commenters expressed concern that it was impractical for DCOs to have all key job functions fully duplicated. The proposed regulation clarifies that a DCO may maintain such functions on its own (including, *e.g.,* through cross-training) or through written outsourcing arrangements, including with another DCO.

The Commission seeks comment on whether these provisions governing outsourcing are appropriate, and whether the clarifications concerning the retention of responsibility and the necessity for integrated testing should be expanded to cover all functions of a DCO.

(vii) Notification of Commission staff; recordkeeping.

Proposed § 39.18(g) would require each DCO to notify Commission staff of various exceptional events, such as technology malfunctions, system security-related incidents, or targeted threats. The proposed regulation attempts to achieve a reasonable balance, requiring notification only of such events that materially impair, or create a significant likelihood of material impairment, of automated system operation, reliability, security, or capacity. The proposed regulation would also require notification of any activation of the DCO's BC–DR plan.

Proposed § 39.18(h) would require a DCO to give Commission staff timely advance notice of planned changes, either changes to automated systems that are likely to have a significant impact on such systems, or changes to the DCO's program of risk analysis and oversight.

Proposed § 39.18(i) would require a DCO to maintain current copies of its business continuity plan and other emergency procedures, its assessments of its operational risks, and records of testing protocols and results; to provide copies of such records to Commission staff pursuant to § 1.31; and to provide other documents requested by Commission staff for the purpose of maintaining a current profile of the DCO's automated systems.

(viii) Testing.

Proposed § 39.18(j) would require a DCO to conduct regular, periodic, objective testing and review of its automated systems to ensure that they are reliable, secure, and have adequate scalable capacity, and of its BC–DR capabilities, using testing protocols adequate to ensure that the DCO's backup resources are sufficient to meet the RTO specified in § 39.18(e). The testing would be required to be conducted by qualified, independent professionals. While such professionals could include employees of the DCO, they could not be persons responsible for development or operation of the systems or capabilities being tested.

Reports setting forth the protocols for, and results of, such tests would be required to be communicated to, and reviewed by, senior management of the DCO. Because tests that result in few or no exceptions raise the possibility of an insufficiently rigorous protocol, such results would be required to be subject to more searching review.

(ix) Coordination of business continuity and disaster recovery plans.

Proposed § 39.18(k) would require each DCO, to the extent practicable, to coordinate its BC–DR plan with those of its clearing members, to initiate coordinated testing of such plans, and to take into account in its own BC–DR plan the BC–DR plans of its providers of essential services, including telecommunications, power, and water.

(b) SIDCOs.

(i) Determining which DCOs will be subject to enhanced BC–DR obligations.

As DCOs, SIDCOs would remain subject to the requirements of Title VII and the regulations thereunder, except to the extent the Commission promulgates higher standards pursuant to Title VIII of the Dodd-Frank Act.

Unlike the July Proposal,[72] these proposed regulations do not provide a means for the Commission to determine which DCOs are "core clearing and settlement organizations." In light of the provisions of section 804 of the Dodd-Frank Act for designation of systemically important clearing or settlement activities, the Commission proposes to avoid duplication by applying the enhanced BC–DR obligations described below to SIDCOs.

(ii) Recovery time objective.

Proposed § 39.30(a) would set an RTO for SIDCOs of recovery no later than two hours following the disruption, for any disruption including a wide-scale disruption,[73] in light of the important

[72] *See id.* at 42639 (proposed appendix E to part 40—Guidance on Critical Financial Market and Core Clearing and Settlement Organization Determination).

[73] *See Interagency Paper on Sound Practices To Strengthen the Resilience of the U.S. Financial System,* 68 FR 17809, 17812 (Apr. 11, 2003) (White Paper) which states

"core clearing and settlement organizations are necessary to the completion of most transactions in critical markets; accordingly, they must recover and resume their critical functions in order for other market participants to process pending transactions and complete large-value payments. It also is reasonable to assume that there will be firms that play significant roles and other market participants in locations not affected by a particular disruption

Continued

role that SIDCOs play in the financial system. The term "wide-scale disruption" is defined in proposed § 39.18(a).

(iii) Geographic diversity.

Because of the importance of SIDCOs to the financial system, and the fact that a wide-scale disruption may cause the physical or technological resources that are located within the relevant area, or personnel who live or work within the relevant area, to be temporarily or permanently unavailable, proposed § 39.30(b) would require each SIDCO to maintain geographic dispersal of physical and technological resources and personnel.

Physical and technological resources must, pursuant to proposed § 39.30(b)(1), be located outside the relevant area of the infrastructure the entity normally relies upon to conduct activities necessary to the clearance and settlement of existing and new contracts, and the SIDCO could not rely on the same critical transportation, telecommunications, power, water, or other critical infrastructure components the entity normally relies upon for such activities. Moreover, proposed § 39.30(b)(2) would require personnel, sufficient to enable the SIDCO to meet the recovery time objective after interruption of normal clearing by a wide-scale disruption affecting the relevant area, who live and work outside that relevant area.

While these proposed requirements would likely lead to a considerable expense, the Commission believes that the systemic importance of SIDCOs carries with it a responsibility to be reliably available on a near-continuous basis, to fulfill their obligations. Moreover, to provide an opportunity to meet this responsibility in a flexible manner, proposed § 39.30(b)(3) would make it explicit that the outsourcing provisions of proposed § 39.18(f) would apply to these resource requirements.

(iv) Testing.

Proposed § 39.30(c) would require each SIDCO to conduct regular, periodic tests of its business continuity and disaster recovery plans and resources and its capacity to achieve the required recovery time objective in the event of a wide-scale disruption, and would state that the provisions of proposed § 39.18(j), concerning testing by DCOs, would apply. Moreover, with respect to outsourcing, proposed § 39.18(f)(2)(ii) would provide that the testing referenced in proposed § 39.30(c) "shall include all [of the DCO's] own and outsourced resources, and shall verify that all such resources will work effectively together."

(v) Effective date.

A number of commenters on the July Proposal suggested that the establishment of geographically diverse capabilities would require an extended implementation period, such as 24 months. The Commission observes with approval, however, that a number of potential SIDCOs already have geographic dispersal of certain resources, and/or are already working to achieving such dispersal. Accordingly, the Commission proposes an effective date for the SIDCO requirements of the later of one year from the effective date of these regulations, or July 30, 2012. Moreover, § 39.30(d) provides that proposed § 39.30 will apply to a DCO no earlier than one year after such DCO is designated as systemically important.

7. Special Enforcement Authority Over SIDCOs

Under section 807(c) of the Dodd-Frank Act, for purposes of enforcing the provisions of Title VIII, a SIDCO is subject to, and the Commission has authority under the provisions of subsections (b) through (n) of section 8 of, the Federal Deposit Insurance Act[74] in the same manner and to the same extent as if the SIDCO were an insured depository institution and the Commission were the appropriate Federal banking agency for such insured depository institution. This special authority is codified in proposed § 39.31.

C. Additional Amendments

1. Technical Amendments To Reorganize Part 39

The Commission is proposing to reorganize part 39 into three subparts. Subpart A would contain general provisions applicable to all DCOs including definitions, procedures for DCO registration, and procedures for implementation of DCO rules and clearing new products. Subpart B would contain the regulations that codify and implement the DCO core principles. The regulations in subpart B would apply to all DCOs except to the extent that a DCO is a SIDCO and there are superseding provisions in subpart C. Subpart C would contain regulations that apply only to SIDCOs. As proposed, for purposes of clarity, each subpart would have an introductory section stating the scope of the subpart.[75]

The Commission is proposing to amend § 39.1 to update the citation to the definition of the term "derivatives clearing organization" and to restate the scope of part 39 to reflect the reorganization of part 39 into subparts A, B, and C.

The Commission is additionally proposing to remove § 39.2, which exempts DCOs from all Commission regulations except those explicitly enumerated in the exemption.[76] The Commission believes that this exemption is inconsistent with the regulatory approach established by the Dodd-Frank Act. Moreover, a preliminary review indicates that by eliminating the exemption, DCOs would be subject to only one additional regulation of significance, § 1.49 (denomination of customer funds and location of depositories).[77] Section 1.49 was promulgated after § 39.2 was adopted. It is noteworthy that, notwithstanding § 39.2, the Commission and the industry have proceeded as if the requirements of § 1.49 applied to DCOs. The absence of a reference in § 39.2 to § 1.49 in the exemption was an oversight. This situation points out the unintended consequences of attempting to carve out "reverse" exemptions in this manner, and the Commission believes it is a better regulatory policy to amend the terms of inapplicable regulations or rescind them, as appropriate, rather than attempt to maintain an up-to-date list of applicable regulations.

that will need to clear and settle pending transactions in critical markets. Therefore, core clearing and settlement organizations should plan both to recover and resume their processing and other activities that support critical markets. In light of the large volume and value of transactions/payments that are cleared and settled on a daily basis, failure to complete the clearing and settlement of pending transactions within the business day could create systemic liquidity dislocations, as well as exacerbate credit and market risk for critical markets. Therefore, core clearing and settlement organizations should develop the capacity to recover and resume clearing and settlement activities within the business day on which the disruption occurs with the overall goal of achieving recovery and resumption within two hours after an event"

[74] 12 U.S.C. 1818.

[75] *See* proposed subpart A, § 39.1; proposed subpart B, § 39.9; and proposed subpart C, § 39.28.

[76] Section 39.2 provides, in relevant part, as follows:

A derivatives clearing organization and the clearing of agreements, contracts and transactions on a derivatives clearing organization are exempt from all Commission regulations except for the requirements of this part 39, §§ 1.3, 1.12(f)(1), 1.20, 1.24, 1.25, 1.26, 1.27, 1.29, 1.31, 1.36, 1.38(b), part 40 and part 190 of this chapter, and as applicable to the agreement, contract, or transaction cleared, parts 15 through 18 of this chapter.

[77] The other provisions relate to governance and conflicts of interest issues, and may be superseded by pending rules. *See* § 1.59 (activities of self-regulatory organization employees, governing board members, committee members, and consultants); § 1.63 (service on self-regulatory organization governing boards or committees by persons with disciplinary histories); and § 1.69 (voting by interested members of self-regulatory organization governing boards and various committees).

In place of the exemption, the Commission proposes to insert the definitions proposed as § 39.1(b) in an earlier proposed rulemaking.[78] Section 39.1(a), as proposed in the earlier rulemaking, would be redesignated as § 39.1.[79]

2. Supplemental Provisions for Proposed § 39.19

The Commission recently proposed a new § 39.19(c) which would require certain reports to be made by a DCO to the Commission.[80] Where the primary reporting requirement would be specified elsewhere in the Commission's regulations, the Commission intends to cross-reference these requirements in § 39.19. The following are recently proposed reporting requirements for which the Commission proposes to add a cross-reference in proposed § 39.19:

(1) The Commission recently proposed a new § 39.24(b)(4) which would require each DCO to collect and verify certain information related to governance fitness standards and provide that information to the Commission on an annual basis.[81] By this notice, the Commission is proposing a new § 39.19(c)(3)(iii)[82] under which a DCO would be required to satisfy the annual reporting requirements of § 39.24(b)(4). The Commission also is proposing to amend proposed § 39.24(b)(4) to require the report to be submitted in accordance with the requirements of proposed § 39.19(c)(3)(iv) (which would require the report to be filed not more than 90 days after the end of the DCO's fiscal year).

(2) The Commission recently proposed a new § 39.25(b) under which a DCO would be required to submit a report to the Commission in the event that the Board of Directors of a DCO rejects a recommendation or supersedes an action of the Risk Management Committee, or the Risk Management Committee rejects a recommendation or supersedes an action of its subcommittee.[83] The report would have to include the following details: (i) The recommendation or action of the Risk Management Committee (or subcommittee thereof); (ii) the rationale for such recommendation or action; (iii) the rationale of the Board of Directors (or the Risk Management Committee, if applicable) for rejecting such recommendation or superseding such action; and (iv) the course of action that the Board of Directors (or the Risk Management Committee, if applicable) decided to take contrary to such recommendation or action. By this notice, the Commission is proposing a new § 39.19(c)(4)(xvi) under which a DCO would be required to report to the Commission as required by § 39.25(b). The Commission also is proposing to amend proposed § 39.25(b) to require the report to be submitted to the Commission within 30 days of such a rejection or supersession.

(3) The Commission also recently proposed a new § 40.9(b)(1)(iii) under which a DCO (as well as other registered entities) would have to submit to the Commission, within 30 days after the election of its Board of Directors, certain information regarding the Board of Directors.[84] By this notice, the Commission is proposing a new § 39.19(c)(4)(xvii) under which a DCO would have to submit to the Commission a report in accordance with the requirements of proposed § 40.9(b)(1)(iii).

(4) In this notice, the Commission is proposing that a DCO notify staff of the Division of Clearing and Intermediary Oversight of certain exceptional events and certain planned changes related to system safeguards (Core Principle I).[85] The Commission is proposing a new § 39.19(c)(4)(xviii) under which a DCO would be required to notify staff of the Division of Clearing and Intermediary Oversight of exceptional events related to system safeguards in accordance with proposed § 39.18(g) and of planned changes related to system safeguards in accordance with proposed § 39.18(h).

3. Technical Amendments to Proposed § 39.21

The Commission recently proposed a new § 39.24(a)(2) which would require each DCO to make available to the public and to the relevant authorities, including the Commission, a description of the manner in which its governance arrangements permit the consideration of the views of its owners, whether voting or non-voting, and its participants, including, without limitation, clearing members and customers.[86] The Commission also recently proposed § 40.9(d) which would require a DCO (as well as other registered entities) to, at a minimum, make certain information available to the public and relevant authorities, including the Commission.[87]

The Commission also recently proposed a new § 39.21(c) which lists certain information a DCO would be required to disclose publicly and to the Commission.[88] By this notice, the Commission is proposing to amend proposed § 39.21(c) to cross-reference the transparency requirements of proposed §§ 39.24(a)(2) and 40.9(d).

III. Effective Date

The Commission is proposing that the requirements proposed in this notice become effective 180 days from the date the final rules are published in the **Federal Register**, with the exception of (1) the system safeguard requirements that would be applicable to SIDCOs, set forth in proposed § 39.30, for which the proposed effective date is discussed in section II.B.6(b)(v) above, and (2) the provisions of § 39.15(b)(2) relating to the commingling of customer futures, options on futures, and swaps positions, which would become effective 30 days after the date of publication of the final rules. The provisions relating to commingling of customer funds do not require additional time for planning and implementation because they relate to a voluntary action on the part of a DCO.

The Commission believes that a period of 180 days would give DCOs adequate time to implement any additional technology and enhanced procedures that may be necessary to fulfill the proposed requirements related to participant and product eligibility, risk management, settlement procedures, treatment of funds, default rules and procedures, and system safeguards (insofar as they would apply to all DCOs). The Commission requests comment on whether 180 days is an appropriate time frame for compliance with these proposed rules. The Commission further requests comment on possible alternative effective dates and the basis for any such alternative dates.

IV. Section 4(c)

Section 4(c) of the CEA provides that, in order to promote responsible

[78] *See* 75 FR at 77585–86.

[79] *Id.*

[80] *See* 75 FR at 78194.

[81] *See* 76 FR 722, 736 (Jan. 6, 2011).

[82] The Commission is proposing to redesignate what is currently proposed as § 39.19(c)(3)(iii) as § 39.19(c)(3)(iv). This proposed regulation currently states:

The reports required by this paragraph (c)(3) shall be submitted concurrently to the Commission not more than 90 days after the end of the derivatives clearing organization's fiscal year; *provided that,* a derivatives clearing organization may request from the Commission an extension of time to submit either report, provided the derivatives clearing organization's failure to submit the report in a timely manner could not be avoided without unreasonable effort or expense. Extensions of the deadline will be granted at the discretion of the Commission.

[83] *See supra* n.81.

[84] *Id.*

[85] *See supra,* section II.B.6.a.vii.

[86] *See* 76 FR at 735.

[87] *Id.* at 736.

[88] *See* 75 FR at 78197.

economic or financial innovation and fair competition, the Commission, by rule, regulation or order, after notice and opportunity for hearing, may exempt any agreement, contract, or transaction, or class thereof, including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction, from the contract market designation requirement of section 4(a) of the CEA, or any other provision of the CEA other than certain enumerated provisions, if the Commission determines that the exemption would be consistent with the public interest.[89]

Proposed §§ 39.15(b)(2)(i) and 39.15(b)(2)(ii) would be promulgated under Core Principle F, which sets forth requirements for treatment of funds by a DCO.[90] Proper treatment of customer funds requires, among other things, segregation of customer money, securities and property received to margin, guarantee, or secure positions in futures or options on futures, in an account subject to section 4d(a) of the CEA (*i.e.,* a futures account), and segregation of customer money, securities and property received to margin, guarantee, or secure positions in cleared swaps, in an account subject to section 4d(f) of the CEA (*i.e.,* a cleared swap account). Customer funds required to be held in a futures account cannot be commingled with non-customer funds and cannot be held in an account other than an account subject to section 4d(a), absent Commission approval in the form of a rule, regulation or order. Section 4d(f) of the CEA mirrors these limitations as applied to customer positions in cleared swaps.

In proposing a regulation that would permit futures and options on futures to be carried in a cleared swap account if the Commission approves DCO rules providing for such treatment of funds, and in proposing a regulation that would permit cleared swap positions to be carried in a futures account if the Commission issues an order permitting such treatment of funds, the Commission is exercising its authority to grant an exemption under section 4(c) of the CEA. In this regard, the DCO and its clearing members would be exempt from complying with the segregation requirements of section 4d(a) when holding customer segregated funds in a cleared swap account subject to section 4d(f) of the CEA, instead of a futures account; and similarly, the DCO and its clearing members would be exempt from complying with the segregation requirements of section 4d(f) when holding customer funds related to cleared swap positions in a futures account subject to section 4d(a) of the CEA, instead of a cleared swap account.

While this rule-based exemption would streamline the approval process for commingling customer positions in futures, options on futures, and cleared swaps, the Commission would still conduct a case-by case analysis when permitting cleared swaps to be carried in a futures account, in keeping with its past practice in issuing orders under section 4d. The Commission believes that there can be benefits to commingling customer positions in futures, options on futures, and cleared swaps, primarily in the area of greater capital efficiency due to margin reductions for correlated positions. The Commission views this form of portfolio margining as a positive step toward financial innovation within a framework of responsible oversight, and it believes that the public can benefit from such innovation.

In light of the foregoing, the Commission believes that the adoption of proposed §§ 39.15(b)(2)(i) and 39.15(b)(2)(ii) would promote responsible economic and financial innovation and fair competition, and would be consistent with the "public interest," as that term is used in section 4(c) of the CEA.

The Commission solicits public comment on whether the proposed regulation satisfies the requirements for exemption under section 4(c) of the CEA.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[91] The rules proposed by the Commission will affect only DCOs (some of which will be designated as SIDCOs). The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[92] The Commission has previously determined that DCOs are not small entities for the purpose of the RFA.[93] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA")[94] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. 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 control number. OMB has not yet assigned a control number to the new collection.

This proposed rulemaking would result in new collection of information requirements within the meaning of the PRA. The Commission therefore is submitting this proposal to the Office of Management and Budget ("OMB") for review. If adopted, responses to this collection of information would be mandatory.

The Commission will protect proprietary information according to FOIA and 17 CFR part 145, "Commission Records and Information." In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." The Commission also is required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

1. Information Provided by Reporting Entities/Persons

The proposed regulations would require each respondent to maintain records of all activities related to its business as a DCO, including all information required to be created, generated, or reported under part 39, including but not limited to the results of and methodology used for all tests, reviews, and calculations.

The Commission staff estimates this would result in a total of one response per respondent on an annual basis and that respondents could expend up to $500 annually, based on an hourly rate of $10, to comply with the proposed regulations. This would result in an aggregated cost of $6,000 per annum (12 respondents × $500).

[89] 7 U.S.C. 6(c).

[90] Section 5b(c)(2)(F) of the CEA; 7 U.S.C. 7a-1(c)(2)(F).

[91] 5 U.S.C. 601 *et seq.*

[92] 47 FR 18618 (Apr. 30, 1982).

[93] *See* 66 FR 45605, 45609 (Aug. 29, 2001).

[94] 44 U.S.C. 3501 *et seq.*

The proposed regulations also would require the submission of an application form by entities seeking to register as DCOs. The applicant burden is estimated to take, on average, approximately 400 hours, with an hourly rate ranging from $75–$400, for a total estimated cost of $100,000 per application. These estimates include the time needed to review instructions and to develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information. Staff estimates that three entities will seek to register as a DCO on an annual basis.

2. Information Collection Comments

The Commission invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment in order to: (i) Evaluate 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; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566 or by e-mail at *OIRAsubmissions@omb.eop.gov.* Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rule preamble. Refer to the **ADDRESSES** section of this notice of proposed rulemaking for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting RegInfo.gov. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

C. Cost-Benefit Analysis

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before issuing a rulemaking under the CEA. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a rule or to determine whether the benefits of the rulemaking outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its action.

Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular regulation is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

Summary of proposed requirements. The proposed regulations would implement the participant and product eligibility, risk management, settlement procedures, treatment of funds, default procedures and system safeguards core principles for DCOs and would adopt an application form for DCO registration under the CEA, as amended by the Dodd-Frank Act.

Costs. With respect to costs, the Commission has determined that the costs to market participants and the public if these regulations are not adopted are substantial. Significantly, without these regulations to ensure that DCOs fully comply with the core principles of participant and product eligibility, risk management, settlement procedures, treatment of funds, default procedures and system safeguards, sound risk management and the financial integrity of the futures and swap markets would not be enhanced, to the detriment of market participants and the public.

The Commission has also determined that the costs of the new reporting requirements imposed on DCOs will consist primarily of recordkeeping requirements, which the Commission estimates will cost DCOs $500 annually. For purposes of this rulemaking, the estimated reporting and recordkeeping costs do not include other costs addressed by other rulemakings. However, the costs do take into account the costs of implementing certain reporting requirements which many DCOs already have in place, and thus, the actual costs to many DCOs may be far less than the Commission's estimates.

Benefits. With respect to benefits, the Commission has determined that the benefits of the proposed rules are many and substantial. DCO registration applications will be processed transparently and efficiently, making clearing services available to the futures and swap markets in order to protect the integrity of these markets through the sound risk management practices associated with clearing and the efficiency that competition between clearinghouses will foster. The protection of market participants, financial integrity of the markets, and sound risk management will further be promoted by the compliance of each DCO with the rules and standards that are being adopted to implement the core principles, notably those associated with participant and product eligibility, risk management, settlement procedures, treatment of funds, default procedures and system safeguards.

The Commission has also determined that the recordkeeping requirements allow for making certain records available for Commission inspection, which helps further the goals of the reporting requirements and is necessary for the Commission to effectively monitor a DCO's financial integrity and compliance with the CEA and Commission regulations.

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

List of Subjects in 17 CFR Part 39

Commodity futures, Participant and product eligibility, Risk management, Settlement procedures, Treatment of funds, Default rules and procedures, System safeguards, Enforcement authority application form.

In light of the foregoing, the Commission hereby proposes to amend part 39 of Title 17 of the Code of Federal Regulations as follows:

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

1. Revise the authority citation for part 39 to read as follows:

Authority: 7 USC 2, 5, 6, 6d, 7a–1, 7a–2, and 7b as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376.

Subpart A—General Provisions Applicable to Derivatives Clearing Organizations

2. Designate existing §§ 39.1 through 39.7 as subpart A and add a subpart heading to read as set forth above.

3. Revise § 39.1 to read as follows:

§ 39.1 Scope.

The provisions of this subpart A apply to any derivatives clearing organization, as defined under section 1a(15) of the Act and § 1.3(d) of this chapter, which is registered or deemed to be registered with the Commission as a derivatives clearing organization, is required to register as such with the Commission pursuant to section 5b(a) of the Act, or which voluntarily registers as such with the Commission pursuant to section 5b(b) or otherwise.

4. Revise § 39.2 to read as follows:

§ 39.2 Definitions.

For the purposes of this part,

Back test means a test that compares a derivatives clearing organization's initial margin requirements with historical price changes to determine the extent of actual margin coverage.

Compliance policies and procedures means all policies, procedures, codes, including a code of ethics, safeguards, rules, programs, and internal controls that are required to be adopted or established by a derivatives clearing organization pursuant to the Act, Commission regulations, or orders, or that otherwise facilitate compliance with the Act and Commission regulations.

Customer account or customer origin means a clearing member's account held on behalf of customers, as defined in § 1.3(k) of this chapter. A customer account is also a futures account, as that term is defined by § 1.3(vv) of this chapter.

House account or house origin means a clearing member's combined proprietary accounts, as defined in § 1.3(y) of this chapter.

Key personnel means derivatives clearing organization personnel who play a significant role in the operations of the derivatives clearing organization, the provision of clearing and settlement services, risk management, or oversight of compliance with the Act and Commission regulations and orders. Key personnel include, but are not limited to, those persons who are or perform the functions of any of the following: chief executive officer; president; Chief compliance officer; chief operating officer; Chief risk officer; chief financial officer; chief technology officer; and emergency contacts or persons who are responsible for business continuity or disaster recovery planning or program execution.

Stress test means a test that compares the impact of a potential price move, change in option volatility, or change in other inputs that affect the value of a position, to the financial resources of a derivatives clearing organization, clearing member, or large trader, to determine the adequacy of such financial resources.

Systemically *important derivatives clearing organization* means a financial market utility that is a derivatives clearing organization registered under section 5b of the Act (7 U.S.C. 7a–1), which has been designated by the Financial Stability Oversight Council to be systemically important.

5. Amend § 39.3 by revising paragraphs (a)(2), (a)(3), (b), (c), (d) and (e) and by adding paragraphs (a)(4) and (a)(5) to read as follows:

§ 39.3 Procedures for registration.

(a) * * *

(2) Application. Any person seeking to register as a derivatives clearing organization, any applicant amending its pending application, or any registered derivatives clearing organization seeking to amend its order of registration (applicant), shall submit to the Commission a completed Form DCO, which shall include a cover sheet, all applicable exhibits, and any supplemental materials, including amendments thereto, as provided in appendix A to this part 39 (application). The Commission will not commence processing an application unless the applicant has filed the application as required by this section. Failure to file a completed application will preclude the Commission from determining that an application is materially complete, as provided in section 6(a) of the Act. Upon its own initiative, an applicant may file with its completed application additional information that may be necessary or helpful to the Commission in processing the application.

(3) *Submission of supplemental information.* The filing of a completed application is a minimum requirement and does not create a presumption that the application is materially complete or that supplemental information will not be required. At any time during the application review process, the Commission may request that the applicant submit supplemental information in order for the Commission to process the application. The applicant shall file electronically such supplemental information with the Secretary of the Commission in the form and manner provided by the Commission.

(4) *Application amendments.* An applicant shall promptly amend its application if it discovers a material omission or error, or if there is a material change in the information provided to the Commission in the application or other information provided in connection with the application.

(5) *Public information.* The following sections of all applications to become a registered derivatives clearing organization will be public: first page of the Form DCO cover sheet, proposed rules, regulatory compliance chart, narrative summary of proposed clearing activities, documents establishing the applicant's legal status, documents setting forth the applicant's corporate and governance structure, and any other part of the application not covered by a request for confidential treatment, subject to § 145.9 of this chapter.

(b) *Stay of application review.* (1) The Commission may stay the running of the 180-day review period if an application is materially incomplete, in accordance with section 6(a) of the Act.

(2) *Delegation of authority.* (i) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Clearing and Intermediary Oversight or the Director's designee, with the concurrence of the General Counsel or the General Counsel's designee, the authority to notify an applicant seeking registration under section 6(a) of the Act that the application is materially incomplete and the running of the 180-day period is stayed.

(ii) The Director of the Division of Clearing and Intermediary Oversight may submit to the Commission for its consideration any matter which has been delegated in this paragraph.

(iii) Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (b)(2)(i) of this section.

(c) *Withdrawal of application for registration.* An applicant for registration may withdraw its application submitted pursuant to paragraph (a) of this section by filing electronically such a request with the Secretary of the Commission in the form and manner provided by the Commission. Withdrawal of an application for registration shall not affect any action taken or to be taken by the Commission based upon actions, activities, or events occurring during the time that the application for registration was pending with the Commission.

(d) *Reinstatement of dormant registration.* Before listing or relisting products for clearing, a dormant registered derivatives clearing organization as defined in § 40.1 of this chapter must reinstate its registration under the procedures of paragraph (a) of this section; *provided, however,* that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

(e) *Request for vacation of registration.* A registered derivatives clearing organization may vacate its registration under section 7 of the Act by filing electronically such a request with the Secretary of the Commission in the form and manner provided by the Commission. Vacation of registration shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the entity was registered by the Commission.

* * * * *

§ 39.7 [Redesignated as § 39.8]

6. Redesignate § 39.7 as § 39.8.

§ 39.6 [Redesignated as § 39.7]

7. Redesignate § 39.6 as § 39.7.

8. Add subpart B to read as follows:

Subpart B—Compliance with Core Principles

Sec.
39.9 Scope.
39.10 [Reserved]
39.11 [Reserved]
39.12 Participant and product eligibility.
39.13 Risk management.
39.14 Settlement procedures.
39.15 Treatment of funds.
39.16 Default rules and procedures.
39.17 [Reserved]
39.18 System safeguards.
39.19 Reporting.
39.20 [Reserved]
39.21 Public information.
39.22 [Reserved]
39.23 [Reserved]
39.24 Governance fitness standards.
39.25 Conflicts of interest.

Subpart B—Compliance with Core Principles

§ 39.9 Scope.

Except as otherwise provided with respect to systemically important derivatives clearing organizations subject to subpart C of this part, the provisions of this subpart B apply to any derivatives clearing organization, as defined under section 1a(15) of the Act and § 1.3(d) of this chapter, which is registered or deemed to be registered with the Commission as a derivatives clearing organization, is required to register as such with the Commission pursuant to section 5b(a) of the Act, or which voluntarily registers as such with the Commission pursuant to section 5b(b) or otherwise.

§ 39.10 [Reserved]

§ 39.11 [Reserved]

§ 39.12 Participant and product eligibility.

(a) *Participant eligibility.* A derivatives clearing organization shall establish appropriate admission and continuing participation requirements for clearing members of the derivatives clearing organization that are objective, publicly disclosed, and risk-based.

(1) *Fair and open access for participation.* The participation requirements shall permit fair and open access;

(i) A derivatives clearing organization shall not adopt restrictive clearing member standards if less restrictive requirements that would not materially increase risk to the derivatives clearing organization or clearing members could be adopted;

(ii) A derivatives clearing organization shall allow all market participants who satisfy participation requirements to become clearing members;

(iii) A derivatives clearing organization shall not exclude or limit clearing membership of certain types of market participants unless the derivatives clearing organization can demonstrate that the restriction is necessary to address credit risk or deficiencies in the participants' operational capabilities that would prevent them from fulfilling their obligations as clearing members.

(iv) A derivatives clearing organization shall not require that clearing members must be swap dealers.

(v) A derivatives clearing organization shall not require that clearing members maintain a swap portfolio of any particular size, or that clearing members meet a swap transaction volume threshold.

(2) *Financial resources.* (i) The participation requirements shall require clearing members to have access to sufficient financial resources to meet obligations arising from participation in the derivatives clearing organization in extreme but plausible market conditions. The financial resources may include, but are not limited to, a clearing member's capital, a guarantee from the clearing member's parent, or a credit facility funding arrangement. For purposes of this paragraph, "capital" means adjusted net capital as defined in § 1.17 of this chapter, for futures commission merchants, and net capital as defined in § 15c3–1 of this title, for broker-dealers, or any similar risk adjusted capital calculation for all other prospective clearing members.

(ii) The participation requirements shall set forth capital requirements that are based on objective, transparent, and commonly accepted standards that appropriately match capital to risk. Capital requirements shall be scalable so that they are proportional to the risks posed by clearing members.

(iii) A derivatives clearing organization shall not set a minimum capital requirement of more than $50 million for any person that seeks to become a clearing member in order to clear swaps.

(3) *Operational requirements.* The participation requirements shall require clearing members to have adequate operational capacity to meet obligations arising from participation in the derivatives clearing organization. The requirements shall include, but are not limited to: the ability to process expected volumes and values of transactions cleared by a clearing member within required time frames, including at peak times and on peak days; the ability to fulfill collateral, payment, and delivery obligations imposed by the derivatives clearing organization; and the ability to participate in default management activities under the rules of the derivatives clearing organization and in accordance with § 39.16 of this part.

(4) *Monitoring.* A derivatives clearing organization shall establish and implement procedures to verify, on an ongoing basis, the compliance of each clearing member with each participation requirement of the derivatives clearing organization.

(5) *Reporting.* (i) A derivatives clearing organization shall require all clearing members, including those that are not futures commission merchants, to file periodic financial reports with the derivatives clearing organization which contain any financial information that the derivatives clearing organization determines is necessary to assess whether participation requirements are met on an ongoing basis. A derivatives clearing organization shall require clearing members that are futures commission merchants to file the financial reports that are specified in § 1.10 of this chapter with the derivatives clearing organization. The derivatives clearing organization shall review all such financial reports for risk management purposes. A derivatives clearing organization shall also require clearing members that are not futures commission merchants to make such periodic financial reports available to

the Commission upon the Commission's request.

(ii) A derivatives clearing organization shall adopt rules that require clearing members to provide to the derivatives clearing organization, in a timely manner, information that concerns any financial or business developments that may materially affect the clearing members' ability to continue to comply with participation requirements.

(6) *Enforcement.* A derivatives clearing organization shall have the ability to enforce compliance with its participation requirements and shall establish procedures for the suspension and orderly removal of clearing members that no longer meet the requirements.

(b) *Product eligibility.* (1) A derivatives clearing organization shall establish appropriate requirements for determining the eligibility of agreements, contracts, or transactions submitted to the derivatives clearing organization for clearing, taking into account the derivatives clearing organization's ability to manage the risks associated with such agreements, contracts, or transactions. Factors to be considered in determining product eligibility include, but are not limited to:

(i) Trading volume;

(ii) Liquidity;

(iii) Availability of reliable prices;

(iv) Ability of market participants to use portfolio compression with respect to a particular swap product;

(v) Ability of the derivatives clearing organization and clearing members to gain access to the relevant market for purposes of creating and liquidating positions;

(vi) Ability of the derivatives clearing organization to measure risk for purposes of setting margin requirements; and

(vii) Operational capacity of the derivatives clearing organization and clearing members to address any unique risk characteristics of a product.

(2) A derivatives clearing organization shall adopt rules providing that all swaps with the same terms and conditions submitted to the derivatives clearing organization for clearing are economically equivalent within the derivatives clearing organization and may be offset with each other within the derivatives clearing organization. A derivatives clearing organization shall also provide for non-discriminatory clearing of a swap executed bilaterally or on or subject to the rules of an unaffiliated designated contract market or swap execution facility.

(3) A derivatives clearing organization shall select contract unit sizes that maximize liquidity, open access, and risk management. To the extent appropriate to further these objectives, a derivatives clearing organization shall select contract units for clearing purposes that are smaller than the contract units in which trades submitted for clearing were executed.

(4) A derivatives clearing organization that clears swaps shall have rules providing that, upon acceptance of a swap by the derivatives clearing organization for clearing:

(i) The original swap is extinguished;

(ii) The original swap is replaced by equal and opposite swaps between clearing members and the derivatives clearing organization;

(iii) All terms of the cleared swaps must conform to templates established under derivatives clearing organization rules; and

(iv) If a swap is cleared by a clearing member on behalf of a customer, all terms of the swap, as carried in the customer account on the books of the clearing member, must conform to the terms of the cleared swap established under the derivatives clearing organization's rules.

§ 39.13 Risk management.

(a) *In general.* A derivatives clearing organization shall ensure that it possesses the ability to manage the risks associated with discharging the responsibilities of the derivatives clearing organization through the use of appropriate tools and procedures.

(b) *Documentation requirement.* A derivatives clearing organization shall establish and maintain written policies, procedures, and controls, approved by its Board of Directors, which establish an appropriate risk management framework that, at a minimum, clearly identifies and documents the range of risks to which the derivatives clearing organization is exposed, addresses the monitoring and management of the entirety of those risks, and provides a mechanism for internal audit. The risk management framework shall be regularly reviewed and updated as necessary.

(c) *Chief risk officer.* A derivatives clearing organization shall have a chief risk officer who shall be responsible for implementing the risk management framework, including the procedures, policies and controls described in paragraph (b) of this section, and for making appropriate recommendations to the derivatives clearing organization's Risk Management Committee or Board of Directors, as applicable, regarding the derivatives clearing organization's risk management functions.

(d) [Reserved]

(e) *Measurement of credit exposure.* A derivatives clearing organization shall:

(1) Measure its credit exposure to each clearing member and mark to market such clearing member's open positions at least once each business day; and

(2) Monitor its credit exposure to each clearing member periodically during each business day.

(f) *Limitation of exposure to potential losses from defaults.* A derivatives clearing organization, through margin requirements and other risk control mechanisms, shall limit its exposure to potential losses from defaults by its clearing members to ensure that:

(1) The operations of the derivatives clearing organization would not be disrupted; and

(2) Non-defaulting clearing members would not be exposed to losses that nondefaulting clearing members cannot anticipate or control.

(g) *Margin requirements*—(1) *In general.* The initial margin that a derivatives clearing organization requires from each clearing member shall be sufficient to cover potential exposures in normal market conditions. Each model and parameter used in setting initial margin requirements shall be risk-based and reviewed on a regular basis.

(2) *Methodology and coverage.* (i) A derivatives clearing organization shall establish initial margin requirements that are commensurate with the risks of each product and portfolio, including any unique characteristics of, or risks associated with, particular products or portfolios. A derivatives clearing organization that clears credit default swaps shall appropriately address jump-to-default risk in setting initial margins.

(ii) A derivatives clearing organization shall use models that generate initial margin requirements sufficient to cover the derivatives clearing organization's potential future exposures to clearing members based on price movements in the interval between the last collection of variation margin and the time within which the derivatives clearing organization estimates that it would be able to liquidate a defaulting clearing member's positions (liquidation time); *provided, however,* that a derivatives clearing organization shall use a liquidation time that is a minimum of five business days for cleared swaps that are not executed on a designated contract market, whether the swaps are carried in a customer account subject to section 4d(a) or 4d(f) of the Act, or carried in a house account, and a liquidation time that is a minimum of one business day for all other products that it clears, and shall use longer

liquidation times, if appropriate, based on the unique characteristics of particular products or portfolios.

(iii) The actual coverage of the initial margin requirements produced by such models, along with projected measures of the models' performance, shall meet an established confidence level of at least 99%, based on data from an appropriate historic time period, for:

(A) Each product (that is margined on a product basis);

(B) Each spread within or between products for which there is a defined spread margin rate, as described in paragraph (g)(4) of this section;

(C) Each account held by a clearing member at the DCO, by customer origin and house origin; and

(D) Each swap portfolio, by beneficial owner.

(iv) A derivatives clearing organization shall determine the appropriate historic time period based on the characteristics, including volatility patterns, as applicable, of each product, spread, account, or portfolio.

(3) *Independent validation.* A derivatives clearing organization's systems for generating initial margin requirements, including its theoretical models, must be reviewed and validated by a qualified and independent party, on a regular basis.

(4) *Spread margins.* (i) A derivatives clearing organization may allow reductions in initial margin requirements for related positions (spread margins) if the price risks with respect to such positions are significantly and reliably correlated. The price risks of different positions will only be considered to be reliably correlated if there is a theoretical basis for the correlation in addition to an exhibited statistical correlation. That theoretical basis may include, but is not limited to, the following:

(A) The products on which the positions are based are complements of, or substitutes for, each other;

(B) One product is a significant input into the other product(s);

(C) The products share a significant common input; or

(D) The prices of the products are influenced by common external factors.

(ii) A derivatives clearing organization shall regularly review its spread margins and the correlations on which they are based.

(5) *Price data.* A derivatives clearing organization shall have a reliable source of timely price data in order to measure the derivatives clearing organization's credit exposure accurately. A derivatives clearing organization shall also have written procedures and sound valuation models for addressing circumstances where pricing data is not readily available or reliable.

(6) *Daily review.* On a daily basis, a derivatives clearing organization shall determine the adequacy of its initial margin requirements for each product (that is margined on a product basis).

(7) *Back tests.* A derivatives clearing organization shall conduct back tests, as defined in § 39.2 of this part, using historical price changes based on a time period that is equivalent in length to the historic time period used by the applicable margin model for establishing the confidence level described in paragraph (g)(2) of this section or a longer time period, unless another time period is specified by this paragraph.

(i) On a daily basis, a derivatives clearing organization shall conduct back tests with respect to products that are experiencing significant market volatility, to test the adequacy of its initial margin requirements and spread margin requirements for such products that are margined on a product basis.

(ii) On at least a monthly basis, a derivatives clearing organization shall conduct back tests to test the adequacy of its initial margin requirements and spread margin requirements for each product that is margined on a product basis.

(iii) On at least a monthly basis, a derivatives clearing organization shall conduct back tests to test the adequacy of its initial margin requirements for each account held by a clearing member at the DCO, by origin, house and customer, and each swap portfolio, by beneficial owner, over at least the previous 30 days.

(8) *Customer margin*—(i) *Gross margin.* A derivatives clearing organization shall collect initial margin on a gross basis for each clearing member's customer account equal to the sum of the initial margin amounts that would be required by the derivatives clearing organization for each individual customer within that account if each individual customer were a clearing member. A derivatives clearing organization may not net positions of different customers against one another. A derivatives clearing organization may collect initial margin for its clearing members' house accounts on a net basis.

(ii) *Customer initial margin requirements.* A derivatives clearing organization shall require its clearing members to collect customer initial margin, as defined in § 1.3 of this chapter, from their customers, for non-hedge positions, at a level that is greater than 100% of the derivatives clearing organization's initial margin requirements with respect to each product and swap portfolio. The derivatives clearing organization shall have reasonable discretion in determining the percentage by which customer initial margins must exceed the derivatives clearing organization's initial margin requirements with respect to particular products or swap portfolios. The Commission may review such percentage levels and require different percentage levels if the Commission deems the levels insufficient to protect the financial integrity of the clearing members or the derivatives clearing organization.

(iii) *Withdrawal of customer initial margin.* A derivatives clearing organization shall require its clearing members to ensure that their customers do not withdraw funds from their accounts with such clearing members unless the net liquidating value plus the margin deposits remaining in a customer's account after such withdrawal are sufficient to meet the customer initial margin requirements with respect to all products and swap portfolios held in such customer's account which are cleared by the derivatives clearing organization.

(9) *Time deadlines.* A derivatives clearing organization shall establish and enforce time deadlines for initial and variation margin payments to the derivatives clearing organization.

(h) *Other risk control mechanisms*—(1) *Risk limits.* (i) A derivatives clearing organization shall impose risk limits on each clearing member, by customer origin and house origin, in order to prevent a clearing member from carrying positions for which the risk exposure exceeds a specified threshold relative to the clearing member's and/or the derivatives clearing organization's financial resources. The derivatives clearing organization shall have reasonable discretion in determining:

(A) The method of computing risk exposure;

(B) The applicable threshold(s); and

(C) The applicable financial resources under this provision; *provided however,* that the ratio of exposure to capital must remain the same across all capital levels. The Commission may review such methods, thresholds, and financial resources and require the application of different methods, thresholds, or financial resources, as appropriate.

(ii) A derivatives clearing organization may permit a clearing member to exceed the threshold(s) applied pursuant to paragraph (h)(1)(i) of this section provided that the derivatives clearing organization requires the clearing member to post additional initial margin that the derivatives clearing organization deems sufficient to

appropriately eliminate excessive risk exposure at the clearing member. The Commission may review the amount of additional initial margin and require a different amount of additional initial margin, as appropriate.

(2) *Large trader reports.* A derivatives clearing organization shall obtain from its clearing members, copies of all reports that are required to be filed with the Commission by such clearing members pursuant to part 17 of this chapter. With respect to exclusively self-cleared contracts, a derivatives clearing organization shall obtain from the relevant reporting market, copies of all reports that are required to be filed with the Commission on behalf of such clearing members by the relevant reporting market, pursuant to § 17.00(i) of this chapter. A derivatives clearing organization shall review such reports on a daily basis to ascertain the risk of the overall portfolio of each large trader, including positions at all clearing members carrying accounts for each such large trader, and shall take additional actions with respect to such clearing members, when appropriate, as specified in paragraph (h)(6) of this section, in order to address any risks posed by any such large trader.

(3) *Stress tests.* A derivatives clearing organization shall conduct stress tests, as defined in § 39.2 of this part, as follows:

(i) On a daily basis, a derivatives clearing organization shall conduct stress tests with respect to each large trader who poses significant risk to a clearing member or the derivatives clearing organization, including positions at all clearing members carrying accounts for each such large trader. The derivatives clearing organization shall have reasonable discretion in determining which traders to test and the methodology used to conduct such stress tests. The Commission may review the selection of accounts and the methodology and require changes, as appropriate.

(ii) On at least a weekly basis, a derivatives clearing organization shall conduct stress tests with respect to each clearing member account, by customer origin and house origin, and each swap portfolio, by beneficial owner, under extreme but plausible market conditions. The derivatives clearing organization shall have reasonable discretion in determining the methodology used to conduct such stress tests. The Commission may review the methodology and require changes, as appropriate.

(4) *Portfolio compression.* (i) A derivatives clearing organization shall offer multilateral portfolio compression exercises, on a regular basis, for its clearing members that clear swaps, to the extent that such exercises are appropriate for those swaps that it clears.

(ii) A derivatives clearing organization shall require its clearing members to participate in all such exercises, to the extent that any swap in the applicable portfolio is eligible for inclusion in the exercise, unless including the swap would be reasonably likely to significantly increase the risk exposure of the clearing member.

(iii) A derivatives clearing organization may permit clearing members participating in compression exercises to set risk tolerance limits for their portfolios, provided that the clearing members do not set such risk tolerances at an unreasonable level or use such risk tolerances to evade the requirements of this paragraph.

(5) *Clearing members' risk management policies and procedures.* (i) A derivatives clearing organization shall adopt rules that:

(A) Require its clearing members to maintain current written risk management policies and procedures;

(B) Ensure that it has the authority to request and obtain information and documents from its clearing members regarding their risk management policies, procedures, and practices, including, but not limited to, information and documents relating to the liquidity of their financial resources and their settlement procedures; and

(C) Require its clearing members to make information and documents regarding their risk management policies, procedures, and practices available to the Commission upon the Commission's request.

(ii) A derivatives clearing organization shall review the risk management policies, procedures, and practices of each of its clearing members on a periodic basis and document such reviews.

(6) *Additional authority.* A derivatives clearing organization shall take additional actions with respect to particular clearing members, when appropriate, based on the application of objective and prudent risk management standards including, but not limited to:

(i) Imposing enhanced capital requirements;

(ii) Imposing enhanced margin requirements;

(iii) Imposing position limits;

(iv) Prohibiting an increase in positions;

(v) Requiring a reduction of positions;

(vi) Liquidating or transferring positions; and

(vii) Suspending or revoking clearing membership.

§ 39.14 Settlement procedures.

(a) *Definitions*—(1) *Settlement.* For purposes of this section, "settlement" means:

(i) Payment and receipt of variation margin for futures, options, and swap positions;

(ii) Payment and receipt of option premiums;

(iii) Deposit and withdrawal of initial margin for futures, options, and swap positions;

(iv) All payments due in final settlement of futures, options, and swap positions on the final settlement date with respect to such positions; and

(v) All other cash flows collected from or paid to each clearing member, including but not limited to, payments related to swaps such as coupon amounts.

(2) *Settlement bank.* For purposes of this section, "settlement bank" means a bank that maintains an account either for the derivatives clearing organization or for any of its clearing members, which is used for the purpose of transferring funds and receiving transfers of funds in connection with settlements with the derivatives clearing organization.

(b) *Daily settlements.* A derivatives clearing organization shall effect a settlement with each clearing member at least once each business day, and shall have the authority and operational capacity to effect a settlement with each clearing member, on an intraday basis, either routinely, when thresholds specified by the derivatives clearing organization are breached, or in times of extreme market volatility.

(c) *Settlement banks.* A derivatives clearing organization shall employ settlement arrangements that eliminate or strictly limit its exposure to settlement bank risks, including the credit and liquidity risks arising from the use of such banks to effect settlements with its clearing members.

(1) A derivatives clearing organization shall have documented criteria with respect to those banks that are acceptable settlement banks for the derivatives clearing organization and its clearing members, including criteria addressing the capitalization, creditworthiness, access to liquidity, operational reliability, and regulation or supervision of such banks.

(2) A derivatives clearing organization shall monitor each approved settlement bank on an ongoing basis to ensure that such bank continues to meet the criteria established pursuant to paragraph (c)(1) of this section.

(3) A derivatives clearing organization shall monitor the full range and concentration of its exposures to its own and its clearing members' settlement banks and assess its own and its clearing members' potential losses and liquidity pressures in the event that the settlement bank with the largest share of settlement activity were to fail. A derivatives clearing organization shall:

(i) Maintain settlement accounts at additional settlement banks;

(ii) Approve additional settlement banks for use by its clearing members;

(iii) Impose concentration limits with respect to its own or its clearing members' settlement banks; and/or

(iv) Take any other appropriate actions, if any such actions are reasonably necessary in order to eliminate or strictly limit such exposures.

(d) *Settlement finality.* A derivatives clearing organization shall ensure that settlements are final when effected by ensuring that settlement fund transfers are irrevocable and unconditional when the derivatives clearing organization's accounts are debited or credited. A derivatives clearing organization's legal agreements with its settlement banks shall state clearly when settlement fund transfers will occur and a derivatives clearing organization shall routinely confirm that its settlement banks are effecting fund transfers as and when required by such legal agreements.

(e) *Recordkeeping.* A derivatives clearing organization shall maintain an accurate record of the flow of funds associated with each settlement.

(f) *Netting arrangements.* A derivatives clearing organization shall possess the ability to comply with each term and condition of any permitted netting or offset arrangement with any other clearing organization.

(g) *Physical delivery.* With respect to contracts, agreements, and transactions that are settled by physical transfers of the underlying instruments or commodities, a derivatives clearing organization shall:

(1) Establish rules that clearly state each obligation that the derivatives clearing organization has assumed with respect to physical deliveries, including whether it has an obligation to make or receive delivery of a physical instrument or commodity, or whether it indemnifies clearing members for losses incurred in the delivery process; and

(2) Ensure that the risks of each such obligation are identified and managed.

§ 39.15 Treatment of funds.

(a) *Required standards and procedures.* A derivatives clearing organization shall establish standards and procedures that are designed to protect and ensure the safety of funds and assets belonging to clearing members and their customers.

(b) *Segregation of funds and assets*—(1) *Segregation.* A derivatives clearing organization shall comply with the segregation requirements of section 4d of the Act and Commission regulations thereunder, or any other applicable Commission regulation or order requiring that customer funds and assets be segregated, set aside, or held in a separate account.

(2) *Commingling of futures, options on futures, and swaps positions*—(i) *Cleared swap account.* In order for a derivatives clearing organization and its clearing members to commingle customer positions in futures, options on futures, and swaps, and any money, securities, or property received to margin, guarantee or secure such positions, in an account subject to the requirements of section 4d(f) of the Act, the derivatives clearing organization shall file rules for Commission approval pursuant to § 40.5 of this chapter. Such rule submission shall include, at a minimum, the following:

(A) An identification of the futures, options on futures, and swaps that would be commingled, including contract specifications or the criteria that would be used to define eligible futures, options on futures, and swaps;

(B) An analysis of the risk characteristics of the eligible products;

(C) A description of whether the swaps would be executed bilaterally and/or executed on a designated contract market and/or a swap execution facility;

(D) An analysis of the liquidity of the respective markets for the futures, options on futures, and swaps that would be commingled, the ability of clearing members and the derivatives clearing organization to offset or mitigate the risk of such futures, options on futures, and swaps in a timely manner, without compromising the financial integrity of the account, and, as appropriate, proposed means for addressing insufficient liquidity;

(E) An analysis of the availability of reliable prices for each of the eligible products;

(F) A description of the financial, operational, and managerial standards or requirements for clearing members that would be permitted to commingle such futures, options on futures, and swaps;

(G) A description of the systems and procedures that would be used by the derivatives clearing organization to oversee such clearing members' risk management of any such commingled positions;

(H) A description of the financial resources of the derivatives clearing organization, including the composition and availability of a guaranty fund with respect to the futures, options on futures, and swaps that would be commingled;

(I) A description and analysis of the margin methodology that would be applied to the commingled futures, options on futures, and swaps, including any margin reduction applied to correlated positions, and any applicable margin rules with respect to both clearing members and customers;

(J) An analysis of the ability of the derivatives clearing organization to manage a potential default with respect to any of the futures, options on futures, or swaps that would be commingled;

(K) A discussion of the procedures that the derivatives clearing organization would follow if a clearing member defaulted, and the procedures that a clearing member would follow if a customer defaulted, with respect to any of the commingled futures, options on futures, or swaps in the account; and

(L) A description of the arrangements for obtaining daily position data from each beneficial owner of futures, options on futures, and swaps in the account.

(ii) *Futures account.* In order for a derivatives clearing organization and its clearing members to commingle customer positions in futures, options on futures, and swaps, and any money, securities, or property received to margin, guarantee or secure such positions, in an account subject to the requirements of section 4d(a) of the Act, the derivatives clearing organization shall file with the Commission a petition for an order pursuant to section 4d(a) of the Act. Such petition shall include, at a minimum, the information required under paragraph (b)(2)(i) of this section.

(iii) *Commission action.* (A) The Commission may request additional information in support of a rule submission filed under paragraph (b)(i) of this section, and may grant approval of such rules in accordance with § 40.5 of this chapter.

(B) The Commission may request additional information in support of a petition filed under paragraph (b)(ii) of this section, and may issue an order under section 4d of the Act in its discretion.

(c) *Holding of funds and assets.* A derivatives clearing organization shall hold funds and assets belonging to clearing members and their customers in a manner which minimizes the risk

of loss or of delay in the access by the derivatives clearing organization to such funds and assets.

(1) *Types of assets.* A derivatives clearing organization shall limit the assets it accepts as initial margin to those that are have minimal credit, market, and liquidity risks. A derivatives clearing organization may not accept letters of credit as initial margin.

(2) *Valuation.* A derivatives clearing organization shall use prudent valuation practices to value assets posted as initial margin on a daily basis.

(3) *Haircuts.* A derivatives clearing organization shall apply appropriate reductions in value to reflect market and credit risk (haircuts), including in stressed market conditions, to the assets that it accepts in satisfaction of initial margin obligations, and shall evaluate the appropriateness of such haircuts on at least a quarterly basis.

(4) *Concentration limits.* A derivatives clearing organization shall apply appropriate limitations on the concentration of assets posted as initial margin, as necessary, in order to ensure its ability to liquidate such assets quickly, with minimal adverse price effects, and shall evaluate the appropriateness of any such concentration limits, on at least a monthly basis.

(5) *Pledged assets.* If a derivatives clearing organization permits its clearing members to pledge assets for initial margin while retaining such assets in accounts in the names of such clearing members, the derivatives clearing organization shall ensure that such assets are unencumbered and that such a pledge has been validly created and validly perfected in the relevant jurisdiction.

(d) *Permitted investments.* Funds and assets belonging to clearing members and their customers that are invested by a derivatives clearing organization shall be held in instruments with minimal credit, market, and liquidity risks. Any investment of customer funds or assets by a derivatives clearing organization shall comply with § 1.25 of this part, as if all such funds and assets comprise customer funds subject to segregation pursuant to section 4d(a) of the Act and Commission regulations thereunder.

§ 39.16 Default rules and procedures.

(a) *In general.* A derivatives clearing organization shall adopt rules and procedures designed to allow for the efficient, fair, and safe management of events during which clearing members become insolvent or default on the obligations of such clearing members to the derivatives clearing organization.

(b) *Default management plan.* A derivatives clearing organization shall maintain a current written default management plan that delineates the roles and responsibilities of its Board of Directors, its Risk Management Committee, any other committee that has responsibilities for default management, and the derivatives clearing organization's management, in addressing a default, including any necessary coordination with, or notification of, other entities and regulators. Such plan shall address any differences in procedures with respect to highly liquid contracts (such as certain futures) and less liquid contracts (such as certain swaps). A derivatives clearing organization shall conduct and document a test of its default management plan on at least an annual basis.

(c) *Default procedures.* (1) A derivatives clearing organization shall adopt procedures that would permit the derivatives clearing organization to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a default on the obligations of a clearing member to the derivatives clearing organization.

(2) A derivatives clearing organization shall adopt rules that set forth its default procedures, including:

(i) The derivatives clearing organization's definition of a default;

(ii) The actions that the derivatives clearing organization may take upon a default, which shall include the prompt transfer, liquidation, or hedging of the customer or proprietary positions of the defaulting clearing member, as applicable, and which may include, in the discretion of the derivatives clearing organization, the auctioning or allocation of such positions to other clearing members;

(iii) Any obligations that the derivatives clearing organization imposes on its clearing members to participate in auctions, or to accept allocations, of a defaulting clearing member's positions, provided that any allocation shall be proportional to the size of the participating or accepting clearing member's positions at the derivatives clearing organization;

(iv) The sequence in which the funds and assets of the defaulting clearing member and the financial resources maintained by the derivatives clearing organization would be applied in the event of a default;

(v) A provision that customer margin posted by a defaulting clearing member shall not be applied in the event of a proprietary default;

(vi) A provision that proprietary margins posted by a defaulting clearing member shall be applied in the event of a customer default, if the relevant customer margin is insufficient to cover the shortfall; and

(3) A derivatives clearing organization shall make its default rules publicly available as provided in § 39.21 of this part.

(d) *Insolvency of a clearing member.*

(1) A derivatives clearing organization shall adopt rules that require a clearing member to provide prompt notice to the derivatives clearing organization if it becomes the subject of a bankruptcy petition, receivership proceeding, or the equivalent;

(2) Upon receipt of such notice, a derivatives clearing organization shall review the continuing eligibility of the clearing member for clearing membership; and

(3) Upon receipt of such notice, a derivatives clearing organization shall take any appropriate action, in its discretion, with respect to such clearing member or its positions, including but not limited to liquidation or transfer of positions, and suspension or revocation of clearing membership.

§ 39.17 [Reserved]

§ 39.18 System safeguards.

(a) *Definitions.* For purposes of this section and of § 39.30 of this part:

Relevant area means the metropolitan or other geographic area within which a derivatives clearing organization has physical infrastructure or personnel necessary for it to conduct activities necessary to the clearance and settlement of existing and new contracts. The term "relevant area" also includes communities economically integrated with, adjacent to, or within normal commuting distance of that metropolitan or other geographic area.

Recovery time objective means the time period within which an entity should be able to achieve recovery and resumption of clearing and settlement of existing and new contracts, after those capabilities become temporarily inoperable for any reason up to or including a wide-scale disruption.

Wide-scale disruption means an event that causes a severe disruption or destruction of transportation, telecommunications, power, water, or other critical infrastructure components in a relevant area, or an event that results in an evacuation or unavailability of the population in a relevant area.

(b) *In general*—(1) *Program of risk analysis.* Each derivatives clearing organization shall establish and

maintain a program of risk analysis and oversight with respect to its operations and automated systems to identify and minimize sources of operational risk through:

(i) The development of appropriate controls and procedures; and

(ii) The development of automated systems that are reliable, secure, and have adequate scalable capacity.

(2) *Resources.* Each derivatives clearing organization shall establish and maintain resources that allow for the fulfillment of each obligation and responsibility of the derivatives clearing organization in light of the risks identified pursuant to paragraph (b)(1) of this section.

(3) *Verification of adequacy.* Each derivatives clearing organization shall periodically verify that resources described in paragraph (b)(2) are adequate to ensure daily processing, clearing, and settlement.

(c) *Elements of program.* A derivatives clearing organization's program of risk analysis and oversight with respect to its operations and automated systems, as described in paragraph (b) of this section, shall address each of the following categories of risk analysis and oversight:

(1) Information security;

(2) Business continuity and disaster recovery planning and resources;

(3) Capacity and performance planning;

(4) Systems operations;

(5) Systems development and quality assurance; and

(6) Physical security and environmental controls.

(d) *Standards for program.* In addressing the categories of risk analysis and oversight required under paragraph (c) of this section, a derivatives clearing organization shall follow generally accepted standards and industry best practices with respect to the development, operation, reliability, security, and capacity of automated systems.

(e) *Business continuity and disaster recovery*—(1) *Plan and resources.* A derivatives clearing organization shall maintain a business continuity and disaster recovery plan, emergency procedures, and physical, technological, and personnel resources sufficient to enable the timely recovery and resumption of operations and the fulfillment of each obligation and responsibility of the derivatives clearing organization following any disruption of its operations.

(2) *Responsibilities and obligations.* The responsibilities and obligations described in paragraph (e)(1) shall include, without limitation, daily processing, clearing, and settlement of transactions cleared.

(3) *Recovery time objective.* The derivatives clearing organization's business continuity and disaster recovery plan described in paragraph (e)(1) of this section shall have the objective of, and the physical, technological, and personnel resources described therein shall be sufficient to, enable the derivatives clearing organization to resume daily processing, clearing, and settlement no later than the next business day following the disruption.

(f) *Location of resources; outsourcing.* A derivatives clearing organization may maintain the resources required under paragraph (e)(1) of this section either:

(1) Using its own employees as personnel, and property that it owns, licenses, or leases (own resources); or

(2) Through written contractual arrangements with another derivatives clearing organization or other service provider (outsourcing).

(i) *Retention of responsibility.* A derivatives clearing organization that enters into such a contractual arrangement shall retain complete liability for any failure to meet the responsibilities specified in paragraph (e) of this section, although it is free to seek indemnification from the service provider. The outsourcing derivatives clearing organization must employ personnel with the expertise necessary to enable it to supervise the service provider's delivery of the services.

(ii) *Testing.* The testing referred to in paragraph (j) of this § 39.18 and § 39.30(c) of this part shall include all own and outsourced resources, and shall verify that all such resources will work effectively together.

(g) *Notice of exceptional events.* A derivatives clearing organization shall notify staff of the Division of Clearing and Intermediary Oversight promptly of:

(1) Any hardware or software malfunction, cyber security incident, or targeted threat that materially impairs, or creates a significant likelihood of material impairment, of automated system operation, reliability, security, or capacity; or

(2) Any activation of the derivatives clearing organization's business continuity and disaster recovery plan.

(h) *Notice of planned changes.* A derivatives clearing organization shall give staff of the Division of Clearing and Intermediary Oversight timely advance notice of all:

(1) Planned changes to automated systems that are likely to have a significant impact on the reliability, security, or adequate scalable capacity of such systems; and

(2) Planned changes to the derivatives clearing organization's program of risk analysis and oversight.

(i) *Recordkeeping.* A derivatives clearing organization shall maintain, and provide to Commission staff promptly upon request, pursuant to § 1.31 of this chapter, current copies of its business continuity plan and other emergency procedures, its assessments of its operational risks, and records of testing protocols and results, and shall provide any other documents requested by Commission staff for the purpose of maintaining a current profile of the derivatives clearing organization's automated systems.

(j) *Testing*—(1) *Purpose of testing.* A derivatives clearing organization shall conduct regular, periodic, and objective testing and review of:

(i) Its automated systems to ensure that they are reliable, secure, and have adequate scalable capacity; and

(ii) Its business continuity and disaster recovery capabilities, using testing protocols adequate to ensure that the derivatives clearing organization's backup resources are sufficient to meet the requirements of paragraph (e) of this section.

(2) *Conduct of testing.* Testing shall be conducted by qualified, independent professionals. Such qualified independent professionals may be independent contractors or employees of the derivatives clearing organization, but shall not be persons responsible for development or operation of the systems or capabilities being tested.

(3) *Reporting and review.* Reports setting forth the protocols for, and results of, such tests shall be communicated to, and reviewed by, senior management of the derivatives clearing organization. Protocols of tests which result in few or no exceptions shall be subject to more searching review.

(k) *Coordination of business continuity and disaster recovery plans.* A derivatives clearing organization shall, to the extent practicable:

(1) Coordinate its business continuity and disaster recovery plan with those of its clearing members, in a manner adequate to enable effective resumption of daily processing, clearing, and settlement following a disruption;

(2) Initiate and coordinate periodic, synchronized testing of its business continuity and disaster recovery plan and the plans of its clearing members; and

(3) Ensure that its business continuity and disaster recovery plan takes into account the plans of its providers of essential services, including telecommunications, power, and water.

§ 39.19 Reporting.

(a) [Reserved]

(b) [Reserved]

(c) (1) [Reserved]

(i) [Reserved]

(ii) [Reserved]

(iii) [Reserved]

(iv) End-of-day positions for each clearing member, by customer origin and house origin.

(2) [Reserved]

(3)(i) [Reserved]

(ii) [Reserved]

(iii) The annual verification required by § 39.24(b)(4) of this part.

(iv) *Time of report.* The reports required by this paragraph (c)(3) shall be submitted concurrently to the Commission not more than 90 days after the end of the derivatives clearing organization's fiscal year; *provided that,* a derivatives clearing organization may request from the Commission an extension of time to submit either report, provided the derivatives clearing organization's failure to submit the report in a timely manner could not be avoided without unreasonable effort or expense. Extensions of the deadline will be granted at the discretion of the Commission.

(4) (i)–(xv) [Reserved]

(xvi) *Action of Board of Directors or Risk Management Committee.* A report when (A) the Board of Directors of a derivatives clearing organization rejects a recommendation or supersedes an action of the Risk Management Committee; or

(B) The Risk Management Committee rejects a recommendation or supersedes an action of its subcommittee, as required by § 39.25(b) of this part.

(xvii) *Election of Board of Directors.* A report after each election of its Board of Directors in accordance with § 40.9(b)(1)(iii) of this chapter.

(xviii) *System safeguards.* A report of (A) exceptional events as required by § 39.18(g) of this part; or

(B) Planned changes as required by § 39.18(h) of this part.

§ 39.20 [Reserved]

§ 39.21 Public information.

(a) [Reserved]

(b) [Reserved]

(c)(1)–(5) [Reserved]

(6) The derivatives clearing organization's rules and procedures for defaults in accordance with § 39.16 of this part;

(7) Governance and conflicts of interest in accordance with § 39.24(a)(2) of this part and § 40.9(d) of this chapter; and

(8) Any other matter that is relevant to participation in the clearing and settlement activities of the derivatives clearing organization.

§ 39.22 [Reserved]

§ 39.23 [Reserved]

§ 39.24 Governance fitness standards.

(a) [Reserved]

(b)(1)–(3) [Reserved]

(4) *Verification.* Each derivatives clearing organization must collect and verify information that supports compliance with the standards in paragraphs (b)(2) and (3) of this section, and provide that information to the Commission on an annual basis in accordance with the requirements of § 39.19(c)(3)(iv) of this part. Such information may take the form of a certification based on verifiable information, an affidavit from the general counsel of the derivatives clearing organization, registration information, or other substantiating information.

§ 39.25 Conflicts of interest.

(a) [Reserved]

(b) *Reporting to the Commission.* In the event that:

(1) The Board of Directors of a derivatives clearing organization rejects a recommendation or supersedes an action of the Risk Management Committee, or

(2) The Risk Management Committee rejects a recommendation or supersedes an action of its subcommittee (as described in § 39.13(d)(5) of this part), the derivatives clearing organization shall submit a written report to the Commission within 30 days of such a rejection or supersession detailing:

(i) The recommendation or action of the Risk Management Committee (or subcommittee thereof);

(ii) The rationale for such recommendation or action;

(iii) The rationale of the Board of Directors (or the Risk Management Committee, if applicable) for rejecting such recommendation or superseding such action; and

(iv) The course of action that the Board of Directors (or the Risk Management Committee, if applicable) decided to take contrary to such recommendation or action.

9. Add subpart C to read as follows:

Subpart C—Provisions applicable to systemically important derivatives clearing organizations.

Sec.
39.28 Scope.
39.29 [Reserved]
39.30 System safeguards.
30.31 Special enforcement authority.

Subpart C—Provisions applicable to systemically important derivatives clearing organizations.

§ 39.28 Scope.

(a) The provisions of this subpart C apply to any derivatives clearing organization, as defined in section 1a(15) of the Act and § 1.3(d) of this chapter,

(1) Which is registered or deemed to be registered with the Commission as a derivatives clearing organization, is required to register as such with the Commission pursuant to section 5b(a) of the Act, or which voluntarily registers as such with the Commission pursuant to section 5b(b) or otherwise; and

(2) Which is a systemically important derivatives clearing organization as defined in § 39.2 of this part.

(b) A systemically important derivatives clearing organization is subject to the provisions of subparts A and B of this part 39 except to the extent different requirements are imposed by provisions of this subpart C.

(c) A systemically important derivatives clearing organization shall provide notice to the Commission in advance of any proposed change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by the systemically important derivatives clearing organization, in accordance with the requirements of § 40.10 of this chapter.

§ 39.29 [Reserved]

§ 39.30 System safeguards.

(a) Notwithstanding § 39.18(e)(3) of this part, the business continuity and disaster recovery plan described in § 39.18(e)(1) for each systemically important derivatives clearing organization shall have the objective of enabling, and the physical, technological, and personnel resources described in § 39.18(e)(1) shall be sufficient to enable, the derivatives clearing organization to recover its operations and resume daily processing, clearing, and settlement no later than two hours following the disruption, for any disruption including a wide-scale disruption.

(b) To ensure its ability to achieve the recovery time objective specified in paragraph (a) of this section in the event of a wide-scale disruption, each systemically important derivatives clearing organization must maintain a degree of geographic dispersal of physical, technological and personnel resources consistent with the following:

(1) Physical and technological resources, sufficient to enable the entity

to meet the recovery time objective after interruption of normal clearing by a wide-scale disruption, must be located outside the relevant area of the infrastructure the entity normally relies upon to conduct activities necessary to the clearance and settlement of existing and new contracts, and must not rely on the same critical transportation, telecommunications, power, water, or other critical infrastructure components the entity normally relies upon for such activities;

(2) Personnel, sufficient to enable the entity to meet the recovery time objective after interruption of normal clearing by a wide-scale disruption affecting the relevant area in which the personnel the entity normally relies upon to engage in such activities are located, must live and work outside that relevant area;

(3) The provisions of § 39.18(f) of this part shall apply to these resource requirements.

(c) Each systemically important derivatives clearing organization must conduct regular, periodic tests of its business continuity and disaster recovery plans and resources and its capacity to achieve the required recovery time objective in the event of a wide-scale disruption. The provisions of § 39.18(j) of this part apply to such testing.

(d) The requirements of this section shall apply to a derivatives clearing organization not earlier than one year after such derivatives clearing organization is designated as systemically important.

§ 39.31 Special enforcement authority.

For purposes of enforcing the provisions of Title VIII of the Dodd-Frank Act, a systemically important derivatives clearing organization shall be subject to, and the Commission has authority under the provisions of subsections (b) through (n) of section 8 of, the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the systemically important derivatives clearing organization were an insured depository institution and the Commission were the appropriate Federal banking agency for such insured depository institution.

10. Revise appendix A to read as follows:

Appendix A to Part 39—Form DCO Derivatives Clearing Organization Application for Registration

BILLING CODE 6351–01–P

UNITED STATES COMMODITY FUTURES TRADING COMMISSION

FORM DCO

DERIVATIVES CLEARING ORGANIZATION APPLICATION FOR REGISTRATION

GENERAL INSTRUCTIONS

Intentional misstatements or omissions of fact may constitute federal criminal violations (7 U.S.C. § 13 and 18 U.S.C. § 1001) or grounds for disqualification from registration.

DEFINITIONS

Unless the context requires otherwise, all terms used in this Form DCO have the same meaning as in the Commodity Exchange Act ("Act"), and in the General Rules and Regulations of the Commodity Futures Trading Commission ("Commission") thereunder. All references to Commission regulations are found at 17 CFR Ch. 1.

GENERAL INSTRUCTIONS

1. This Form DCO, which includes a Cover Sheet and required Exhibits (together, "Form DCO" or "application"), is to be filed with the Commission by all applicants for registration as a derivatives clearing organization, including applicants when amending a pending application, and by any registered derivatives clearing organization applying for an amendment to its registration, pursuant to Section 5b of the Act and the Commission's regulations thereunder. Upon the filing of an application for registration or registration amendment, the Commission will publish notice of the filing and afford interested persons an opportunity to submit written data, views and comments concerning such application. No application for registration or registration amendment will be effective unless the Commission, by order, grants such registration or amended registration.

2. For the purposes of this Form DCO, the term "Applicant" shall include any applicant for registration as a derivatives clearing organization or any registered derivatives clearing organization that is applying for an amendment to its derivatives clearing organization registration.

3. Individuals' names, except the executing signature, shall be given in full (Last Name, First Name, Middle Name).

4. With respect to the executing signature, it must be manually signed by a duly authorized representative of the Applicant as follows: If the Form DCO is filed by a limited liability company, it must be signed in the name of the limited liability company by a manager or member duly authorized to sign on the limited liability company's behalf; if filed by a corporation, it must be signed in the name of the corporation by a principal officer duly authorized; if filed by a partnership, it must be signed in the name of the partnership by a general partner duly authorized; if filed by an unincorporated organization or association which is not a partnership, it must be signed in the name of such organization or association by the managing agent, i.e., a duly authorized person who directs or manages or who participates in the directing or managing of its affairs.

5. If this Form DCO is being filed as an application for registration, all applicable items must be answered in full. If any item or Exhibit is inapplicable, this response must be affirmatively indicated by the designation "none," "not applicable," or "N/A," as appropriate.

6. Under Section 5b of the Act and the Commission's regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this Form DCO from any Applicant seeking registration as a derivatives clearing organization and from any registered derivatives clearing organization. Disclosure by the Applicant of the information specified in this Form DCO is mandatory prior to the start of the processing of an application for, or amendment to, registration as a derivatives clearing organization. The information provided in this Form DCO will be used for the principal purpose of determining whether the Commission should grant or deny registration to an Applicant.

The Commission may determine that additional information is required from the Applicant in order to process its application. An Applicant is therefore encouraged to supplement this Form DCO with any additional information that may be significant to its operation as a derivatives clearing organization and to the Commission's review of its application. A Form DCO which is not prepared and executed in compliance with applicable requirements and instructions may be returned as not acceptable for filing. Acceptance of this Form DCO, however, shall not constitute a finding that the Form DCO has been filed as required or that the information submitted is true, current or complete.

7. Except as provided in 17 CFR 39.3(a)(5), in cases where the Applicant submits a request for confidential treatment with the Secretary of the Commission pursuant to the Freedom of Information Act and 17 CFR 145.9, information supplied in this application will be included routinely in the public files of the Commission and will be available for inspection by any interested person.

APPLICATION AMENDMENTS

1. 17 CFR 39.3(a)(4) requires an Applicant to promptly amend its application if it discovers a material omission or error in the application, or if there is a material change in the information contained in the application, including any supplement or amendment thereto.

2. Applicants, when filing this Form DCO for purposes of amending an application, must re-file a cover sheet, amended if necessary and including an executing signature, and attach thereto revised Exhibits or other materials marked to show changes, as applicable. The submission of an amendment represents that the remaining items and Exhibits that are not amended continue to be true, current and complete as previously filed.

WHERE TO FILE

This Form DCO must be filed electronically with the Secretary of the Commission in the form and manner provided by the Commission.

UNITED STATES COMMODITY FUTURES TRADING COMMISSION

FORM DCO

DERIVATIVES CLEARING ORGANIZATION
APPLICATION FOR REGISTRATION

COVER SHEET

_____

Exact name of Applicant as specified in charter

_____

Address of principal executive offices

☐ If this is an **APPLICATION** for registration, complete in full and check here.

☐ If this is an **AMENDMENT** to an application, list below all items that are being amended and check here.

☐ If this is an **APPLICATION FOR AN AMENDMENT** to an existing registration, list below all items to be amended and check here.

_____

_____

_____

_____

GENERAL INFORMATION

- Name under which business is conducted, if different than name specified above (include acronyms, if any):

_____

- If name of derivatives clearing organization is being amended, state previous derivatives clearing organization name:

_____

- Mailing address, if different than address specified above:

_____

Number and Street

_____

City State Country Zip Code

- Additional contact information:

_____

Website URL Main Phone Number

- List of principal office(s) and address(es) where derivatives clearing organization activities are/will be conducted:

Office	Address
_____	_____
_____	_____
_____	_____

BUSINESS ORGANIZATION

- Applicant is a:

☐ Corporation

☐ Partnership (specify whether general or limited)

☐ Limited Liability Company

☐ Other form of organization (specify) _____

- Date of formation _____
- Jurisdiction of organization: _____
- List all other jurisdictions in which Applicant is qualified to do business (including non-US jurisdictions):

_____

_____

- List all other regulatory licenses or registrations of Applicant (or exemptions from any licensing requirement) including with non-US regulators:

_____

_____

- FEIN or other Tax ID# _____
- Fiscal Year End _____

CONTACT INFORMATION

- Provide contact information specifying name, title, phone numbers, mailing address and e-mail address for the following individuals:

a. The primary contact for questions and correspondence regarding the application

Name and Title

Office Phone Number | Mobile Phone Number

Mailing address | E-mail Address

b. The individual responsible for handling questions regarding the Applicant's financial statements

Name and Title

Office Phone Number | Mobile Phone Number

Mailing address | E-mail Address

c. The individual responsible for serving as the Chief Risk Officer of the Applicant pursuant to § 39.13 of the Commission's regulations

Name and Title

Office Phone Number | Mobile Phone Number

Mailing address | E-mail Address

d. The individual responsible for serving as the Chief Compliance Officer of the Applicant pursuant to § 39.10 of the Commission's regulations

Name and Title

Office Phone Number | Mobile Phone Number

Mailing address | E-mail Address

e. The individual responsible for serving as the chief legal officer of the Applicant

Name and Title

Office Phone Number Mobile Phone Number

Mailing address E-mail Address

- Outside Service Providers: Provide contact information specifying name, title, phone number, mailing address and e-mail address for any outside service provider retained by the Applicant as follows:

a. Certified Public Accountant

Name and Title

Office Phone Number Mobile Phone Number

Mailing address E-mail Address

b. Legal Counsel

Name and Title

Office Phone Number Mobile Phone Number

Mailing address E-mail Address

c. Records Storage or Management

Name and Title

Office Phone Number Mobile Phone Number

Mailing address E-mail Address

d. Business Continuity/Disaster Recovery

Name and Title

Office Phone Number Mobile Phone Number

Mailing address E-mail Address

e. Other (specify any other outside service providers, such as consultants, providing services related to this application)

_____

Name and Title

_____

Office Phone Number Mobile Phone Number

_____

Mailing address E-mail Address

- Applicant agrees and consents that the notice of any proceeding before the Commission in connection with this application may be given by sending such notice by certified mail to the person named below at the address given.

_____

Print Name and Title

_____

Number and Street

_____

City State Zip Code

SIGNATURE/REPRESENTATION

- The Applicant has duly caused this application to be signed on its behalf by its duly authorized representative as of the _____ day of _____, 20_____. The Applicant and the undersigned represent hereby that all information contained herein is true, current and complete. It is understood that all required items and Exhibits are considered integral parts of this Form DCO and that the submission of any amendment represents that all items and Exhibits that are not amended, remain true, current, and complete as previously filed.

_____

Name of Applicant

By:_____

Manual Signature of Duly Authorized Officer

_____

Print Name and Title of Signatory

UNITED STATES COMMODITY FUTURES TRADING COMMISSION

FORM DCO

DERIVATIVES CLEARING ORGANIZATION APPLICATION FOR REGISTRATION

EXHIBIT INSTRUCTIONS

1. The following Exhibits must be filed with the Commission by each Applicant seeking registration as a derivatives clearing organization or applying for an amendment to an existing derivatives clearing organization registration, pursuant to Section 5b of the Act and the Commission's regulations thereunder.

2. The application must include a Table of Contents listing each Exhibit required by this Form DCO and indicating which, if any, Exhibits are inapplicable. For any Exhibit that is inapplicable, next to the Exhibit letter specify "none," "not applicable," or "N/A," as appropriate.

3. The Exhibits must be labeled as specified in this Form DCO. If any Exhibit requires information that is related to, or may be duplicative of, information required to be included in another Exhibit, Applicant may summarize such information and provide a cross-reference to the Exhibit that contains the required information.

4. If the information required in an Exhibit involves computerized programs or systems, Applicant must submit descriptions of system test procedures, tests conducted, or test results in sufficient detail to demonstrate the Applicant's ability to comply with the core principles specified in Section 5b of the Act and the Commission's regulations thereunder (the "Core Principles"). With respect to each system test, Applicant must identify the methodology used and provide the computer software, programs, and data necessary to enable the Commission to duplicate each system test as it relates to the applicable Core Principle.

5. If Applicant seeks confidential treatment of any Exhibit or a portion of any Exhibit, Applicant must clearly label the relevant material as being "SUBJECT TO A REQUEST FOR CONFIDENTIAL TREATMENT" and file a confidentiality request with the Secretary of the Commission in accordance with 17 CFR 145.9.

BILLING CODE 6351–01–C

Description of Exhibits

Exhibit A—General Information/Compliance

• Attach as Exhibit A–1, a regulatory compliance chart setting forth each Core Principle and providing citations to the Applicant's relevant rules, policies, and procedures that address each Core Principle, and a brief summary of the manner in which Applicant will comply with each Core Principle.

• Attach as Exhibit A–2, a current copy of Applicant's rulebook. The rulebook must consist of all the rules necessary to carry out Applicant's role as a derivatives clearing organization. Applicant must certify that its rules constitute a binding agreement between Applicant and its clearing members and, in addition to the separate clearing member agreements, establish rights and obligations between Applicant and its clearing members.

• Attach as Exhibit A–3, a narrative summary of Applicant's proposed clearing activities including (i) the anticipated start date of clearing products (or, if Applicant is already clearing products, the anticipated start date of activities for which Applicant is seeking an amendment to its registration) and (ii) a description of the scope of Applicant's proposed clearing activities (*e.g.,* clearing for a designated contract market; clearing for a swap execution facility; clearing over-the-counter ("OTC") products).

• Attach as Exhibit A–4, a detailed business plan setting forth, at a minimum, the nature of and rationale for Applicant's activities as a derivatives clearing organization, the context in which it is beginning or expanding its activities, and the nature, terms, and conditions of the products it will clear.

• Attach as Exhibit A–5, a list of the names of any person (i) who owns 5% or more of Applicant's stock or other ownership or equity interests; or (ii) who, either directly or indirectly, through agreement or otherwise, may control or direct the management or policies of Applicant. Provide as part of Exhibit A–5 the full name and address of each such person, indicate the person's ownership percentage, and attach a copy of the agreement or, if there is no agreement, an explanation of the basis upon which such person exercises or may exercise such control or direction.

• Attach as Exhibit A–6, a list of Applicant's current officers, directors, governors, general partners, LLC managers, and members of all standing committees (including any committee referenced in Section (a)(2) of Exhibit P herein), as applicable, or persons performing functions similar to any of the foregoing, indicating for each:

a. Name and Title (with respect to a director, such title must include participation on any committee of Applicant);

b. Phone number (both work and mobile) and e-mail contact information;

c. Dates of commencement and, if appropriate, termination of present term of office or position;

d. Length of time each such person has held the same office or position;

e. Brief description of the business experience of each person over the last ten years;

f. Any other current business affiliations in the financial services industry;

g. If such person is not an employee of Applicant, list any compensation paid to the person as a result of his or her position at Applicant. For a director, describe any performance-based compensation;

h. A certification for each such person that the individual would not be disqualified under Section 8a(2) of the Act or § 1.63; and

i. With respect to a director, whether such director is a public director or a clearing member customer, and the basis for such a determination as to the director's status.

If another entity "operates" Applicant, attach for such entity all of the items indicated in Exhibit A–6. For this purpose, the term "operate" shall be as defined in § 40.9(b)(2)

• Attach as Exhibit A–7, a diagram of the entire corporate organizational structure of Applicant including the legal name of all entities within the organizational structure and the applicable percentage ownership among affiliated entities. Additionally, provide (i) a list of all jurisdictions in which Applicant or its affiliated entities are doing business; (iii) the registration status of Applicant and its affiliated entities, including pending applications or exemption requests and whether any applications or exemptions have been denied (*e.g.,* country, regulator, registration category, date of registration or request for exemption, date of denial, if applicable); and (ii) the address for

legal service of process for Applicant (which cannot be a post office box) for each applicable jurisdiction.

• Attach as Exhibit A–8, a copy of the constituent documents, articles of incorporation or association with all amendments thereto, partnership or limited liability agreements, and existing bylaws, operating agreement, and rules or instruments corresponding thereto, of Applicant. Provide a certificate of good standing or its equivalent for Applicant for each jurisdiction in which Applicant is doing business, including any foreign jurisdiction, dated within one month of the date of the Form DCO.

• Attach as Exhibit A–9, a brief description of any material pending legal proceeding(s) or governmental investigation(s) to which Applicant or any of its affiliates is a party or is subject, or to which any of its or their property is at issue. Include the name of the court or agency where the proceeding(s) is pending, the date(s) instituted, the principal parties involved, a description of the factual allegations in the complaint(s), the laws that were allegedly violated, and the relief sought. Include similar information as to any such proceeding(s) or any investigation known to be contemplated by any governmental agency.

• If Applicant intends to use the services of an outside service provider (including services of its clearing members or market participants), to enable Applicant to comply with any of the Core Principles, Applicant must submit as Exhibit A–10 all agreements entered into or to be entered into between Applicant and the outside service provider, and identify (1) the services that will be provided; (2) the staff who will provide the services; and (3) the Core Principles addressed by such arrangement. If a submitted agreement is not final and executed, the Applicant must submit evidence that constitutes reasonable assurance that such services will be provided as soon as operations require.

• Attach as Exhibit A–11, documentation that demonstrates compliance with the Chief Compliance Officer ("CCO") requirements set forth in § 39.10(c), including but not limited to:

a. Evidence of the designation of an individual to serve as Applicant's CCO with full responsibility and authority to develop and enforce appropriate compliance policies and procedures;

b. A description of the background and skills of the person designated as the CCO and a certification that the individual would not be disqualified under Section 8a(2) of the Act or § 1.63;

c. To whom the CCO reports (*i.e.,* the senior officer or the Board of Directors);

d. Any plan of communication or regular or special meetings between the CCO and the Board of Directors or senior officer as appropriate;

e. A job description setting forth the CCO's duties;

f. Procedures for the remediation of noncompliance issues; and

g. A copy of Applicant's Compliance Manual (including a code of ethics and conflict of interest policy).

Exhibit B—Financial Resources

• Attach as Exhibit B, documents that demonstrate compliance with the financial resources requirements set forth in § 39.11, including but not limited to:

a. *General*—Provide as Exhibit B–1:

(1) The most recent set of audited financial statements of Applicant or of its parent company, including the balance sheet, income statement, statement of cash flows, notes to the financial statements, and accountant's opinion;

(2) If the audited financial statements are not dated within 1 month of the date of filing of the Form DCO, Applicant must provide a set of unaudited financial statements current within 1 month of the date of filing of the Form DCO;

(3) If Applicant does not have audited financial statements, Applicant must provide a balance sheet as of a date within 1 month of the date of filing of the Form DCO and an income statement and statement of cash flows reflecting the period since Applicant's formation and a date that is within 1 month of the date of filing of the Form DCO. These statements must be accompanied by an independent certified public accountant's review report; and

(4) Evidence of ability to satisfy the requirements of Exhibits B–2 and B–3 below which may include (i) pro forma financial statements setting forth all projections and assumptions used therein, and (ii) a narrative description of how Applicant will fund its financial resources obligations on the first day of its operation as a derivatives clearing organization.

b. *Default Resources*—Provide as Exhibit B–2:

(1) A calculation of the financial resources needed to enable Applicant to meet its requirements under § 39.11(a)(1). Applicant must provide hypothetical default scenarios designed to reflect a variety of market conditions, and the assumptions and variables underlying the scenarios must be explained. All results of the analysis must be included. This calculation requires a start-up enterprise to estimate its largest anticipated financial exposure. A start-up must be able to explain the basis for its estimate;

(2) Proof of unencumbered assets sufficient to satisfy § 39.11(a)(1). This may be demonstrated by a copy of a bank balance statement(s) in the name of Applicant and may be combined with the types of financial resources set forth in § 39.11(b)(1). If relying on § 39.11(b)(1)(vi), such other resources must be thoroughly explained. If relying on § 39.11(b)(1)(ii) and/or (vi), Applicant cannot also count these assets when demonstrating its compliance with its operating resources requirement under § 39.11(a)(2) and Applicant must detail the amounts or percentages of such assets that apply to each financial resource requirement;

(3) A demonstration that Applicant can perform the monthly calculations required by § 39.11(c)(1);

(4) A demonstration that Applicant's financial resources are sufficiently liquid as required by § 39.11(e)(1);

(5) A demonstration of how Applicant will be able to maintain, at all times, the level of resources required by § 39.11(a)(1); and

(6) A demonstration of how default resources financial information will be updated and reported to clearing members and the public under § 39.21, and to the Commission as required by § 39.11(f)(1) and § 39.19.

c. *Operating Resources*—Provide as Exhibit B–3:

(1) A calculation of the financial resources needed to enable Applicant to meet its requirements under § 39.11(a)(2);

(2) Proof of assets sufficient to satisfy the amount required under § 39.11(a)(2). This may be demonstrated by a copy of a bank balance statement(s) in the name of Applicant and may be combined with the types of financial resources set forth in § 39.11(b)(2). If relying on § 39.11(b)(2)(ii), such other resources must be thoroughly explained. If relying on § 39.11(b)(2)(i) or (ii), Applicant cannot also count these assets when demonstrating its compliance with meeting its default resources requirement under § 39.11(a)(1) and Applicant must detail the amounts or percentages of such assets that apply to each financial resource requirement;

(3) Proof of adequate physical infrastructure to carry out business operations, which includes an office(s) (separate from any personal dwelling) with a U.S. street address (not merely a post office box number) that has electricity, HVAC, and running water and meets all local building and fire codes. This location must be the same as the principal executive offices address identified on the cover sheet of the Form DCO;

(4) Proof of adequate technological systems necessary to carry out operations including properly working computers, networks, appropriate software, telephones, fax machines, Internet access, and photocopiers;

(5) A calculation pursuant to § 39.11(c)(2), including the total projected operating costs for Applicant's first year of operation, calculated on a monthly basis with an explanation of the basis for calculating each cost and a discussion of the type, nature, and number of the various costs included;

(6) A demonstration that Applicant's financial resources are sufficiently liquid and unencumbered, as required by § 39.11(e)(2);

(7) A demonstration of how Applicant will maintain, at all times, the level of resources required by § 39.11(a)(2) with an explanation of asset valuation methodology and calculation of projected revenue, if applicable; and

(8) A demonstration of how operating resources financial information will be updated and reported to clearing members and the public under § 39.21, and to the Commission as required by § 39.11(f)(1) and § 39.19.

d. *Human Resources*—Provide as Exhibit B–4:

(1) An organizational chart showing Applicant's current and planned staff by position and title, including key personnel (as such term is defined in § 39.2) and, if applicable, managerial staff reporting to key personnel.

(2) A discussion and description of the staffing requirements needed to fulfill all operations and associated functions, tasks,

services, and areas of supervision necessary to operate Applicant on a day-to-day basis; and

(3) The names and qualifications of individuals who are key personnel or other managerial staff who will carry out the operations and associated functions, tasks, services, and supervision needed to run the Applicant on day-to-day basis. In particular, Applicant must identify such individuals who are responsible for risk management, treasury, clearing operations and compliance (and specify whether each such person is an employee or consultant/agent).

Exhibit C—Participant and Product Eligibility

• Attach as Exhibit C, documents that demonstrate compliance with the participant and product eligibility requirements set forth in § 39.12 of the Commission's regulations, including but not limited to:

a. *Participant Eligibility*—Provide as Exhibit C–1, an explanation of the requirements for becoming a clearing member and how those requirements satisfy § 39.12 and, where applicable, support Applicant's compliance with other Core Principles. Applicant must address how its participant eligibility requirements comply with the core principles and regulations thereunder for financial resources, risk management and operational capacity. The explanation also must include:

(1) A final version of the membership agreement between Applicant and its clearing members that sets forth the full scope of respective rights and obligations;

(2) A discussion of how Applicant will monitor for and enforce compliance with its eligibility criteria, especially minimum financial requirements;

(3) An explanation of how the eligibility criteria are objective and allow for fair and open access to Applicant. Applicant must include an explanation of the differences between various classes of membership or participation that might be based on different levels of capital and/or creditworthiness. Applicant must also include information about whether any differences exist in how Applicant will monitor and enforce the obligations of its various clearing members including any differences in access, privilege, margin levels, position limits, or other controls;

(4) If Applicant allows intermediation, Applicant must describe the requirements applicable to those who may act as intermediaries on behalf of customers or other market participants;

(5) A description of the program for monitoring the financial status of the clearing members on an ongoing basis;

(6) The procedures that Applicant will follow in the event of the bankruptcy or insolvency of a clearing member, which did not result in a default to Applicant;

(7) A description of whether and how Applicant would adjust clearing member participation under continuing eligibility criteria based on the financial, risk, or operational status of a clearing member;

(8) A discussion of whether Applicant's clearing members will be required to be registered with the Commission; and

(9) A list of current or prospective clearing members. If a current or prospective clearing member is a Commission registrant, Applicant must identify the member's designated self-regulatory organization.

b. *Product Eligibility*—Provide as Exhibit C–2, an explanation of the criteria for instruments acceptable for clearing including:

(1) The regulatory status of each market on which a contract to be cleared by Applicant is traded (*e.g.,* DCM, SEF, not a registered market), and whether the market for which Applicant clears intends to join the Joint Audit Committee. For OTC agreements, contracts, or transactions not traded on a registered market, Applicant must describe the nature of the OTC market and its interest in having the particular OTC agreement, contract, or transaction cleared;

(2) The criteria, and the factors considered in establishing the criteria, for determining the types of products that will be cleared;

(3) An explanation of how the criteria for deciding what products to clear take into account the different risks inherent in clearing different agreements, contracts, or transactions and how those criteria affect maintenance of assets to support the guarantee function in varying risk environments;

(4) A precise list of all the agreements, contracts, or transactions to be covered by Applicant's registration order, including the terms and conditions of all agreements, contracts, or transactions;

(5) A forecast of expected volume and open interest at the outset of clearing operations, after six months, and after one year of operation; and

(6) The mechanics of clearing the contract, such as reliance on exchange for physical, exchange for swap, or other substitution activity; whether the contracts are matched prior to submission for clearing or after submission; and other aspects of clearing mechanics that are relevant to understanding the products that would be eligible for clearing.

Exhibit D—Risk Management

• Attach as Exhibit D, documents that demonstrate compliance with the risk management requirements set forth in § 39.13 of the Commission's regulations, including but not limited to:

a. *Risk Management Framework*—Provide as Exhibit D–1, a copy of Applicant's written policies, procedures, and controls, as approved by Applicant's Board of Directors, that establish Applicant's risk management framework as required by § 39.13(b). Applicant must also provide a description of the composition and responsibilities of Applicant's Risk Management Committee.

b. *Measuring Risk*—Provide as Exhibit D–2, a narrative explanation of how Applicant has projected and will continue to measure its counterparty risk exposure, including:

(1) A description of the risk-based margin calculation methodology;

(2) The assumptions upon which the methodology was designed, including the risk analysis tools and procedures employed in the design process;

(3) An explanation as to why a particular methodology was chosen over other methodologies that might have been suitable, including a comparison of margin levels calculated using other margin methodologies;

(4) A demonstration of the margin methodology as applied to real or hypothetical clearing scenarios;

(5) A description of the data sources for inputs used in the methodology, *e.g.* historical price data reflecting market volatility over various periods of time;

(6) A description of the sources of price data for the measurement of current exposures and the valuation models for addressing circumstances where pricing data is not readily available or reliable;

(7) The frequency and circumstances under which the margin methodology will be reviewed and the criteria for deciding how often to review and whether to modify a margin methodology;

(8) An independent validation of Applicant's systems for generating initial margin requirements, including its theoretical models;

(9) The frequency of measuring counterparty risk exposures (mark to market), whether counterparty risk exposures are routinely measured on an intraday basis, whether Applicant has the operational capacity to measure counterparty risk exposures on an intraday basis, and the circumstances under which Applicant would conduct a non-routine intraday measurement of counterparty risk exposures;

(10) Preliminary forecasts regarding future counterparty risk exposure and assumptions upon which such forecasts of exposure are based;

(11) A description of any systems or software that Applicant will require clearing members to use in order to margin their positions in their internal bookkeeping systems, and whether and under what terms and conditions Applicant will provide such systems or software to clearing members; and

(12) A description of the extent to which counterparty risk can be offset through the clearing process (*i.e.,* the limitations, if any, on Applicant's duty to fulfill its obligations as the buyer to every seller and the seller to every buyer).

c. *Limiting Risk*—Provide as Exhibit D–3, a narrative discussion addressing the specifics of Applicant's clearing activities, including:

(1) How Applicant will collect financial information about its clearing members and other traders or market participants, monitor price movements, and mark to market, on a daily basis, the products and/or portfolios it clears;

(2) How Applicant will monitor accounts carried by clearing members, the accumulation of positions by clearing members and other market participants, and compliance with position limits; and how it will use large trader information;

(3) How Applicant will determine variation margin levels and outstanding initial margin due;

(4) How Applicant will identify unusually large pays on a proactive basis before they occur;

(5) Whether and how Applicant will compare price moves and position information to historical patterns and to the

financial information collected from its clearing members; how it will identify unusually large pays on a daily basis;

(6) How Applicant will use various risk tools and procedures such as: (i) value-at-risk calculations; (ii) stress testing; (iii) back testing; and/or (iv) other risk management tools and procedures;

(7) How Applicant will communicate with clearing members, settlement banks, other derivatives clearing organizations, designated contract markets, swap execution facilities, major swap participants, swap data repositories, and other entities in emergency situations or circumstance that might require immediate action by the Applicant;

(8) How Applicant will monitor risk outside business hours;

(9) How Applicant will review its clearing members' risk management practices;

(10) Whether Applicant will impose credit limits and/or employ other risk filters (such as automatic system denial of entry of trades under certain conditions);

(11) Plans for handling "extreme market volatility" and how Applicant defines that term;

(12) An explanation of how Applicant will be able to offset positions in order to manage risk including: (i) ensuring both Applicant and clearing members have the operational capacity to do so; and (ii) liquidity of the relevant market, especially with regard to OTC products and OTC markets;

(13) Plans for managing accounts that are "too big" to liquidate and for conducting "what if" analyses on these accounts;

(14) If options are involved, how Applicant will manage the different and more complex risk presented by these products;

(15) If Applicant intends to clear swaps, whether and how often Applicant will offer multilateral portfolio compression exercises for its clearing members; and

(16) If Applicant intends to clear credit default swaps, how Applicant will manage the unique risks associated with clearing these products, such as jump-to-default risk.

d. *Existence of collateral (funds and assets) to apply to losses resulting from realized risk*—Provide as Exhibit D–4:

(1) An explanation of the factors, process, and methodology used for calculating and setting required collateral levels, the required inputs, the appropriateness of those inputs, and an illustrative example;

(2) An analysis supporting the sufficiency of Applicant's collateral levels for capturing all or most price moves that may take place in one settlement cycle;

(3) A description of how Applicant will value open positions and collateral assets;

(4) A description and explanation of the forms of assets allowed as collateral, why they are acceptable, and whether there are any haircuts or concentration limits on certain kinds of assets, including how often any such haircuts and concentration limits are reviewed;

(5) An explanation of how and when Applicant will collect collateral, whether and under what circumstances it will collect collateral on an intraday basis, and what will happen if collateral is not received in a timely manner. Include a proposed collateral collection schedule based on changes in market positions and collateral values; and

(6) If options are involved, a full explanation of how it will manage the associated risk through the use of collateral including, if applicable, a discussion of its option pricing model, how it establishes its implied volatility scan range, and other matters related to the complex matter of managing the risk associated with the clearing of option contracts.

Exhibit E—Settlement Procedures

• Attach as Exhibit E, documents that demonstrate compliance with the settlement procedures requirements set forth in § 39.14 of the Commission's regulations, including but not limited to:

a. *Settlement*—Provide as Exhibit E–1, a full description of the daily process of settling financial obligations on all open positions being cleared. This must include:

(1) Procedures for completing settlements on a timely basis during normal market conditions (and no less frequently than once each business day);

(2) Procedures for completing settlements on a timely basis in varying market circumstances including in the event of a default by the clearing member creating the largest financial exposure for Applicant in extreme but plausible market conditions;

(3) A description of how contracts will be marked to market on at least a daily basis;

(4) Identification of the settlement banks used by Applicant (including identification of the lead settlement bank, if applicable) and a copy of Applicant's settlement bank agreement(s). Such settlement bank agreements must (i) outline daily cash settlement procedures, (ii) state clearly when settlement fund transfers will occur, (iii) provide procedures for settlements on bank holidays when the markets are open, and (iv) ensure that settlements are final when effected;

(5) Identification of settlement banks that Applicant will allow its clearing members to use for margin calls and variation settlements;

(6) A description of the criteria and review process used by Applicant when selecting settlement banks; procedures for monitoring the continued appropriateness of all settlement banks including a description of how Applicant monitors its concentration risk or exposure to each settlement bank;

(7) The specific means by which settlement instructions are communicated from Applicant to the settlement bank(s);

(8) A timetable showing the flow of funds associated with the settlement of products for a 24-hour period or such other settlement timeframe specified by a particular product; this may be presented in the form of a chart, as in the following example:

FORM DCO - SAMPLE SETTLEMENT CYCLE CHART [Specify U.S. Dollar or other currency as applicable]	
TRADE DATE = T [INSERT TIME ZONE] [INSERT EXACT TIMES BELOW]	**EXAMPLE OF SETTLEMENT ACTIVITY FOR WHICH TIMES SHOULD BE PROVIDED**
T: _____ pm	Last market closes (end of regular trading hours).
T: Approx. ____ pm	DCO/DCM/SEF establishes daily settlement price for each product based on information generated by its [INSERT NAME OF APPLICABLE CLEARING SYSTEM].
T: By _____ pm	Clearing members' position information for intraday settlement is obtained from DCO's clearing system.
T+1: Approx. ____ am	DCO provides daily performance bond (PB) and settlement variation/option premium (SVOP) amounts to clearing members and banks.
T+1: By ____ am	Banks commit to pay daily PB and SVOP amounts.
T+1: Approx. ____ am	Banks pay daily PB and SVOP amounts from clearing members to DCO.
T+1: Approx. __ am	Banks pay daily PB and SVOP amounts from DCO to clearing members.
T: Approx. ____ pm	DCO/DCM/SEF determines prices for intraday settlement.
T: Approx. ____ pm	Clearing members' position information for intraday settlement is obtained from DCO's clearing system.
T: By approx. ____ pm	DCO provides intraday PB and SVOP amounts to banks and clearing members.
T: By ____ pm	Banks commit to pay intraday PB and SVOP amounts.
T: Approx. ____ pm	Banks pay intraday PB and SVOP amounts from clearing members to DCO.
T: Approx. ____ pm	Banks pay intraday PB and SVOP amounts from DCO to clearing members.

(9) A description of what happens in the event that there are insufficient funds in a clearing member's settlement account;

(10) An explanation of how and when Applicant will collect variation margin, whether and under what circumstances it will collect variation margin on an intraday basis, what will happen if variation margin is not received in a timely manner, and a proposed variation margin collection schedule based on changes in market prices;

(11) All the information above, to the extent relevant, for any products cleared that may be denominated in a foreign currency; and

(12) With respect to physical settlements, identify Applicant's rules that clearly state each obligation of Applicant with respect to physical deliveries, and explain how Applicant intends to identify and manage risks arising from physical settlement.

b. *Recordkeeping*—Provide as Exhibit E–2, a full description of the following:

(1) The nature and quality of the information collected concerning the flow of funds involved in clearing and settlement; and

(2) How such information will be recorded, maintained, and accessed.

c. *Interfaces with other clearing organizations*—Provide as Exhibit E–3, a description of Applicant's relationships with other derivatives clearing organizations, clearing agencies, financial market utilities or foreign entities that perform similar functions including how compliance with the terms and conditions of agreements or arrangements with such other entities will be satisfied, *e.g.,* any netting or offset arrangements, cross-margining, portfolio margining, linkage, common banking, common clearing programs or limited guaranty agreements or arrangements.

Exhibit F—Treatment of Funds

• Attach as Exhibit F, documents that demonstrate compliance with the treatment of funds requirements set forth in § 39.15 of the Commission's regulations, including but not limited to:

a. *Safe custody*—Provide as Exhibit F–1, documents that demonstrate:

(1) How Applicant will ensure the safekeeping of funds and collateral in depositories and how Applicant will minimize the risk of loss or of delay in accessing such funds and collateral;

(2) The depositories that will hold the funds and collateral and any written agreements between or among such depositories, Applicant or its clearing members regarding the legal status of the funds and collateral and the specific conditions or prerequisites for movement of the funds and collateral; and

(3) How Applicant will limit the concentration of risk in depositories where funds and collateral are deposited.

b. *Segregation of customer and proprietary funds*—Provide as Exhibit F–2, documents that demonstrate:

(1) The appropriate segregation of customer funds and associated acknowledgement documentation; and

(2) Requirements or restrictions regarding commingling customer funds with proprietary funds, obligating customer funds for any purpose other than to purchase, clear, and settle the products Applicant is clearing, procedures regarding customer funds which are subject to cross-margin or similar agreements, and any other aspects of customer fund segregation.

c. *Investment standards*—Provide as Exhibit F–3, documents that demonstrate:

(1) How customer funds would be invested in instruments with minimal credit, market, and liquidity risks, and in compliance with the requirements of § 1.25; and

(2) How Applicant will obtain and keep associated records and data regarding the details of such investments.

Exhibit G—Default Rules and Procedures

• Attach as Exhibit G, documents that demonstrate compliance with the default rules and procedures requirements set forth in § 39.16 of the Commission's regulations, including but not limited to:

a. *Default Management Plan*—Applicant must provide a copy of its written default management plan which must contain all of the information required by § 39.16(b), along with Applicant's most recently documented results of a test of its default management plan.

b. *Definition of default*—Applicant must describe or otherwise document:

(1) The events (activities, lapses, or situations) that will constitute a clearing member default;

(2) What action Applicant can take upon a default and how Applicant will otherwise enforce the rules applicable in the event of default, including the steps and the sequence of the steps that will be followed. Identify whether a Default Management Committee exists and, if so, its role in the default process; and

(3) An example of a hypothetical default scenario and the results of the default management process used in the scenario.

c. *Remedial action*—Applicant must describe or otherwise document:

(1) The authority and methods by which Applicant may take appropriate action in the event of the default of a clearing member which may include, among other things, liquidating positions, hedging, auctioning, allocating (including any obligations of clearing members to participate in auctions or to accept allocations), and transferring of customer accounts to another clearing member (including an explanation of the movement of positions and collateral on deposit); and

(2) Actions taken by a clearing member or other events that would put a clearing member on Applicant's "watch list" or similar device.

d. *Process to address shortfalls*—Applicant must describe or otherwise document:

(1) Procedures for the prompt application of Applicant and/or clearing member financial resources to address monetary shortfalls resulting from a default;

(2) How Applicant will make publicly available its default rules including a description of the priority of application of financial resources in the event of default (*i.e.,* the "waterfall"); and

(3) How Applicant will take timely action to contain losses and liquidity pressures and to continue to meet each obligation of Applicant.

e. *Use of cross-margin programs*—Describe or otherwise document, as applicable, how cross-margining programs will provide for fair and efficient means of covering losses in the event of a default of any clearing member participating in the program.

f. *Customer priority rule*—Describe or otherwise document rules and procedures regarding priority of customer accounts over proprietary accounts of defaulting clearing members and, where applicable, specifically in the context of specialized margin reduction programs such as cross-margining or common banking arrangements with other derivatives clearing organizations, clearing agencies, financial market utilities or foreign entities that perform similar functions.

Exhibit H—Rule Enforcement

• Attach as Exhibit H, documents that demonstrate compliance with the rule enforcement requirements set forth in § 39.17 of the Commission's regulations, including but not limited to:

a. *Surveillance*—Describe or otherwise document arrangements and resources for the effective monitoring and enforcement of compliance with Applicant's rules and the resolution of disputes.

b. *Enforcement*—Applicant must describe or otherwise document:

(1) Arrangements and resources for the effective enforcement of rules and authority and ability to discipline and limit or suspend a member's activities pursuant to clear and fair standards;

(2) Arrangements for enforcing compliance with its rules and addressing instances of non-compliance, including: Disciplinary tools such as limiting, suspending, or terminating a clearing member's access or member privileges;

(3) How Applicant will address situations related to, but which may not constitute an event of default, such as a clearing member's failure to comply with certain rules or to maintain eligibility standards, or actions taken by other regulatory bodies;

(4) The standards and any procedural protections Applicant will follow in imposing any such enforcement measure; and

(5) Processes for reporting to the Commission Applicant's rule enforcement activities and possible sanctions that could be imposed against clearing members.

c. *Dispute resolution*—Describe or otherwise document arrangements and resources for resolution of disputes between customers and clearing members, and between clearing members.

Exhibit I—System Safeguards

• Attach as Exhibit I, documents that demonstrate compliance with the system safeguards requirements set forth in § 39.18 of the Commission's regulations, including but not limited to:

a. A description of Applicant's program of risk analysis and oversight with respect to its operations and automated systems. This program must be designed to ensure daily processing, clearing, and settlement of transactions and address each of the following categories of risk:

(1) Information security;

(2) Business continuity-disaster recovery planning and resources;

(3) Capacity and performance planning;

(4) Systems operations;

(5) Systems development and quality assurance; and

(6) Physical security and environmental controls.

b. An explanation of how Applicant will establish and maintain resources that allow for the fulfillment of its program of risk analysis and oversight with respect to its operations and automated systems, and a description of such resources, including:

(1) A description of how Applicant will periodically verify that its resources are adequate to ensure daily processing, clearing, and settlement;

(2) A demonstration that Applicant's automated systems are reliable, secure, and have (and will continue to have) adequate scalable capacity;

(3) A description of the physical, technological and personnel resources and procedures used by Applicant as part of its business continuity and disaster recovery plan, and support for the conclusion that these resources are sufficient to enable the Applicant to resume daily processing, clearing and settlement no later than the next business day following a disruption; and

(4) A statement identifying which such resources are Applicant's own resources and which are provided by a service provider (outsourced). For resources that are outsourced, provide (i) all contracts governing the outsourcing arrangements, including all schedules and other supplemental materials, and (ii) a demonstration that Applicant employs personnel with the expertise necessary to enable them to supervise the service provider's delivery of the services.

c. An explanation of how Applicant will ensure the proper functioning of its systems, including its program for the periodic objective testing and review of its systems and back-up facilities (including all of its own and outsourced resources), and verification that all such resources will work effectively together;

d. Identification of the persons conducting the testing, including information as to their qualifications and independence;

e. A description of Applicant's emergency procedures, including a copy of its written plan for business continuity and disaster recovery and a description of how Applicant will coordinate its business continuity and disaster recovery plan (including testing) with those of its clearing members and providers of essential services such as telecommunications, power and water; and

f. A description of how Applicant will report exceptional events and planned changes to the Commission as required by §§ 39.18(g) and 39.18(h).

Exhibit J—Reporting

• Attach as Exhibit J, documents that demonstrate compliance with the reporting requirements set forth in § 39.19 of the Commission's regulations including but not limited to:

a. How Applicant will make available to Commission staff all the information Commission staff need in order to carry out effective oversight. This must include a discussion of what will be made available on a routine basis, how often it will be made available, and the method of its transmission. The same items must be addressed for information it will make available on a non-routine basis and what events would precipitate the generation of such data or information. Applicant must also address the manner in which any information will be made available to clearing members, customers, market participants and/or the general public. If not part of an initial application, Applicant must provide a representation that it will provide the

following when initially generated or when content changes occur:

(1) A list of current members/market participants;

(2) A list of all products currently eligible for clearing;

(3) The initial margin collection schedule;

(4) Information on any disciplinary actions (such as suspensions, etc.);

(5) Information concerning any physical or other emergencies;

(6) All information concerning any default by a member and the impact of the default on Applicant's financial resources;

(7) A copy of any examination/evaluation/compliance report of any regulatory body other than the Commission that oversees Applicant;

(8) A copy of any internal examination/evaluation/compliance reports such as, but not limited to, those related to stress testing and systems testing;

(9) Key personnel that have particular knowledge of the market(s) for which Applicant clears and any changes in those personnel, especially those to be contacted in case of market volatility or to respond to inquiries and emergencies;

(10) Copies of audited financial statements of Applicant; and

(11) Information regarding counterparties and their positions, stress test results, internal governance, legal proceedings, and other clearing activities.

b. Forms or templates to be used to satisfy the daily, quarterly, annual, and event-specific reporting requirements specified in § 39.19(c) of the Commission's regulations.

Exhibit K—Recordkeeping

• Attach as Exhibit K, documents that demonstrate compliance with the recordkeeping requirements set forth in § 39.20 of the Commission's regulations including but not limited to:

a. Applicant's recordkeeping and record retention policies and procedures;

b. The different activities related to the entity as a derivatives clearing organization for which it must maintain records;

c. The manner in which records relating to swaps and swap data are gathered and maintained; and

d. How Applicant will satisfy the performance standards of § 1.31 as applicable to derivatives clearing organizations, including:

(1) What "full" or "complete" will encompass with respect to each type of book or record that will be maintained;

(2) The form and manner in which books or records will be compiled and maintained with respect to each type of activity for which such books or records will be kept;

(3) Confirmation that books and records will be open to inspection by any representative of the Commission or of the U.S. Department of Justice;

(4) How long books and records will be readily available and how they will be made readily available during the first two years; and

(5) How long books and records will be maintained (and confirmation that, in any event, they will be maintained as required in § 1.31).

Exhibit L—Public Information

• Attach as Exhibit L, documents that demonstrate compliance with the public information requirements set forth in § 39.21 of the Commission's regulations including but not limited to:

a. Applicant's procedures for making its rulebook, a list of all current clearing members, and the information listed in § 39.21(c) readily available to the general public, in a timely manner, by posting such information on Applicant's Web site no later than the business day following the day to which the information pertains;

b. Any other information routinely made available to the public by Applicant;

c. How Applicant will make information available to clearing members and market participants in order to allow such persons to become familiar with Applicant's procedures before participating in clearing operations; and

d. How clearing members will be informed of their specific rights and obligations preceding a default and upon a default, and of the specific rights, options and obligations of Applicant preceding and upon a clearing member's default.

Exhibit M—Information Sharing

• Attach as Exhibit M, documents that demonstrate compliance with the information sharing requirements set forth in § 39.22 of the Commission's regulations, including but not limited to:

a. The appropriate and applicable information sharing agreements to which Applicant is, or intends to be, a party including any domestic or international information-sharing agreements or arrangements, whether formal or informal, which involve or relate to Applicant's operations, especially as it relates to measuring and addressing counterparty risk;

b. A description of the types of information expected to be shared and how that information will be shared;

c. An explanation as to how information obtained pursuant to any information-sharing agreements or arrangements would be used to further the objectives of Applicant's risk management program and any of its surveillance programs including financial surveillance and continuing eligibility of its clearing members; and

d. An explanation as to how Applicant expects to obtain accurate information pursuant to the information-sharing agreement or arrangement and the mechanisms or procedures which would allow for timely use and application of all information.

Exhibit N—Antitrust Considerations

• Attach as Exhibit N, documents that demonstrate compliance with the antitrust considerations requirements set forth in § 39.23 of the Commission's regulations, including but not limited to policies or procedures to ensure compliance with the antitrust considerations requirements.

Exhibit O—Governance Fitness Standards

• Attach as Exhibit O, documents that demonstrate compliance with the governance fitness standards requirements set forth in § 39.24 of the Commission's regulations, including but not limited to:

a. The manner in which its governance arrangements permit consideration of the views of Applicant's owners, whether voting or non-voting, and its participants (clearing members and customers) including (i) the general method by which Applicant will learn of the views of Applicant's owners, other than through their exercise of voting power, or the views of participants, other than through representation on the Board of Directors or any committee of Applicant, and (ii) the manner in which Applicant will consider such views;

b. The fitness standards applicable to members of the Board of Directors, members of any Disciplinary Panel, members of any Disciplinary Committee, clearing members, any individual or entity with direct access to settlement or clearing activities, and any party affiliated with any of the above individuals or entities, as well as natural persons who, directly or indirectly, own greater than 10% of any one class of equity interest in Applicant; including a description or other documentation explaining how Applicant will collect and verify information that supports compliance with the fitness standards; and

c. The manner in which Applicant will condition clearing member access and other direct access to its settlement and clearing activities on agreement to be subject to the jurisdiction of Applicant.

Exhibit P—Conflicts of Interest

• Attach as Exhibit P, documents that demonstrate compliance with the conflicts of interest requirements set forth in §§ 39.13(d), 39.25, and 40.9 of the Commission's regulations, including but not limited to:

a. A copy of:

(1) The charter (or mission statement) of Applicant (if not attached as Exhibit A–8).

(2) The charter (or mission statement) of Applicant's Board of Directors, each committee with a composition requirement (including any Executive Committee), as well as each other committee that has the authority to amend or constrain actions of Applicant's Board of Directors (if not attached as Exhibit A–8).

(3) If another entity "operates" the Applicant, the charter (or mission statement) of such entity's Board of Directors (if not attached as Exhibit A–8); and a description of the manner in which the Applicant will ensure that the entity complies with § 40.9(b)(2)(ii)(B) and (C) (Officers and Directors; Books and Records).

(4) An internal organizational chart showing the lines of responsibility and accountability for each operational unit.

b. Describe or otherwise document:

(1) Applicant's rules and procedures for ensuring compliance with the requirements of § 39.25(b) (including ensuring parent compliance with § 39.25(b)(4)), including through remediation as detailed in § 39.25(b)(5);

(2) Applicant's nominations process for the Board of Directors and the process for assigning members of the Board of Directors or other persons to any committee referenced in item a.(2) above;

1. The manner in which the Board of Directors reviews its performance and the

performance of its members on an annual basis; and

2. The procedures for removing a member of the Board of Directors, including where the conduct of such member is likely to be prejudicial to the sound and prudent management of Applicant;

(3) The composition of its Nominating Committee, including the number or percentage of public directors, and the identity of the Chairman of the Committee;

(4) The composition of any Executive Committee, including the number or percentage of public directors;

(5) The composition of the Risk Management Committee, including the number or percentage of public directors, the number or percentage of customer representatives, and the identity of the Chairman of the committee;

1. Whether the Risk Management Committee is an executive committee or an advisory committee; and

2. Whether the Risk Management Committee has delegated certain functions to the Risk Management Subcommittee, including a description or other documentation of the functions so delegated;

(6) The form of report to be used in reporting to the Commission those instances in which the Board rejects a recommendation or supersedes an action of the Risk Management Committee, or the Risk Management Committee rejects a recommendation or supersedes an action of its subcommittee;

(7) The manner in which Applicant will ensure compliance with § 39.13(d)(6) (Discretion); and the manner in which Applicant will ensure compliance with § 40.9(c)(ii)(A) and (B) (Prohibition on Domination of and Recusal Procedures with respect to the Disciplinary Panel), and § 40.9(c)(iii) (Appeals), including whether the Board of Directors has delegated the functions of the Disciplinary Panel to any other committee;

(8) The manner in which Applicant will record and summarize "significant decisions," as such term is described in § 40.9(d);

(9) The manner in which Applicant will ensure that all information required under § 40.9(d) is current, accurate, clear, and readily accessible to both the Commission and the public;

(10) Any written procedures that Applicant intends to adopt to identify, on an ongoing basis, existing and potential conflicts of interest;

(11) Applicant's process for making fair and non-biased decisions in the event of a conflict of interest; and

(12) Applicant's written policies or procedures on safeguarding non-public information, and the manner in which such policies or procedures fulfill the minimum standards set forth in § 40.9(f)(2).

Exhibit Q—Composition of Governing Boards

• Attach as Exhibit Q, documents that demonstrate compliance with the composition of governing boards requirements set forth in § 39.26, including but not limited to documentation describing the composition of Applicant's Board of Directors, including the number or percentage of public directors and customer representatives.

Exhibit R—Legal Risk Considerations

• Attach as Exhibit R, documents that demonstrate compliance with the legal risk considerations requirements set forth in § 39.27 of the Commission's regulations, including but not limited to:

a. A discussion of how Applicant operates pursuant to a well-founded, transparent, and enforceable legal framework that addresses each aspect of the activities of Applicant. The framework must provide for Applicant to act as a counterparty, including, as applicable:

(1) Novation;

(2) Netting arrangements;

(3) Applicant's interest in collateral (including margin);

(4) The steps that Applicant can take to address a default of a clearing member, including but not limited to, the unimpeded ability to liquidate collateral and close out or transfer positions in a timely manner;

(5) Finality of settlement and funds transfers that are irrevocable and unconditional when effected (when Applicant's accounts are debited and credited); and

(6) Other significant aspects of Applicant's operations, risk management procedures, and related requirements.

b. If Applicant provides, or will provide, clearing services outside the United States, Applicant must (i) provide a memorandum from local counsel analyzing insolvency issues in the foreign jurisdiction where Applicant is based and (ii) describe or otherwise document:

(1) How Applicant has identified and addressed any conflict of law issues;

(2) Which jurisdiction's law is intended to apply to each aspect of Applicant's operations;

(3) The enforceability of Applicant's choice of law in relevant jurisdictions; and

(4) That its rules, procedures, and products are enforceable in all relevant jurisdictions.

Issued in Washington, DC, on December 16, 2010, by the Commission.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

Appendices to Risk Management Requirements for Derivatives Clearing Organizations—Commission Voting Summary and Statements of Commissioners

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Sommers, Chilton and O'Malia voted in the affirmative; no Commissioner voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the proposed rulemaking for risk management requirements for derivatives clearing organizations (DCOs). The proposal establishes robust risk management standards, which is particularly important as more swaps are moved into central clearinghouses. The proposed rule meets or exceeds international standards and recommendations. It establishes methodologies for clearinghouses to set margin with regard to swaps contracts.

The proposed regulations will enhance legal certainty for DCOs, clearing members and market participants by providing a regulatory framework to support DCO risk management practices. This will help strengthen the financial integrity of the futures and swap markets. The proposed participant eligibility requirements will promote fair and open access to clearing. Importantly, the proposal addresses rules of how a futures commission merchant can become a member of a swaps clearinghouse. The proposal promotes more inclusiveness while allowing the clearinghouses to scale a member's participation and risk based upon its capital.

The proposal would establish a registration application form to bring about greater uniformity and transparency in the DCO application process and facilitate greater efficiency and consistency in processing submissions.

[FR Doc. 2011–690 Filed 1–19–11; 8:45 am]

BILLING CODE 6351–01–P

FEDERAL REGISTER

Vol. 76 Thursday

No. 13 January 20, 2011

Part III

Department of Defense

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project, Department of the Army, Army Research, Development and Engineering Command, Armament Research, Development and Engineering Center (ARDEC); Notice

DEPARTMENT OF DEFENSE

Office of the Secretary

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project, Department of the Army, Army Research, Development and Engineering Command, Armament Research, Development and Engineering Center (ARDEC)

AGENCY: Office of the Deputy Under Secretary of Defense (Civilian Personnel Policy), DoD.

ACTION: Notice.

SUMMARY: Section 342(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1995, Public Law 103–337 (10 U.S.C. 2358 note), as amended by section 1109 of NDAA for FY 2000, Public Law 106–65, and section 1114 of NDAA for FY 2001, Public Law 106–398, authorizes the Secretary of Defense to conduct personnel demonstration projects at DoD laboratories designated as Science and Technology Reinvention Laboratories (STRLs) to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management. Section 1105 of the NDAA for FY 2010, Public Law 111–84, 123 Stat. 2486, October 28, 2009, designates additional DoD laboratories as STRLs for the purpose of designing and implementing personnel management demonstration projects for conversion of employees from the personnel system which applied on October 28, 2009. The ARDEC is listed in subsection 1105(a) of NDAA for FY 2010 as one of the newly designated STRLs.

DATES: Implementation of this demonstration project will begin no earlier than March 9, 2011.

FOR FURTHER INFORMATION CONTACT: ARDEC: Ms. Christina Duncan, U.S. Army ARDEC, Human Capital Management Office, Building 1, 3rd Floor, RDAR–EIH, Picatinny Arsenal NJ 07806–5000.

DoD: Ms. Betty Duffield, CPMS–PSSC, Suite B–200, 1400 Key Boulevard, Arlington, VA 22209–5144.

SUPPLEMENTARY INFORMATION:

1. Background

Since 1966, many studies of DoD laboratories have been conducted on laboratory quality and personnel. Almost all of these studies have recommended improvements in civilian personnel policy, organization, and management. Pursuant to the authority provided in section 342(b) of Public Law 103–337, as amended, a number of DoD STRL personnel demonstration projects were approved. These projects are "generally similar in nature" to the Department of Navy's "China Lake" Personnel Demonstration Project. The terminology, "generally similar in nature," does not imply an emulation of various features, but rather implies a similar opportunity and authority to develop personnel flexibilities that significantly increase the decision authority of laboratory commanders and/or directors.

This demonstration project involves:

(1) Two appointment authorities (permanent and modified term);

(2) Modified probationary period for newly hired employees;

(3) Modified supervisory and managerial probationary period;

(4) Pay banding;

(5) Streamlined delegated examining;

(6) Modified reduction-in-force (RIF) procedures;

(7) Simplified job classification;

(8) A contribution-based appraisal system;

(9) Academic degree and certificate training;

(10) Sabbaticals;

(11) A Volunteer Emeritus Corps;

(12) Direct hire authority for candidates with advanced degrees for scientific and engineering positions; and

(13) Distinguished Scholastic Achievement Appointment Authority.

2. Overview

The NDAA for FY 2010 not only designated new STRLs but also repealed the National Security Personnel System (NSPS) mandating conversion of NSPS covered employees to their former personnel system or one that would have applied absent the NSPS. A number of ARDEC employees are covered by the NSPS and must be converted to another personnel system. Section 1105 of NDAA for FY 2010 stipulates the STRLs designated in subsection (a) of section 1105 may not implement any personnel system, other than a personnel system under an appropriate demonstration project as defined in section 342(b) of Public Law 103–337, as amended, without prior congressional authorization. In addition, any conversion under the provisions of section 1105 shall not adversely affect any employee with respect to pay or any other term or condition of employment; shall be consistent with section 4703(f) of title 5 United States Code (U.S.C.), and shall be completed within 18 months after enactment of NDAA for FY 2010. Therefore, since ARDEC is both designated an STRL by section 1105 of NDAA for FY 2010 and has NSPS covered employees, it must convert, at a minimum, its NSPS covered employees to a personnel management demonstration project (Lab Demo) before the end of April 2011.

The proposed STRL Demonstration Project Plan for ARDEC was published on September 9, 2010 in 75 **Federal Register** (FR) 55200 that was subsequently corrected by 75 FR 60091 published on September 29, 2010. During the public comment period ending October 9, 2010, DoD received 40 comments. All comments were carefully considered. Some comments addressed topics that were outside the project's scope or the demonstration authority of 5 U.S.C. 4703. These comments are not included in the summary below.

The following summary addresses the pertinent comments received, provides responses, and notes resultant changes to the original project plan in the first **Federal Register** notice.

A. General

Seven general comments were received; responses are provided below.

(1) *Comment:* Employees should be returned to the GS system because it is viewed that the NSPS performance system lost the classification restrictions and allowed for growth in salaries beyond the GS classification guides. Also, the merit compensation system allowed for compensation growth not based on merit. It would be most beneficial to only have one performance system, that being the GS system.

Response: Public Law 111–84, section 1105, prevents ARDEC from returning to the GS system and requires ARDEC to develop a Lab Demo. The ARDEC Lab Demo has been designed to capture the positive features of various personnel management systems/projects in use today. Specifically, in reference to this comment, the ARDEC Lab Demo design is founded on the principle that standard classification criteria are the basis for both performance assessment and pay setting. In reference to the comment that it would be beneficial to have only one performance system, the ARDEC Lab Demo performance management system is designed to be the performance management system for the ARDEC workforce. No change to the Lab Demo plan is required.

(2) *Comment:* The unions have already rejected participation in this Lab Demo, as they have rejected participation in the previous two attempts to revise the General Schedule system. All implications that this Lab Demo is a full workforce management process need to be stricken from the descriptions and pay bands. This

proposal is only for the management officials at ARDEC, and should be described as such, particularly when addressing the expected benefits on page 55202.

Response: The public law directed ARDEC to develop a personnel system that could cover the majority of the workforce, not just management officials. The Lab Demo plan was designed to cover both bargaining and non-bargaining unit eligible employees. The intent is for ARDEC to continue to pursue Union acceptance. Upon initial conversion, there will be both non-management and management employees within the ARDEC in Lab Demo positions spanning the full spectrum of the pay bands and associated occupational families. No change to the Lab Demo plan is required.

(3) *Comment:* Return to the Acquisition Demonstration project without any modifications.

Response: Public Law 111–84, section 1105, prevents ARDEC from returning to the Acquisition Demonstration Project and requires ARDEC to convert eligible employees to a personnel system under an appropriate demonstration project as referred to in section 342(b) of Public Law 103–337, October 5, 1994. No change to the Lab Demo plan is necessary.

(4) *Comment:* If as stated, "The primary benefit expected from this demonstration project is greater organizational effectiveness through increased employee satisfaction." Why was employee opinion on this modification not considered?

Response: As an integral part of the process used to develop the ARDEC Lab Demo Project, a number of employee outreach venues were used, including Town Halls, ARDEC Web-Site, Focus Groups, Union Meetings and ARDEC Lab Demo mail box to solicit employee ideas and recommendations for improvement. As a result of these outreach initiatives significant changes were incorporated into the Lab Demo project plan. No change to the initial Lab Demo **Federal Register** notice is needed.

(5) *Comment:* The fact that the unions non-concur suggests that employees will not be satisfied with the proposed system.

Response: The ARDEC Lab Demo project has been designed to capture the positive features of the personnel management systems/projects in use today with a key objective being employee acceptance and satisfaction. By incorporating employee suggestions into the design and with continuing employee feedback as the design matures, the full expectation is that employees will be satisfied. No change to the initial **Federal Register** notice is required.

(6) *Comment:* I believe that this system is inherently unfair and not in line with standard US Government personnel practices. This system suggests "pay for contribution." Contribution level is inherently tied to job assignment. A supervisor, upper management, or fiscal events could dictate responsibility reduction, at no fault of an employee, which would eventually result in a lower contribution rating and reduced salary. A salary reduction without merit is not fair and will definitely not result in "increased employee satisfaction."

Response: The ARDEC Lab Demo project uses a contribution-based compensation system in that both employees' contributions assessments and subsequent base pay are determined by reference to the classification system criteria. In as much as the pay setting and contribution evaluation are one in the same, employees' pay would be comparable to the level of work and contribution results. Position classification defines job responsibilities and, therefore, base pay level. It is expected that all employees will perform, at a minimum, to their position responsibilities. Supervisors assign objectives and work assignments commensurate with position responsibilities. No change to the **Federal Register** notice is required.

(7) *Comment:* This system does not capture nor reward the experience and expertise brought to an organization by seasoned professionals. A 5-year employee who mentors five 1-year employees could be considered to contribute more than a 30-year employee who mentors three 5-year employees. In measuring and rewarding current "contribution" it negates and fails to reward experience and wisdom.

Response: The ARDEC Lab Demo project uses a contribution-based compensation system. In as much as the pay setting and contribution evaluation are one in the same employees base pay would be comparable for the work they perform and the value of their contributions. The system is not designed to reward employees for experience and wisdom alone but rather how they apply wisdom and experience to their job. In addition, as in other personnel systems, employee compensation is not based on amount of workload but rather the level of work accomplished successfully. No change to the **Federal Register** notice is required.

B. Participating Employees

Two similar comments regarding participating employees were received and the response is provided below.

(1) *Comment (two similar comments combined):* ARDEC should have the right to exclude When Actually Employed (WAE), Summer Hires (i.e., STEPs) and Co-ops (i.e., SCEPs) from Lab Demo coverage at least until the bargaining unit employees are included. ARDEC needs to be able to use discretion on that point.

Response: Public Law 111–84, section 1105(b) indicates that the personnel of each STRL designated in section 1105(a), which includes ARDEC, are to convert to an appropriate demonstration project as referred to in Public Law 103–337, section 342(b). These conversions must be consistent with title 5 U.S.C. 4703(f) and be completed before April 28, 2011. The conversion provisions do not apply to prevailing rate employees or senior executives. Thus, the categories of employees mentioned in the comment are covered by the conversion requirements of Public Law 111–84, section 1105(b).

C. Pay Administration

Eight comments regarding Pay Administration were received and the responses are provided below.

(1) *Comment:* Reassignments to positions of similar responsibility should not result in an increase to base pay.

Response: The ARDEC Lab Demo does not provide for pay increases for reassignments to positions with similar responsibilities. However, pay increases can be granted when a reassignment significantly increases the complexity, responsibility, and authority or for other compelling reasons. Such an increase is subject to the specific guidelines established by the PMB. No change to the **Federal Register** notice is required.

(2) *Comment:* The **Federal Register** does not state anything about overtime. The only good thing about NSPS, you actually got time and a half for anything over 8 hours.

Response: The NSPS overtime feature had been considered for implementation in our initial **Federal Register** notice but was determined to be inconsistent with existing public law that established Lab Demo projects and therefore not included. The ARDEC Lab Demo will be using the existing GS rules for overtime. No change to the Lab Demo plan is needed.

(3) *Comment:* It is not clear if the contribution bonus is continuous bonus or a onetime bonus.

Response: The Contribution Bonus is a onetime payment to be paid out on a

yearly basis corresponding to the annual rating cycle. Language has been changed in the Lab Demo plan paragraph III.C.5.c(2), from " * * * is a lump sum payment * * * " to " * * * is a onetime lump sum payment * * *."

(4) *Comment:* It is not clear how and when the General Pay Increase (GPI) will be decreased for employees that fall above the Normal Pay Range or above the upper rail.

Response: Employees who fall above the Normal Pay Range or above the upper rail may have their GPI partially reduced or denied. The specific rules covering when and how much the GPI is reduced is a responsibility of the PMB. These rules will define under what circumstances the GPI will be denied or, if reduced, the amount of reduction. To address this concern, the **Federal Register** notice will be changed to reflect that the PMB will be responsible for establishing the rules for instances where implementation and operating procedures are required such as withholding GPI for employees that fall above the Normal Pay Range (NPR). The Lab Demo plan paragraph II.G.2 is changed from "At a minimum, duties executed by the board will be to:" to "The PMB is responsible for establishing the implementation and operating rules as required. At a minimum, duties executed by the board will be to:". Also, a new paragraph II.G.2.s has been added stating, "Establish rules and procedures for denying or reducing GPI for employees whose contributions are in region A (above the NPR)."

(5) *Comment:* Will employees that fall above the rail receive the full locality pay increase regardless of GPI reduction?

Response: Yes, employees will receive locality pay regardless of a reduction in GPI. Locality pay is separate from the Contribution-Based Compensation System. No change to the **Federal Register** notice is required.

(6) *Comment:* Traditionally employee recognition is not sufficient compared to private industry. Recommend raising the invention disclosures and patent award amounts to a larger limit more comparable to private industry.

Response: Appreciate your comment, however after further review, employee recognition for invention disclosures and patents is not a **Federal Register** notice issue. These awards are controlled at the component level (Army) and will be further investigated through other channels. No change to the **Federal Register** notice is required.

(1) *Comment:* The **Federal Register** does not seem to adequately address pay setting for employees on temporary assignments at the time of transition.

Response: It is a requirement for conversion from the National Security Personnel System and the intent of the Lab Demo project to ensure an employee does not have any loss in pay on conversion to the project regardless if the employee is on a permanent or a temporary assignment prior to conversion. Employees on a temporary assignment will convert back to their permanent position of record and then convert to a new temporary assignment within the demonstration project. In these cases, section 1113(c)(1) would also apply to the temporary position, i.e., there will be no loss or decrease in pay as a result of the conversion of positions and employees from NSPS. This is already covered in paragraph V.B.2 of the **Federal Register** notice and no change is required.

(2) *Comment:* For paragraph III.F.1, change "Employees whose performance is acceptable and not on pay retention will receive the full annual general pay increase and the full locality pay." to, "Employees whose performance is acceptable and not on pay retention will receive the full annual general pay increase and the full locality pay, with the exception of those employees covered under paragraph III.C.5.c.(3)."

Response: Employees whose Assessed Overall Contribution Score falls in the "above the rail" region may not be officially identified as "unacceptable;" however, their GPI is subject to being withheld or reduced. Therefore, for clarity and completeness the **Federal Register** paragraph III.F.1 has been changed as follows: change "Employees whose performance is acceptable and not on pay retention will receive the full annual general pay increase and the full locality pay" to, "Employees whose performance is acceptable and not on pay retention will receive the full annual general pay increase and the full locality pay, with the exception of those employees' whose rating is as described in paragraph III.C.5.c.(3)."

D. Base Pay

One comment regarding base pay was received and the response is provided below.

(1) *Comment:* For persons capped at the top rate under current NSPS equivalent to GS–15, Step 10, + 5% or $165,300:

Since the executive level cap does not rise by the cost of living and the Locality Market supplement percentage is set, then the base pay does not go up as much as it normally would. It seems unreasonable and unfair, that the distribution of pay between the local market supplement and base pay which comprises the full salary should be at the expense of base pay. While the pay is capped, the base pay should rise relative to the Local Market Supplement. If one were to transfer to a lower cost of living area where the local market supplement was less, then one would end up with reduced pay even after they have not received full or any pay raises for prior years due to the executive level cap. It is unclear if the same situation exists under the new demo project but this issue should be fixed.

Response: The situation as described in the comment above will not occur in the ARDEC Lab Demo project. In the Lab Demo project an employee's base pay may rise to the annual GS–15, Step 10, base pay cap. Locality pay adjustments are added to this base pay and are subject to the overall total Executive Level IV salary cap. The ARDEC Lab Demo project uses base pay for contribution calculations/payouts adjustments. All salary adjustments at the end of a rating cycle are applied to base pay and limited to the base pay salary caps for each of the pay bands. Locality pay and other salary adjustments are added as appropriate and are also subject to overall pay cap limitations, more specifically Executive Level IV. This comment does not require any change to the **Federal Register** notice.

E. Conversion

Five comments regarding conversion were received and the responses are provided below.

(1) *Comment (two similar comments combined):* Clarify what is the deciding factor for putting a YF–2 supervisor in Pay Band III or Pay Band IV? Page 55203 (first **Federal Register** notice) shows that a first-level supervisory position would be a pay band IV, however, Table 1—Equivalent NSPS pay bands shows YF–2 (first-level supervisory position) in both Pay Band III and Pay Band IV. I thought it was equal pay for equal work?

Response: Employees will convert to the appropriate band based on position classification. Table 1 identifies the possible bands to which employees may convert. The verbiage on Page 55203 is solely intended to provide examples of the types of positions that could be in each band but they are not absolute. Case in point, an employee's position can be a first-line supervisor position in pay bands II, III, IV, or V depending on the position's responsibilities and type and complexity of work supervised. The **Federal Register** notice has been changed to better reflect the potential position matching upon conversion. Paragraph III.A.1 has been changed by

adding the following at the end of the paragraph: "The following descriptions of positions for the bands in the occupational families illustrate examples of the types of positions included." In addition, to ensure pay equity, it is the intent to set the base pay for an employee at the minimum base pay of the pay band to which the employee's position is classified. For clarification the **Federal Register** notice has been changed as follows: In section V.B.2, the following has been added to the end of the first paragraph, "If the employee's base pay is less than the minimum rate for his/her position's assigned demonstration project pay band, the base pay rate will be increased to the minimum of that pay band."

(2) *Comment:* Conversion from NSPS is not redressing the problems created by the GS–Demo–NSPS–Demo sequence at ARDEC over the last 5–10 years. The Acquisition Demo created GS–14/15 bands, where once selected, an employee could move up, without competition, through the entire pay scale of the band. In NSPS, ARDEC "gated" some of these employees, such that their max pay would be capped at essentially a GS–14, Step 10, level. In other words, the full range of opportunity was taken away from some people. It would seem reasonable that under this Lab Demo proposal, any employee who was competitively selected for a GS–14/15 band in the past, be converted to a Pay Band V under this Lab Demo.

Response: Employees will convert to the appropriate band based on classification for the position they occupy at the time of conversion. Table 1 (Pay Band Charts) identifies the possible bands to which employees may convert. Any employee that has a base pay that exceeds the band will be place on indefinite pay retention until such time as their pay falls within the Normal Pay Range. No change to the **Federal Register** notice is required.

(3) *Comment:* Paragraph V.B.4, Transition Equity. Recommend this paragraph also apply to GS employees under paragraph V.A.

Response: It has been determined that adding the provision of Transition Equity in the NSPS conversion section to the GS conversion section of the **Federal Register** notice is appropriate. The notice has been changed by adding the following paragraphs to the end of section V.A. as a new paragraph 6:

"6. During the first 12 months following conversion to the demonstration project, management may approve certain adjustments within the pay band for pay equity reasons stemming from conversion. For example, if an employee would have been otherwise promoted but demonstration project pay band placement no longer provides the opportunity for promotion, a pay equity adjustment may be authorized provided the adjustment does not cause the employee's base pay to exceed the maximum rate of his or her assigned pay band and the employee's performance warrants an adjustment. The decision to grant a pay equity adjustment is at the sole discretion of the ARDEC Director and is not subject to employee appeal procedures.

During the first 12 months following conversion, management may approve an adjustment of not more than 20 percent, provided the adjustment does not cause the employee's base pay to exceed the maximum rate of his or her assigned pay band and the employee's performance warrants an adjustment, to mitigate compensation inequities that may be caused by artifacts of the process of conversion into STRL pay bands."

(4) *Comment:* Recommend deleting the last part of the paragraph V.A.5.a. and V.B.7.a, "and may have their initial period extended in accordance with the demonstration project regulation and implementing issuances." This is a change in contract with a person as that person was promoted with the understanding of only having a one-year probationary period and this is not considered reasonable.

Response: It has been determined that to change an employee's original probationary period contract, as defined when hired, during conversion to the ARDEC Lab Demo would be an unreasonable change to the employee's employment contract. The **Federal Register** notice paragraphs V.A.5.a. and V.B.7.a, have been changed by deleting the last part of the paragraph, "and may have their initial period extended in accordance with the demonstration project regulation and implementing issuances."

F. Contributing Factors

Two similar comments regarding Contributing Factors were received; and the response is provided below.

(1) *Comments (two similar comments received):* The Contribution-Based Compensation System (CBCS) is based on 6 factors, which duplicate to a great degree the GS Position Classification system, and introduce duplication and unnecessary administrative costs. In one case, Factor 6 on Resource Management actually proposes to add more words, and more confusion, to the legal definition of appropriation laws (page 55205).

Response: The factors, descriptors, and discriminators are intended to be used as guides for determining the level of contribution for each employee across all bands and occupational families. They are not intended to, nor does the **Federal Register** notice prescribe, changes to the legal definition of the appropriation laws. However, additional clarity has been achieved by revising some of the Descriptors and Discriminators in Appendix C of the **Federal Register** notice.

G. Pay Pool Funding

One comment regarding Pay Pool Funding was received. The response is provided below.

(1) *Comment:* The 2 percent base pay and 1 percent bonus funding levels appear to be too low for proper recognition of the workforce.

Response: The **Federal Register** notice identifies these pay pool funding levels as minimums and permits the ARDEC Director to increase these funding levels as needed. These minimums are base pay pool funding levels, not the limit to the total compensation adjustments for an individual employee. The system does not preclude other recognition/awards to employees that are not part of the CBCS compensation. No change to the **Federal Register** notice is required.

H. Pay Bands

Three comments regarding Pay Bands were received; and the responses are provided below.

(1) *Comment:* (Two similar comments received.) Gating within bands, similar to what was done under the NSPS system is highly undesirable. The system that is put in place should prevent ARDEC managers from setting arbitrary limits on the pay bands and limiting the flexibility.

Response: The ARDEC Lab Demo project has reduced the need for gating (control points) within a band by placing salary limits on bands that are commensurate with the level and difficulty of work assignments across the occupational families for the given bands. The notice does have provisions to use control points should the need arise in the future based on experience in operating the system to ensure employees are appropriately paid for the work they perform. No change to the **Federal Register** notice is required.

(2) *Comment:* The equivalent NSPS Pay Band by Occupational Family Table appears to be missing the YH category personnel and there are at least two at Picatinny, ARDEC. Where do they fit in?

Response: There was an oversight in the initial **Federal Register** notice. A revision to this table was made by

adding the NSPS YH category into Table 1 (Equivalent NSPS Pay Bands). Additionally, the General Health Science Series (0601) was moved from the Business and Technical to the Engineering and Science Occupational Family in Appendix B of the **Federal Register** notice to accommodate employees in the YH category.

I. Personnel Management Board

One comment regarding the Personnel Management Board was received. The response is provided below.

(1) *Comment:* It appears that the PMB is assuming responsibilities that should reside with Line Management. The responsibility of each should be clearly delineated. Suggest deleting the following paragraphs as these are more management functions to be performed by the line managers than the PMB.

II.G.2.m. ensure in-house budget discipline

II.G.2.n. manage the number of employees by Occupational Family and pay band.

Response: After further review the following management functions were determined to be not required for the PMB as they are line management responsibilities as such. The following paragraphs were deleted:

II.G.2.m. ensure in-house budget discipline.

II.G.2.n. manage the number of employees by Occupational Family and pay band.

J. Employee Developmental Programs

One comment regarding Employee Developmental Programs was received; and the response is provided below.

(1) *Comment:* It is suggested that the language in paragraph II.G.2.o.—"Developmental Opportunity Programs" be changed to "Employee Developmental Programs" to be consistent with language of paragraph III.G.

Response: There is an inconsistent use of terminology in the Initial **Federal Register** notice. Developmental Opportunity Programs should be changed to Employee Developmental Programs for consistency. The **Federal Register** notice has been changed as follows: paragraph II.G.2.o.—Changed from "Developmental Opportunity Programs" to "Employee Developmental Programs".

K. Annual Appraisal Cycle

Two comments regarding Annual Appraisal Cycle were received; and the responses provided below.

(1) *Comment:* The Contribution-Based Compensation System requires a mid-point review be conducted for all employees. For employees entering the Lab Demo late in the rating cycle this may be an issue.

Response: The **Federal Register** notice did not adequately account for conducting midpoint reviews for employees entering the Lab Demo project late in the rating cycle. The notice has been changed as follows: In paragraph "III.C.4 Annual Appraisal Cycle and Rating Process," the verbiage in the third paragraph was changed from "At least one review, normally the mid-point review, will be documented as a progress review." to, "At least one review, normally the mid-point review, will be documented as a progress review. Exceptions may be established by the PMB and approved by the ARDEC Director based on employees that will be in the Lab Demo for less than 180 days at the end of the rating cycle."

(2) *Comment:* The scoring system seems unbalanced over the bands with different levels to score. The program should provide for more levels for each pay band level, either by adding a "very high" category to each or use of the five bands as in Level II.

Response: Employees may score anywhere within the full spectrum of scores for their occupational family. The "very high" categorical rating exists at the top pay band level for each occupational family and provides the potential for employees in a top pay band level to score above their band level as can employees in other band levels. The scoring range for employees in pay band II of the Engineer and Science and Business and Technical occupational family is greater than other pay bands reflecting the broader range (equivalent to GS–05 to GS–11 grades) of contribution levels contained in that pay band. The additional categorical ratings (Medium High and Medium Low) in pay band II facilitate the ability to assess and categorize employee contributions within pay band II. No change to the notice is needed.

L. Probationary Periods

One comment regarding Probationary Periods was received. The response is provided below.

(1) *Comment:* Consider adding written documentation for reassignments of supervisors on probationary periods similar to what is being done for the employee probationary period.

Response: There is an inconsistent requirement for written documentation for different probationary periods. It is appropriate to document the supervisory probationary period reassignments in the same manner as required for the employee probationary period. The notice has been modified to add the following to paragraph III.D.9, "When a supervisor determines to reassign a probationary supervisor to a non-supervisory position during the probationary period because his/her work performance or conduct is unacceptable, the probationary employee's supervisor will provide written notification subject to higher level management approval."

M. Position Classification

One comment regarding Position Classification was received. The response is provided below.

(1) *Comment:* Should specialty codes be used for Lab Demo position descriptions? Can any position description be established without them? Suggest changing from "will" to "may" or remove from the **Federal Register** notice.

Response: Concur with the recommendation to change "will" to "may" in paragraph III.B.2.

N. Reduction in Force

Three comments regarding reduction in force were received. The responses are provided below.

(1) *Comment:* Do Specialty Work Codes have any effect if ARDEC were to conduct a reduction in force?

Response: The Lab Demo **Federal Register** notice does not mandate the use of Specialty Work Codes on position descriptions; and, therefore, the notice will not specifically make the use of Specialty Work Codes mandatory when conducting a reduction in force (RIF). No change to the **Federal Register** notice is required.

(2) *Comment:* Paragraph III.H—Recommend changing the RIF credit lines to define them as 3 points below the Expected Overall Contribution Score (EOCS). Using 94 percent would mean 3 Overall Contribution Score (OCS) points for an EOCS of 50 and 6 OCS points for an EOCS of 100. Also, since ratings are not given to people on a Contribution Improvement Period (CIP), recommend deleting the requirement for OCS to be less than 92 percent (actually 4 points) as well as CIP to get 0 years of credit. Define the year as the year that the employee enters a CIP, so as not to penalize two years should the CIP overlap two years.

Response: The use of percent was in error and the intent was to define the years of service augmentation based upon the delta between an employee's Assessed Overall Contribution Score (AOCS) and an employee's EOCS at the end of a rating cycle. Additionally, the **Federal Register** notice has been adjusted (see service augmentation rule 3 below) to clarify when zero years of

service augmentation are applied. The following are the service augmentation rules:

1. Seven (7) years of service augmentation for each year the AOCS is greater than or equal to the EOCS minus 3 (AOCS ≥ EOCS − 3).

2. Four (4) years of service augmentation for each year the AOCS is less than the EOCS minus 3 (AOCS < EOCS − 3).

3. Zero (0) years of service augmentation for each year the employee was placed on a CIP at any time during the rating cycle.

(3) *Comment:* The RIF procedures have a predictable outcome on the rating process. If ARDEC gets into a long downsizing cycle, such as in the 1990s, rating will be progressively exaggerated, until almost all employees get the seven years of extra credit. This will return the workforce to the standard, GS RIF ranking of tenure, veterans' preference and years of service.

Response: The Lab Demo project has been designed to improve the discipline of the rating process and reduces the possibility of inflated ratings. No change to the **Federal Register** notice is required.

O. Hiring Authority

One comment regarding Hiring Authority was received. The response is provided below.

(1) *Comment:* For paragraph III.D.3.a, change the beginning to "The ARDEC has and is forecasted to have for the near future an urgent need.* * *" This is not a one time need, but will continue.

Response: The verbiage in the **Federal Register** notice does not address the anticipated near future hiring need. The following rewording provides for the current and future hiring needs of ARDEC. Change paragraph III.D.3.a from The ARDEC has an urgent need * * *" to "The ARDEC has and is forecasted to have for the foreseeable future an urgent need.* * *" This is not a one time need, but will continue.

P. Projected Annual Expenses

One comment regarding Projected Annual Expenses was received; and the response is provided below.

(1) *Comment:* The costs need to be re-visited and validated. NSPS costs of implementation need to be obtained and used as a comparable set of figures. The operating costs of NSPS, meaning the paperwork, the administrative support costs, the automation costs, the employee and supervisor time spent feeding the system need to be compiled. There needs to be some realistic comparison between the value of a 2% incentive to the life cycle cost of operating a system. The investment ARDEC has made in its previous attempts to shed the GS system must by now total millions. By the way, the $85k shown does not cover the salary of the lead admin officer for the project, so it can hardly be right.

Response: The projected annual expenses in the initial **Federal Register** notice were determined based on benchmarks of other lab demo projects and do not include the normal managerial labor expenses typically incurred in the execution of other personnel systems. Subsequently, ARDEC has obtained and developed additional cost data and revised Table 6 of the **Federal Register** notice as follows:

TABLE 6—PROJECTED ANNUAL EXPENSES

	FY10	FY11	FY12	FY13	FY14
Training	0K	15K	10K	5K	5K
Project Evaluation	40K	80K	30K	30K	30K
Automation	97K	400K	400K	50K	50K
Totals	137K	495K	440K	85K	85K

3. Access to Flexibilities of Other STRLs

Flexibilities published in this **Federal Register** notice shall be available for use by the STRLs previously enumerated in section 9902(c)(2) of title 5, United States Code, which are now designated in section 1105 of the NDAA for FY 2010, Public Law 111–84, 123 Stat. 2486, October 28, 2009, if they wish to adopt them in accordance with DoD Instruction 1400.37; pages 73248 to 73252 of volume 73, **Federal Register**; and after the fulfilling of any collective bargaining obligations.

Dated: January 13, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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I. Executive Summary

The Armament Research, Development and Engineering Center includes the ARDEC organizations at Picatinny Arsenal, NJ; Watervliet Arsenal, NY; Rock Island Arsenal, IL; and ARDEC employees with duty stations at other sites. The intent of this demonstration project is to cover all employees, subject to bargaining unit agreement.

The ARDEC provides integrated science, technology, and engineering solutions to address the armament, munitions, and fire control needs for the Army. The ARDEC's core competency is working with weapon systems at all stages of the materiel life cycle. The ARDEC maintains the following fundamental capabilities:

(1) Armaments and Weapons;
(2) Fire Control;
(3) Energetics, Warheads, and Ammunition;
(4) Ammunition Logistics;
(5) Explosive Ordnance Disposal; and
(6) Homeland Defense Technology.

In order to sustain these unique capabilities, the ARDEC must be able to hire, retain, and continually motivate enthusiastic, innovative, and highly-educated scientists and engineers, supported by accomplished business management and administrative professionals, as well as a skilled administrative and technical support staff.

The goal of the project is to enhance the quality and professionalism of the ARDEC workforce through improvements in the efficiency and effectiveness of the human resource system. The project interventions will strive to achieve the best workforce for the ARDEC mission, adjust the workforce for change, and improve workforce satisfaction. With some modifications, this project mirrors the STRL personnel management demonstration project, designed by the U.S. Army Edgewood Chemical Biological Center (ECBC). The ARDEC Demonstration Project was built on the ECBC concepts and uses much of the same language; however, it includes several concepts from the Air Force Research Laboratory (AFRL), Naval Research Laboratory (NRL), and the DoD Civilian Acquisition Workforce (Acq Demo) personnel management demonstration projects. Of significant note is the inclusion of a contribution-based compensation and assessment system similar to that used in the Acq Demo program. The results of the project will be evaluated within five years of implementation.

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that the effectiveness of DoD STRLs can be enhanced by expanding opportunities available to employees and by allowing greater managerial control over personnel functions through a more responsive and flexible personnel system. Federal laboratories need more efficient, cost effective, and timely processes and methods to acquire and retain a highly-creative, productive, educated, and trained workforce. This project, in its entirety, attempts to improve employees' opportunities and provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve the highest quality organization, and hold them accountable for the proper exercise of this authority within the framework of an improved personnel management system.

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. The provisions of this project plan will not be modified, or extended to individuals or groups of employees not included in the project plan without the approval of the DUSD(CPP). The provisions of DoDI 1400.37 are to be followed for any modifications, adoptions, or changes to this demonstration project plan.

B. Problems With the Present System

The ARDEC has participated in a number of personnel systems and personnel demonstrations over the past 25 years. These include the current Civil Service General Schedule (GS) system (80 percent of ARDEC employees are currently in this GS system); Acq Demo Project from 2001 to 2006; and NSPS from 2006 to the present (20 percent of ARDEC employees are currently in NSPS). The ARDEC's experience with each of these prior personnel systems was that, although each had positive features, each also had negative aspects. As a result of the ARDEC's experience, it was determined that certain features from the earlier systems were worthwhile to carry forward and certain shortcomings/limitations needed to be corrected or alleviated.

The current Civil Service GS system has existed in essentially the same form since 1949. Work is classified into one of fifteen overlapping pay ranges that correspond with the fifteen grades. Base pay is set at one of those fifteen grades and the ten interim steps within each grade. The Classification Act of 1949 rigidly defines types of work by occupational series and grade, with very precise qualifications for each job. This system does not quickly or easily respond to new ways of designing work and changes in the work itself.

The performance management model that has existed since the passage of the Civil Service Reform Act in 1980 has come under extreme criticism. Employees frequently report there is inadequate communication of performance expectations and feedback on performance. There are perceived inaccuracies in performance ratings with general agreement that the ratings are inflated and often unevenly distributed by grade, occupation, and geographic location.

The need to change the current hiring system is essential as the ARDEC must be able to recruit and retain scientific, engineering, acquisition support and other professionals and skilled technicians. The ARDEC must be able to compete with the private sector for the best talent and be able to make job offers in a timely manner with the attendant bonuses and incentives to attract high quality employees and be in compliance with public law.

Finally, current limitations on training, retraining, and otherwise developing employees make it difficult to correct skill imbalances and to prepare current employees for new lines of work to meet changing missions and emerging technologies.

The ARDEC's proposed personnel management demonstration project, by building on previous strengths and addressing shortcomings, is intended to provide the highest potential for movement to a single system that will meet the needs of the ARDEC and all its employees.

C. Changes Required/Expected Benefits

The primary benefit expected from this demonstration project is greater organizational effectiveness through increased employee satisfaction. The long-standing Department of the Navy "China Lake" and National Institute of Standards and Technology (NIST) demonstration projects have produced impressive statistics on increased job satisfaction and quality of employees versus that for the Federal workforce in general. This project will demonstrate that a human resource system tailored to the mission and needs of the ARDEC workforce will facilitate increased:

1. Quality in the workforce and resultant products;
2. timeliness of key personnel processes;
3. retention of excellent performers;
4. success in recruitment of personnel with critical skills;
5. management authority and accountability;
6. satisfaction of customers; and
7. workforce satisfaction.

An evaluation model was developed for the Director, Defense, Research, and Engineering (DDR&E) in conjunction with STRL service representatives and the Office of Personnel Management (OPM). The model will measure the

effectiveness of this demonstration project, as modified in this plan, and will be used to measure the results of specific personnel system changes.

D. Participating Organizations

The ARDEC is comprised of employees headquartered at Picatinny Arsenal, NJ. The ARDEC employees are geographically dispersed at the locations shown in Appendix A. It should be noted that some sites currently employ fewer than ten people and that the sites may change should ARDEC reorganize or realign. Successor organizations will continue coverage in the demonstration project.

E. Participating Employees and Union Representation

This demonstration project will cover approximately 3,400 ARDEC civilian employees under title 5 U.S.C. in the occupational series listed in Appendix B. The project plan does not cover members of the Senior Executive Service (SES), Scientific and Professional (ST) employees, Federal Wage System (FWS) employees, employees presently covered by the Defense Civilian Intelligence Personnel System (DCIPS), or Department of Army (DA), Army Command centrally funded interns and centrally funded students employed under the Student Career Experience Program (SCEP).

The International Federation of Professional and Technical Engineers (IFPTE) Local 1437; the American Federation of Government Employees (AFGE) Local 225; the American Federation of Government Employees (AFGE) Local 15; and the National Federation of Federal Employees (NFFE) Local 2109 represent a majority of the ARDEC employees. Of those employees assigned to the ARDEC, approximately 75 percent are represented by labor unions.

To foster union acceptance of the ARDEC's proposed personnel demonstration project, initial discussions with the four unions began in November 2009. The ARDEC will continue to fulfill its obligation to consult and/or negotiate with all labor organizations in accordance with 5 U.S.C. 4703(f) and 7117, as applicable.

F. Project Design

In October 2009, the 2010 National Defense Authorization Act directed the ARDEC to transition to a laboratory personnel management demonstration project. Following review and analysis of existing DoD demonstration projects, the ARDEC senior leadership decided to adapt the ECBC model, one of the latest Army projects. A series of focus groups, benchmarking and other sensing sessions were completed to determine the unique ARDEC needs and requirements. One key departure from the ECBC model is the shift from their Performance Management System to a Contribution-Based Compensation System (CBCS), similar to the Acq Demo project.

G. Personnel Management Board (PMB)

1. ARDEC will create a PMB to oversee and monitor the fair, equitable, and consistent implementation of the provisions of the demonstration project to include establishment of internal controls and accountability. Members of the board will be senior leaders appointed by the ARDEC Director. As needed, ad hoc members (such as labor counsel, human resource representatives, etc.) will serve as advisory members to the board.

2. The PMB is responsible for establishing the implementation and operating rules as required. At a minimum, duties executed by the board will be to:

a. Determine the composition of the pay pools in accordance with the guidelines of this proposal and internal procedures;

b. review operation of pay pools and provide guidance to pay pool managers;

c. oversee disputes in pay pool issues;

d. formulate and manage the civilian pay pool budget;

e. formulate and manage the civilian bonus pool budget;

f. determine hiring, reassignment, and promotion base pay as well as exceptions to Contribution-Based Compensation System base pay increases;

g. conduct classification review and oversight, monitor and adjust classification practices, and decide board classification issues;

h. approve major changes in position structure;

i. address issues associated with multiple pay systems during the demonstration project;

j. manage standard Contribution Factors and Descriptors;

k. identify and implement improvements to demonstration project procedures and policies;

l. review requests for Supervisory/Team Leader Base Pay Adjustments and provide recommendations to the Director;

m. develop policies and procedures for administering Employee Developmental Programs;

n. ensure that all employees are treated in a fair and equitable manner in accordance with all policies, regulations, and guidelines covering this demonstration project;

o. monitor the evaluation of the project;

p. establish and manage the Accelerated Compensation for Developmental Positions (ACDP); and

q. Establish rules and procedures for denying or reducing GPI for employees whose contributions are in region A (above the NPR).

III. Personnel System Changes

A. Pay Banding

The design of the ARDEC pay banding system takes advantage of the many reviews performed by DA, DoD, OPM, and others. The design also has the benefit of being preceded by exhaustive studies of pay banding systems currently practiced in the Federal sector, to include those practiced by the China Lake experiment and NIST. The ARDEC pay banding system will replace the current GS grade and NSPS pay band structures.

1. Occupational Families

Occupations with similar characteristics will be grouped together into one of three Occupational Families with career paths and pay band levels designed to facilitate pay progression. These Occupational Families are Engineering and Science (E&S), Business and Technical (B&T), and General (GEN). Each Occupational Family's career path will be composed of pay bands corresponding to recognized advancement and career progression patterns within the covered occupations. These career paths and their pay bands will replace the NSPS pay band structure and the individual GS grades and will not be the same for each Occupational Family. Each Occupational Family will be divided into three to six pay bands. Employees track into an Occupational Family based on their current OPM classification series as provided in Appendix B. All employees are initially assigned to the Occupational Family and pay band in which their comparable grade fits based on position classification using the GS classification standards. Comparison to the GS grades is used in setting the upper and lower base pay dollar limits of the pay band levels with the exception of Pay Band VI of the E&S Occupational Family (refer to III.A.3). The current occupations have been examined; and their characteristics and distribution have served as guidelines in the development of the three Occupational Families. The following descriptions of positions in the pay bands of each occupational family illustrate examples of the types of positions included.

a. Engineering and Science (E&S) (Pay Plan DB): This Occupational Family includes positions as defined in Appendix B. Specific course work or educational degrees are required for these occupations. Six bands have been established for the E&S career path: (refer to Table 1).

(1) Band I includes student trainee positions.

(2) Band II includes developmental positions.

(3) Band III includes full-performance technical positions.

(4) Band IV includes technical specialist and first level supervisory positions.

(5) Band V includes senior technical and managerial positions.

(6) Band VI includes positions classified above the GS–15 level.

b. Business and Technical (B&T) (Pay Plan DE): This Occupational Family includes positions as defined in Appendix B. Employees in these positions may or may not require specific course work or educational degrees. Five bands have been established for the B&T career path: (refer to Table 1).

(1) Band I includes student trainee positions.

(2) Band II includes developmental positions.

(3) Band III includes full-performance technical and first level supervisory positions.

(4) Band IV includes senior technical specialist and supervisory positions.

(5) Band V includes managerial positions.

c. General Support (GEN) (Pay Plan DK): This Occupational Family includes positions as defined in Appendix B. Employees in these positions may or may not require specific course work or educational degrees. Three bands have been established for the GEN career path: (refer to Table 1).

(1) Band I covers entry-level and student positions.

(2) Band II covers full-performance positions.

(3) Band III includes supervisory and senior positions.

2. Pay Band Design

The pay bands for the Occupational Families and how they relate to the current GS/NSPS frameworks are shown in Table 1.

TABLE 1—PAY BAND CHARTS

Occupational family	Equivalent GS grades					
	I	II	III	IV	V	VI
E&S	GS–01–04	GS–05–11	GS–12–13	GS–14	GS–15	>GS–15
Business & Technical	GS–01–04	GS–05–11	GS–12–13	GS–14	GS–15	
General Support	GS–01–04	GS–05—08	GS–9			

Occupational family	Equivalent NSPS Pay bands[1, 2]					
	I	II	III	IV	V	VI
E&S (DB)	YP–1	YD–1, YF–1, YF–2, YP–1.	YD–2, YF–2	YD–3, YF–2, YF–3, YH–3.	YD–3, YF–3	
Business & Technical (DE)	YP–1, YB–1, YE–1	YA–1, YA–2, YB–1, YB–2, YB–3, YC–1, YC–2, YE–1, YE–2, YE–3, YP–1.	YA–2, YB–3, YC–2, YE–3, YE–4.	YA–3, YC–2, YC–3.	YA–3, YC–3	
General Support (DK)	YB–1, YE–1, YP–1	YB–1, YB–2, YE–1, YE–2, YP–1.	YB–2, YE–2, YP–1.			

[1] NSPS Pay Bands overlap Lab Demo bands and Occupational Families.
[2] Student Career Experience Program participants in YP pay bands are not included in this Demonstration Project.

As the rates of the GS are increased due to the annual general pay increases, the upper and lower base pay rates of the pay bands will also be adjusted. Since pay progression through the bands depends directly on contribution, there will be no scheduled Within-Grade Increases (WGIs) or Quality Step Increases (QSIs) for former GS employees once the pay banding system is in place. GS special rate schedules and NSPS Targeted Local Market Supplements (TLMS) will no longer be applicable to demonstration project employees. Special provisions have been included to ensure no loss of pay upon conversion (refer to III.F.11 Staffing Supplements). Except for those receiving a staffing supplement and employees on pay retention, employees will receive locality pay in addition to their base pay in the same amount and to the same extent as established for GS employees in accordance with 5 U.S.C. 5304 and 5304a. However, adjusted pay (base + locality) for employees in Band V or below cannot exceed Executive Level IV. 3. Science and Engineering Positions Classified Above GS–15.

The career path for the E&S Occupational Family includes a pay band VI to provide the ability to accommodate positions having duties and responsibilities that exceed the GS–15 classification criteria. This pay band is based on the Above GS–15 Position concept found in other STRL personnel management demonstration projects that was created to solve a critical classification problem. The STRLs have positions warranting classification above GS–15 because of the technical expertise requirements including inherent supervisory and managerial responsibilities. However, these positions are not considered to be appropriately classified as Scientific or Professional Positions (STs) because of the degree of supervision and level of managerial responsibilities. Neither are these positions appropriately classified as Senior Executive Service (SES) positions because of the requirement for advanced specialized scientific or engineering expertise, and because the positions are not at the level of the general managerial authority and impact that is required for an SES position.

The original Above GS–15 Position concept was to be tested for a five-year period. The number of trial positions was set at 40 with periodic reviews to determine appropriate position

requirements. The Above GS–15 Position concept is currently being evaluated by DoD management for its effectiveness, continued applicability to the current STRL scientific, engineering, and technology workforce needs and appropriate allocation of billets based on mission requirements. The degree to which the laboratory plans to participate in this concept and develop classification, compensation, and performance management policy, guidance, and implementation processes will be based on the final outcome of the DoD evaluation.

B. Classification

1. Occupational Series

The GS classification system has over 400 occupational series which are divided into 23 occupational groupings. The ARDEC currently has positions in approximately 60 occupational series that fall into approximately 16 occupational groupings. All positions listed in Appendix B will be included in the classification structure. Provisions will be made for including other occupations in response to changing missions.

2. Classification Standards and Position Descriptions

The ARDEC may use an automated classification system. The current OPM classification standards will be used for the identification of proper series and occupational titles of positions within the demonstration project. The grading criteria in the OPM classification standards will be used as a framework to develop new and simplified pay band factor level descriptors for each pay band determination. The objective is to record the essential criteria for each pay band within each Occupational Family by stating the characteristics of the work, the responsibilities of the position, the competencies required, and the expected contributions. The Factor Descriptors will serve as both classification criteria and contribution assessment criteria and may be found in Appendix C. New position descriptions will replace the current position/job descriptions. The Factor Descriptors of each pay band will serve as an important component in the new position description, which will also include position-specific information and provide data element information pertinent to the job. The new descriptions will be easier to prepare, minimize the amount of writing time, and make the position description a more useful and accurate tool for other personnel management functions.

Specialty work codes (narrative descriptions) may be used to further differentiate types of work and the competencies required for particular positions within an Occupational Family and pay band. Each code represents a specialization or type of work within the occupation.

3. Fair Labor Standards Act

Fair Labor Standards Act (FLSA) exemption and non-exemption determinations will be consistent with criteria found in 5 CFR part 551. All demonstration project positions are covered by the FLSA unless they meet the criteria for exemption. Positions will be evaluated as needed by comparing the duties and responsibilities assigned the pay band factor level descriptors for each pay band level, and the 5 CFR part 551 FLSA criteria. As a general rule, the FLSA status of a position can be matched to an Occupational Family, career path, and pay band level as indicated in Table 2. For example, positions classified in Pay Band I of the E&S Occupational Family are typically nonexempt, meaning they are covered by the overtime entitlements prescribed by the FLSA. An exception to this guideline includes supervisors/managers whose primary duty meets the definitions outlined in the OPM GS Supervisory Guide. Therefore, supervisors/managers in any of the pay bands who meet the foregoing criteria are exempt from the FLSA. Supervisors with classification authority will make the determinations on a case-by-case basis by comparing assigned duties and responsibilities and pay band factor level descriptors to the 5 CFR part 551 FLSA criteria. Additionally, the advice and assistance of the servicing Civilian Personnel Advisory Center (CPAC) will be obtained in making determinations. The position descriptions will not be the sole basis for the determination. The basis for exemption will be documented and attached to each position description. Exemption criteria will be narrowly construed and applied only to those employees who clearly meet the spirit of the exemption. Changes will be documented and provided to the CPAC.

TABLE 2—FLSA STATUS

[Pay bands]

Occupational family	I	II	III	IV	V	VI
E&S	N	N/E	E	E	E	E
B&T	N	N/E	E	E	E	
GEN	N	N	E			

N—Non-Exempt from FLSA; E—Exempt from FLSA; and N/E—Exemption status determined on a case-by-case basis.

Note: Although typical exemption status under the various pay bands is shown in the above table, actual FLSA exemption determinations are made on a case-by-case basis.

4. Classification Authority

The ARDEC Director will have delegated classification authority and may in turn, re-delegate this authority to appropriate levels. Position descriptions will be developed to assist managers in exercising delegated position classification authority. Managers will identify the Occupational Family, occupational series, functional code, specialty work code, pay band level, and the appropriate acquisition codes. Personnel specialists will provide ongoing consultation and guidance to managers and supervisors throughout the classification process. These decisions will be documented on the position description.

5. Classification Appeals

Classification appeals under this demonstration project will be processed using the following procedures: An employee may appeal the determination of Occupational Family, occupational series, position title, and pay band of his/her position at any time. An employee must formally raise the area of concern to supervisors in the immediate chain of command, either verbally or in writing. If the employee is not satisfied with the supervisory response, he/she may then appeal to the DoD appellate level. Appeal decisions rendered by DoD will be final and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government. Classification appeals are not accepted on positions which

exceed the equivalent of a GS–15 level. Time periods for cases processed under 5 CFR part 511 apply.

An employee may not appeal the accuracy of the position description, the demonstration project classification criteria, or the pay-setting criteria; the assignment of occupational series to an Occupational Family; the propriety of a pay schedule; matters grievable under an administrative or negotiated grievance procedure; or a decision reached using an alternative dispute resolution procedure.

The evaluations of classification appeals under this demonstration project are based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the servicing Civilian Personnel Advisory Center (CPAC) and will include copies of appropriate demonstration project criteria.

C. Contribution-Based Compensation System

1. Overview

The purpose of the Contribution-Based Compensation System (CBCS) is to provide an effective, efficient, and flexible method for assessing, compensating, and managing the ARDEC workforce. CBCS is essential for the development and continued growth of the high quality, extremely productive and innovative workforce needed to meet mission requirements. The CBCS allows for greater employee involvement in the assessment process, fosters increased communication between supervisor and employee, promotes a clear accountability of performance, facilitates employee career progression, and provides an understandable and rational basis for base pay changes by linking pay, performance, and contribution. The CBCS process described herein applies to all Occupational Families and pay band levels except Pay Band VI of the E&S Occupational Family. The assessment process for E&S Pay Band VI positions will be based on the final outcome of the DoD evaluation and documented in ARDEC Internal Operating Instructions.

CBCS is an assessment system that measures the employee's level of contribution to the organization's mission and how well the employee performed. Contribution is simply defined as the measure of the demonstrated value of employee actions in terms of accomplishing or advancing the organizational objectives and mission impact. CBCS promotes base pay adjustment decisions made on the basis of an individual's overall annual contributions and current base pay in relation to other employees' contributions and their level of compensation in the pay pool. The measurement of overall contribution is determined through a rating process which determines the Overall Contribution Score (OCS). OCS is a key component to the CBCS assessment system in that it:

(1) Provides a consistent scoring scale linked to base pay even as salaries increase in accordance with GPI increases.

(2) Provides a rating scale that enables direct comparison of the level and quality of employee contributions to the current base pay of that employee.

To accomplish (2) above, the employee's current base pay is converted to an Expected OCS (EOCS). The other OCS score, Assessed OCS (AOCS) is the measurement of the employee's contributions in the appraisal process. AOCS is the result of measuring contribution and performance by using the pay band level descriptors for a set of contribution factors and discriminators each of which is relevant to mission success of the organization. The comparison of EOCS and AOCS determines if the employee is appropriately compensated. The same factor level descriptors used for classification will also be used for the annual CBCS employee assessments (see Appendix C).

2. Contribution Factors

The following six (6) factors will be used for evaluating the yearly contribution of the ARDEC personnel in all three Occupational Families:

(1) Problem Solving
(2) Teamwork/Cooperation
(3) Customer Relations
(4) Leadership/Supervision
(5) Communication
(6) Resource Management

Each factor has multiple levels of increasing contribution corresponding to the pay band levels. Each factor contains descriptors for each respective pay band level within the relevant Occupational Family.

The appropriate Occupational Family pay band level factor descriptors will be used by the rating official to determine the employee's actual contribution score. Employees can score within, above, or below their pay band level. For example, a pay band level II employee could score in the pay band level I, II, III, or IV range.

3. Pay Pools

The ARDEC employees will be placed into pay pools that are defined for the purpose of determining performance payouts under the CBCS. Pay pools will be established and operated in accordance with the guidelines provided in the following paragraphs. These guidelines will be followed noting the following exception. The ARDEC Director may deviate from the guidelines provided there is a compelling need. The rationale must be documented in writing.

The ARDEC Director will establish pay pools. Typically, pay pools will have between 35 and 300 employees. A pay pool should be large enough to encompass a reasonable distribution of ratings but not so large as to compromise rating consistency. Neither the pay pool manager nor supervisors within a pay pool will recommend or set their own individual pay. Decisions regarding the amount of the contribution payout are based on the established formal payout calculations.

Funds within a pay pool available for contribution payouts are divided into two components, base pay and bonus. These funds will be determined based on historical data. The base pay fund will be set at no less than two percent of total base pay of employees eligible for compensation adjustment in CBCS. The bonus fund will be set at no less than one percent of total base pay. The ARDEC PMB will annually review the pay pool funding and recommend adjustments to the ARDEC Director to ensure cost discipline over the life of the demonstration project. CBCS payouts can be in the form of increases to base pay and/or bonuses that are not added to base pay but rather are given as a lump-sum payment. Other awards such as special acts, time-off awards, etc., will be managed separately from the CBCS payouts.

4. Annual Appraisal Cycle and Rating Process

The annual appraisal cycle normally begins on October 1 and ends on September 30 of the following year. The minimum rating period will be 90 days. At the beginning of the annual appraisal period, the pay band level descriptors for each factor will be provided to employees so that they know the basis on which their performance will be assessed. At the discretion of the pay pool manager, weights will be applied to the factors. If weighting is used, the same weighting will be applied to all similar positions within an Occupational Family in a pay pool. Also, if weighting is used, the minimum weighting will be 10 percent and the sum of all weights must equal 100 percent. Employees will be informed of

the weights at the beginning of the rating cycle.

Each supervisor will discuss work assignment, performance and conduct standards, and provide clear objectives to their employees. Typically, the rating official is the first-level supervisor. If the current first-level supervisor has been in place for less than 90 days during the rating cycle, the second-level supervisor serves as the initial rating official. If the second-level supervisor is in place for less than 90 days during the rating cycle, the next higher level supervisor in the employee's rating chain conducts the assessment.

Employees and supervisors alike are expected to actively participate in on-going formal and informal performance discussions regarding expectations. The timing of these discussions will vary based on the nature of work performed, but will occur at least at the mid-point and end of the rating period. At least one review, normally the mid-point review, will be documented as a progress review. Exceptions may be established by the PMB and approved by the ARDEC Director based on employees that will be in the Lab Demo for less than 180 days at the end of the rating cycle. More frequent, task specific, discussions may be appropriate in some organizations.

The employee will provide a list of his/her accomplishments to the supervisor at both the mid-point and end of the rating period. An employee may elect to provide self-ratings on the contribution factors and/or solicit input from team members, customers, peers, supervisors in other units, subordinates, and other sources which will assist the supervisor in fully evaluating contributions. At the end of the annual appraisal period, the immediate supervisor (rating official), from employees' inputs and his/her own knowledge, identifies for each employee the appropriate contribution level for each factor, and recommends the AOCS.

To determine the AOCS, numerical values are assigned based on the contribution levels of individuals, using the ranges shown in Table 3. The AOCS is calculated by averaging the numerical values (as weighted if applicable) assigned for each of the six contribution factors. (All AOCS's will be rounded to the nearest tenth of a point. If the decimal is .05 or higher, the AOCS will be rounded up.) The rating official in conjunction with the second-level supervisor reviews the AOCS for all employees, correcting any inconsistencies identified and making the appropriate adjustments in the factor ratings.

TABLE 3—CONTRIBUTION SCORE RANGES BY OCCUPATIONAL FAMILY

Pay Band Levels		Engineering and Science	Business and Technical	General Support
		Point Range	Point Range	Point Range
VI		TBD	—	—
	Very High	101–115	101–115	—
	High	97–100	97–100	—
V	Med	91–96	91–96	—
	Low	87–90	87–90	—
	High	91–95	91–95	—
IV	Med	84–90	84–90	—
	Low	79–83	79–83	—
	Very High	—	—	60–64
	High	81–86	81–86	53–59
III	Med	68–80	68–80	47–52
	Low	62–67	62–67	43–46
	High	62–68	62–68	46–54
	Med High	51–61	51–61	—
II	Med	41–50	41–50	30–45
	Med Low	30–40	30–40	—
	Low	22–29	22–29	22–29
	High	24–30	24–30	24–30
I	Med	6–23	6–23	6–23
	Low	0–5	0–5	0–5

The pay pool panel conducts a final review of the AOCS for each employee in the pay pool. The pay pool panel has the authority to make AOCS adjustments, after discussion with the initial rating officials, to ensure equity and consistency. Final approval of AOCS rests with the pay pool manager, the individual within the organization responsible for managing the CBCS process. The AOCS, as approved by the pay pool manager, becomes the rating of record. Rating officials will communicate the factor scores and AOCS to each employee and discuss the results.

If on the last day of the appraisal cycle the employee has served under CBCS for less than 90 days, the first rating will be provided at the end of the next annual rating cycle. The first CBCS appraisal must be rendered within 18 months after entering the demonstration project.

When an employee cannot be evaluated readily by the normal CBCS appraisal process due to special circumstances that take the individual away from normal duties or duty station (e.g., long-term full-time training, active military duty, extended sick leave, leave without pay, etc.), the rating official will document the special circumstances on the appraisal form. The rating official will then determine which of the following options to use:

a. Re-certify the employee's last contribution appraisal; or

b. Presume the employee is contributing consistently at his/her pay level.

5. Linking OCS to Compensation Adjustment

a. The Normal Pay Range (NPR)

The CBCS integrated pay schedule provides a direct link between contribution level and base pay. This is shown by the graph in Figure 1. The horizontal axis spans from 0 to the maximum OCS of 100 for positions in pay band levels I through V. Impact of Band VI will be determined after receiving DoD guidance on Band VI

positions. The vertical axis spans from zero dollars to the dollar equivalent of the highest positions covered by CBCS. This encompasses the full base pay range (excluding locality pay and staffing supplements) under this demonstration for the given calendar year (note: Figure 1 currently depicts Calendar Year (CY) 10). Each year the rails for the NPR are adjusted based on the GS general pay increase under 5 U.S.C. 5303. The area between the upper and lower rails is considered the NPR. This pay range represents a base pay range of plus or minus eight percent from the Standard Pay Line (SPL). The SPL is a mapping of the GS base pay scale to OCS values (see formula below) that shows the expected level of contributions (EOCS) from an employee at a specific base pay rate. The SPL and NPR provide the means to link base pay and contribution using a scale that does not change even as a base pay range changes with GPI increases. This scale is not a linear scale but rather adopts and reflects the provision that the former GS basic pay increases (e.g., GPI, step increases) are percentage increases. Thus, the scale reflects that each point increase in OCS reflects a fixed percent increase in base pay. For example, an OCS of 61 reflects an approximate two percent base pay difference over an OCS of 60 and an OCS of 87 reflects an approximate two percent base pay difference over an OCS of 86. The SPL and NPR are established using the following parameters:

(1) The lowest possible score is an OCS of 0, which equates to the lowest base pay under this demonstration project, GS–1, step 1,

(2) The OCS of 100 equates to the base pay of GS–15, step 10.

The SPL is calculated as:

Standard Pay Line (SPL) = (GS–1, Step 1) * $(1.020043)^{OCS}$

The factor 1.020043 is called the SPL factor and reflects the percent increase of salary corresponding to a one point increase in OCS:

SPL Factor = (GS–15, Step 10)/(GS–1, Step 1)$^{(0.01)}$

The SPL Factor will remain the same value (1.020043) for as long as GPI increases are applied as the same percentage increase to GS–1, Step 1, to GS–15, Step 10.

The upper rail is calculated as: Upper Rail = SPL * 1.08

The lower rail is calculated as: Lower Rail = SPL * 0.92

The upper and lower rails encompass an area of +/− 8.0 percent in terms of base pay which correlates to approximately +/− 4.0 OCS points.

The EOCS is the intersection of the employee's current base pay and the SPL. In the instance of an employee on retained pay, the EOCS is determined by using the maximum base pay of the employee's assigned pay band in lieu of their current base pay.

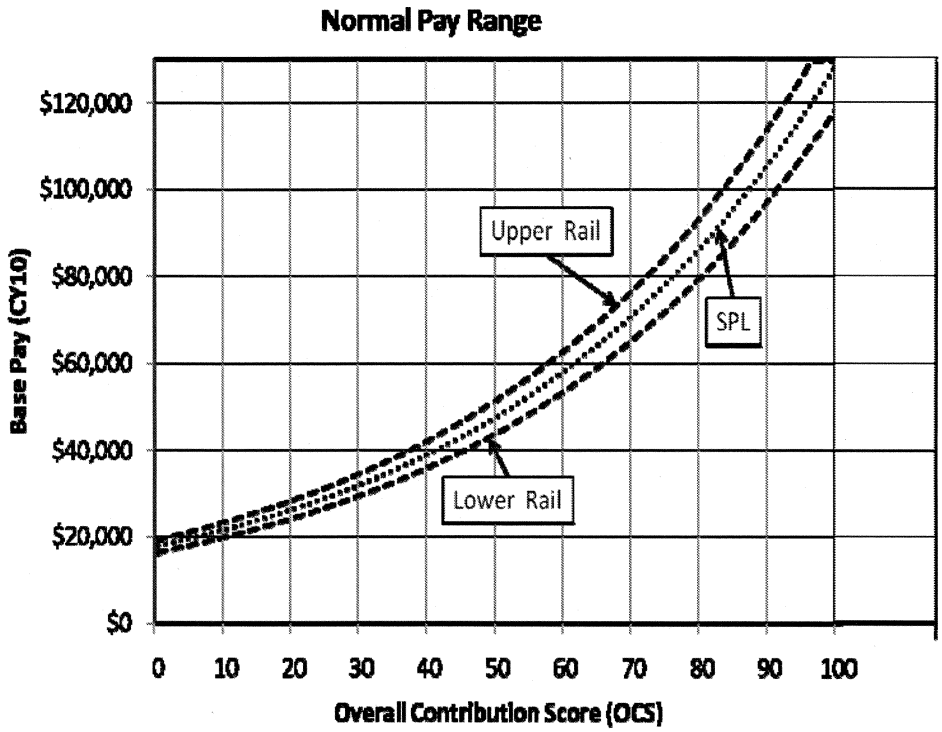

Figure 1. Normal Pay Range

The NPR is the same for all the Occupational Families. What varies among the Occupational Families are the beginnings and endings of the pay band levels. The minimum and maximum numerical OCS values and associated base pay for each pay band level by Occupational Family are provided in Table 4. These minimum and maximum breakpoints represent the lowest and highest base pay for the bands; and the minimum and maximum base pay possible for each pay band level. Locality pay or staffing supplements are not included in the NPR but are added to base pay as appropriate.

TABLE 4—OCS AND PAY BAND BASE PAY RANGES

Occupational family	$ (CY10 OCS salaries)					
	I	II	III	IV	V	VI[1]
E&S	$17,803–$32,288 0–30	$27,548–$68,634 22–68	$60,930–$98,100 62–86	$85,377–$117,283 79–95	$100,066–$129,517 87–100	
Business & Technical	$17,803–$32,288 0–30	$27,548–$68,634 22–68	$60,930–$98,100 62–86	$85,377–$117,283 79–95	$100,066–$129,517 87–100	
General Support	$17,803–$32,288 0–30	$27,548–$51,986 22–54	$41,791–$57,409 43–59			

[1] Band VI pay and OCS range will be determined based on DoD guidance.

b. OCS-Based Compensation Adjustment Guidelines

After the pay pool manager approves the OCS for all employees in the pay pool, the current base pay versus AOCS is plotted for all employees on a chart similar to Figure 2. This plot relates contribution to base pay, and identifies the placement of each employee into one of three regions: Region A—Above-the-NPR, Region C—Within-the-NPR, or Region B—Below-the-NPR. When an employee is placed in the Region A—Above-the-NPR, the employee is considered to be overcompensated. When an employee is placed in the Region B—Below-the-NPR the employee is considered to be undercompensated and when an employee is placed in the Region C—Within-the-NPR, the employee is considered to be adequately compensated.

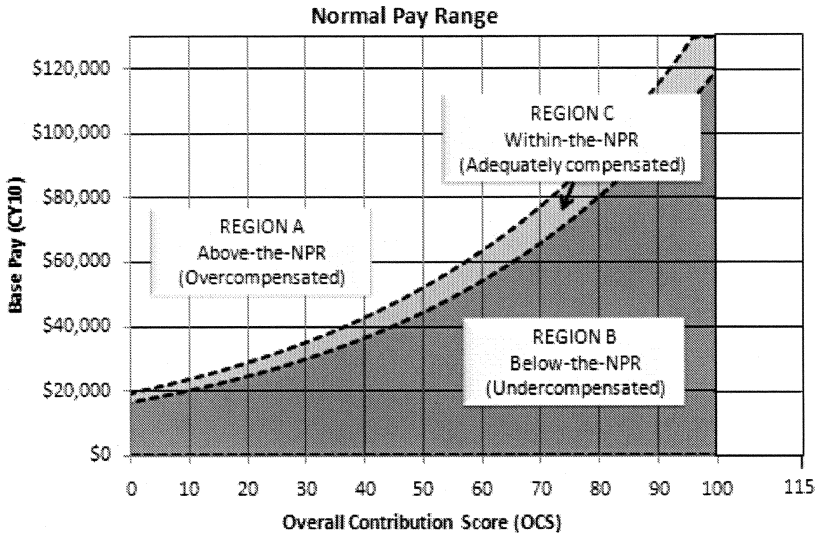

Figure 2. Compensation Regions Defined by NPR

c. The following delineates compensation adjustment guidelines for employees in each of the three regions:

(1) All employees are entitled to the full locality pay or a staffing supplement, as appropriate (subject to overall salary pay limitations).

(2) The employees whose base pay falls within the NPR (Region C) must receive the full GPI, may receive a Contribution Base Pay Increase of up to 6 percent, and may receive a Contribution Bonus. The Contribution Base Pay Increase is included as a permanent increase in base pay, but the Contribution Bonus is a onetime lump sum payment that does not affect base pay.

(3) The employees whose base pay falls above the NPR (Region A) could be denied part or all of the GPI and will receive no Contribution Base Pay Increase or Contribution Bonus. The intent of the demonstration project is to allow managers to retain the ability to determine how much, if any, of the GPI an Overcompensated (Region A) employee shall receive, on a case-by-case basis.

(4) The employees whose base pay falls below the NPR (Region B) must receive the full GPI, may receive up to a 20 percent Contribution Base Pay Increase (higher amounts require the approval of the ARDEC Director), and may also receive a Contribution Bonus.

(5) The employees on retained pay in the demonstration project will receive base pay adjustments in accordance with 5 U.S.C. 5363 and 5 CFR Part 536. An employee receiving retained pay is not eligible for a Contribution Base Pay Increase, but may receive a Contribution Bonus.

(6) Table 5 illustrates the additional pay adjustments possible for the three groupings of employees.

TABLE 5—COMPENSATION ELIGIBILITY CHART

Category	General pay increase	Contribution base pay increase	Contribution bonus	Locality pay/staffing supplement [1]
—Above the NPR	Could be reduced or denied.	NO	NO	YES
Within the NPR—	YES	YES [2]—Up to 6 percent	YES [5]	YES
—Below the NPR	YES	YES [3 4]—Up to 20 percent	YES [5]	YES

[1] Base pay plus locality pay/staffing supplement may not exceed Executive Level IV, except for Band VI.
[2] May not exceed upper rail of NPR for employee's AOCS or maximum base pay for current pay band level.
[3] Over 20 percent requires ARDEC Director's approval.
[4] May not exceed 6 percent above the lower rail or the maximum base pay for current pay band level.
[5] Pay pool manager approves up to $10,000. Amounts exceeding $10,000 require ARDEC Director's approval.

(7) In general, those employees whose base pay falls below the NPR should expect to receive greater percentage base pay increases than those whose base pay is above the NPR. Over time, people will migrate closer to the normal pay range and base pay appropriate for their level of contribution.

(8) Employees whose AOCS would result in awarding a Contribution Base Pay Increase such that the base pay exceeds the maximum base pay for their current pay band level may receive a Contribution Bonus equaling the difference.

6. Accelerated Compensation for Developmental Positions (ACDP)

ACDP provides for an increase to base pay, bonus, or a combination of these to employees participating in training programs or in other developmental capacities as determined by the ARDEC policy. ACDP recognizes growth and development in the acquisition of job-related competencies combined with successful contribution. In order to receive an ACDP, the employee must be in a pay and duty status and have been on an approved performance plan (may be from any system) for 90 days. Most ACDP increases will occur yearly, comparable to the GS intern career progression. However, when warranted (e.g., high turnover positions, hard-to-fill positions, exceptional performance by the employee), an ACDP increase may occur anytime during the year. Employees under an ACDP will follow the standard CBCS rating cycle. The employee is only entitled to the bonus component as a result of CBCS rating.

7. Extraordinary Achievement Recognition

A pay pool manager may request approval from the ARDEC Director for use of an Extraordinary Achievement Recognition. Such recognition grants a base pay increase and/or bonus to an employee. The funds available for an Extraordinary Achievement Recognition are separately funded within budget constraints.

8. Awards

To provide additional flexibility in motivating and rewarding individuals and groups, some portion of the award budget will be reserved for special acts and other categories as they occur. Awards may include, but are not limited to, special acts, patents, suggestions, on-the-spot, and time-off. The funds available to be used for traditional title 5 U.S.C. awards are separately funded within budget constraints.

While not directly linked to the CBCS, this additional flexibility is important to encourage outstanding contribution and innovation in accomplishing the diverse mission of the ARDEC. Additionally, to foster and encourage teamwork among its employees, organizations may give group awards. The delegation of awards authority is an internal Army decision and will be considered as such.

9. Adverse Actions

Except where specifically waived or modified in this plan, adverse action procedures under 5 CFR part 752 remain unchanged.

10. Grievance of Assessed Overall Contribution Score

An employee may grieve the AOCS received under the CBCS. Non-bargaining unit employees and bargaining unit employees covered by a negotiated grievance procedure that does not permit grievances over performance ratings must file under administrative grievance procedures. Bargaining unit employees whose negotiated grievance procedures cover performance rating grievances must file under those negotiated procedures. Payout amounts resulting from the contribution assessment cannot be grieved.

11. Inadequate Employee Performance/Contribution

Inadequate performance/contribution at any time during the appraisal period is considered grounds for initiation of a reduction-in-pay or removal action. The following procedures replace those established in 5 U.S.C. 4303 pertaining to reductions in grade or removal for unacceptable performance except with respect to appeals of such actions. 5 U.S.C. 4303(e) provides the statutory authority for appeals of contribution-based actions. As is currently the situation for performance-based actions taken under 5 U.S.C. 4303, contribution-based actions shall be sustained if the decision is supported by substantial evidence; and the Merit Systems Protection Board shall not have mitigation authority with respect to such actions. The separate statutory authority to take contribution-based actions under 5 U.S.C. 75, as modified in the waiver section of this notice (section IX), remains unchanged by these procedures.

When an employee's AOCS plots above the upper rail of the NPR and the employee is considered to be under-performing/contributing, the supervisor has two options. The first is to take no action but to document this decision in a memorandum for the record. A copy of this memorandum will be provided to the employee and management. The second option is to inform the employee, in writing, that unless the contribution increases to, and is sustained at, a higher level, the employee may be reduced in pay, pay band level, or removed.

The second option will include a Contribution Improvement Plan (CIP). The CIP must include standards for acceptable contribution, actions required of the employee, and time in

which they must be accomplished to increase and sustain the employee's contribution at an acceptable level. When an employee is placed on a CIP, the rating official will afford the employee a reasonable opportunity (a minimum of 60 days) to demonstrate acceptable contribution. These provisions also apply to an employee whose contribution deteriorates during the year.

Employees who are on a CIP at the time pay determinations are made do not receive performance payouts or the annual GPI. Employees who are on a CIP will not receive any portion of the GPI or RIF service credit until such time as his/her performance improves to the acceptable level and remains acceptable for at least 90 days. When the employee has performed acceptably for at least 90 days, the GPI and RIF service credit will be reinstated at the beginning of the next pay period. No retroactive GPI will be paid for time lost under a CIP.

Once an employee has been afforded a reasonable opportunity to demonstrate acceptable contribution but fails to do so, a reduction-in-pay (which may include a change to a lower pay band level and/or reassignment) or removal action may be proposed. If the employee's contribution increases to an acceptable level and is again determined to deteriorate in any factor within two years from the beginning of the opportunity period, actions may be initiated to effect reduction in pay or removal with no additional opportunity to improve. If an employee has contributed acceptably for two years from the beginning of an opportunity period, and the employee's overall contribution once again declines to an unacceptable level, the employee will be afforded an additional opportunity to demonstrate acceptable contribution before it is determined whether or not to propose a reduction in pay or removal.

An employee whose reduction in pay or removal is proposed is entitled to a 30-day advance notice of the proposed action that identifies specific instances of unacceptable contribution by the employee on which the action is based. The employee will be afforded a reasonable time to answer the notice of proposed action orally and/or in writing.

A decision to reduce pay or remove an employee for unacceptable contribution may be based only on those instances of unacceptable contribution that occurred during the two-year period ending on the date of issuance of the proposed action. The employee will be issued written notice at or before the time the action will be effective. Such notice will specify the instances of unacceptable contribution by the employee on which the action is based and will inform the employee of any applicable appeal or grievance rights.

All relevant documentation concerning a reduction-in-pay or removal that is based on unacceptable contribution will be preserved and made available for review by the affected employee or a designated representative. At a minimum, the records will consist of a copy of the notice of proposed action; the written answer of the employee or a summary when the employee makes an oral reply; and the written notice of decision and the reasons thereof, along with any supporting material including documentation regarding the opportunity afforded the employee to demonstrate acceptable contribution.

D. Hiring Authority

1. Qualifications

The qualifications required for placement into a position in a pay band within an Occupational Family will be determined using the OPM "Operating Manual for Qualification Standards for GS Positions." Since the pay bands are anchored to the GS grade levels, the minimum qualification requirements for a position will be those corresponding to the lowest GS grade incorporated into that pay band. For example, for a position in the E&S Occupational Family, Pay Band II individuals must meet the basic requirements for a GS–5 as specified in the OPM "Qualification Standard for Professional and Scientific Positions."

Selective factors may be established for a position in accordance with the OPM "Operating Manual for Qualification Standards for GS Positions" when determined to be critical to successful job performance. These factors will become part of the minimum requirements for the position; and applicants must meet them in order to be eligible. If used, selective factors will be stated as part of the qualification requirements in vacancy announcements and recruiting bulletins.

2. Delegated Examining

Competitive service positions will be filled through Merit Staffing, Direct Hire Authority, or Delegated Examining. Where delegated to the laboratory level, hiring authority will be exercised in accordance with the requirements of the delegation of authority. The Rule of Three will be eliminated. When there are no more than fifteen qualified applicants and no preference eligibles, all eligible applicants are immediately referred to the selecting official without rating and ranking. Rating and ranking will be required only when the number of qualified candidates exceeds fifteen or there is a mix of preference and non-preference applicants. Statutes and regulations covering veterans' preference will be observed in the selection process and when rating and ranking are required.

3. Direct Hire Authority for Candidates With Advanced Degrees for Scientific and Engineering Positions

a. Background:

The ARDEC has, and is forecasted to have, for the foreseeable future an urgent need for direct hire authority to appoint qualified candidates possessing an advanced degree to scientific and engineering positions. The market is extremely competitive with industry and academia for the small supply of highly-qualified and security clearable candidates with a Masters Degree or Ph.D. in science or engineering. There are 35,000 scientists and engineers employed in the DoD laboratories; 27 percent hold Masters Degrees, while 10 percent are in possession of a Ph.D. The ARDEC employs over 2,300 scientists and engineers; 34 percent holding Masters Degrees, while 2.6 percent are in possession of a Ph.D. Over the next five years, the ARDEC plans to hire approximately 500 of the country's best and brightest scientists and engineers (S&Es) just to keep pace with attrition. This number does not include the impact that actions such as Base Realignment and Closure may have on the attrition of S&Es from the ARDEC. Statistics indicate that the available pool of advanced degree, security clearable candidates is substantially diminished by the number of non-U.S. citizens granted degrees by U.S. institutions. For instance, in 2006, 20 percent of Masters Degrees in science and over 35 percent of Ph.D.s in science were awarded to temporary residents.

It is expected that this hiring authority, together with streamlined recruitment processes, will be very effective in hiring candidates possessing a Masters or Ph.D. and accelerating the hiring process. For instance, under a similar authority found in the NDAA for FY 09, section 1108, Public Law 110–417, October 28, 2009, one STRL had fifteen Ph.D. selectees in 2009 for the sixteen vacancies for which they were using this hiring authority. Another STRL, using this expedited hiring authority in calendar year 2009, made thirty firm hiring offers in an average of thirteen days from receipt of paper work in the Human Resources Office. Of these

thirty selectees, twenty-three possessed Ph.D.s.

b. Definitions:

(1) Scientific and engineering positions are defined as all professional positions in scientific and engineering occupations (with a positive education requirement) utilized by the laboratory.

(2) An advanced degree is a Master's or higher degree from an accredited college or university in a field of scientific or engineering study directly related to the duties of the position to be filled.

(3) Qualified candidates are defined as candidates who:

(a) Meet the minimum standards for the position as published in OPM's operating manual, "Qualification Standards for General Schedule Positions," or the laboratory's demonstration project qualification standards specific to the position to be filled;

(b) Possess an advanced degree; and

(c) Meet any selective factors.

(4) The term "employee" is defined by section 2105 of title 5, U.S.C.

c. Provisions:

(1) Use of this appointing authority must comply with merit system principles when recruiting and appointing candidates with advanced degrees to covered occupations.

(2) Qualified candidates possessing an advanced degree may be appointed without regard to the provisions of subchapter 1 of chapter 33 of title 5, United States Code, other than sections 3303, 3321, and 3328 of such title.

(3) The hiring threshold for this authority shall be consistent with DoD policy and legislative language as expressed in any National Defense Authorization Act addressing such.

(4) Positions and candidates must be counted on a full-time equivalent basis.

(5) Science and engineering positions that are filled as of the close of the fiscal year are those positions encumbered on the last day of the fiscal year.

(6) When completing the personnel action, the following will be given as the authority for the Career-Conditional, Career, Term, Temporary, or special demonstration project appointment authority: Section 1108, NDAA for FY 09.

(7) Evaluation of this hiring authority will include information and data on its use, such as numerical limitation, hires made, how many veterans hired, declinations, difficulties encountered, and/or recognized efficiencies.

4. Distinguished Scholastic Achievement Appointment

ARDEC will establish a Distinguished Scholastic Achievement Appointment using an alternative examining process which provides the authority to appoint undergraduates and graduates through the doctoral level to professional positions at the equivalent of GS–7 through GS–11, and GS–12 positions. At the undergraduate level, candidates may be appointed to positions at a pay level no greater than the equivalent of GS–7, step 10, provided that: they meet the minimum standards for the position as published in OPM's operating manual, "Qualification Standards for General Schedule Positions," plus any selective factors stated in the vacancy announcement; the occupation has a positive education requirement; and the candidate has a cumulative grade point average of 3.5 or better (on a 4.0 scale) in those courses in those fields of study that are specified in the qualifications standards for the occupational series. Appointments may also be made at the equivalent of GS–9 through GS–12 on the basis of graduate education and/or experience for those candidates with a grade point average of 3.5 or better (on a 4.0 scale) for graduate level courses in the field of study required for the occupation. Veterans' preference procedures will apply when selecting candidates under this authority. Preference eligibles who meet the above criteria will be considered ahead of nonpreference eligibles. In making selections, to pass over any preference eligible(s) to select a nonpreference eligible requires approval under current pass-over or objection procedures. Priority must also be given to displaced employees as may be specified in OPM and DoD regulations. Distinguished Scholastic Achievement Appointments will enable ARDEC to respond quickly to hiring needs with eminently qualified candidates possessing distinguished scholastic achievements.

5. Legal Authority

For actions taken under the auspices of this demonstration project, the legal authorities, Public Law 103–337, as amended, and Public Law 111–84 will be used. For all other actions, the nature of action codes and legal authority codes prescribed by OPM, DoD, or DA will continue to be used.

6. Modified Term Appointments

The ARDEC conducts a variety of projects that range from three to six years. The current four-year limitation on term appointments for competitive service employees often results in the termination of these employees prior to completion of projects they were hired to support. This disrupts the research and development process and affects the organization's ability to accomplish the mission and serve its customers.

The ARDEC will continue to have career and career-conditional appointments and temporary appointments not-to-exceed one year. These appointments will use existing authorities and entitlements. Under the demonstration project, ARDEC will have the added authority to hire individuals under a modified term appointment. These appointments will be used to fill positions for a period of more than one year, but not more than a total of five years when the need for an employee's services is not permanent. The modified term appointments differ from term employment as described in 5 CFR part 316 in that they may be made for a period not to exceed five, rather than four years. The ARDEC Director is authorized to extend a modified term appointment one additional year.

Employees hired under the modified term appointment authority are in a non-permanent status, but may be eligible for non-competitive conversion to career-conditional or career appointments. To be converted, the employee must:

(1) Have been selected for the term position under competitive procedures, with the announcement specifically stating that the individual(s) selected for the term position may be eligible for conversion to a career-conditional or career appointment at a later date;

(2) have served two years of continuous service in the term position; and

(3) be performing at an acceptable level of performance.

Employees serving under term appointments at the time of conversion to the demonstration project will be converted to the new modified term appointments provided they were hired for their current positions under competitive procedures. These employees will be eligible for conversion to career-conditional or career appointments if they:

(1) Have served two years of continuous service in the term position;

(2) are selected under merit promotion procedures for the permanent position; and

(3) have not been placed on a Contribution Improvement Period (CIP).

Time served in term positions prior to conversion to the modified term appointment is creditable, provided the service was continuous.

7. Initial Probationary Period

The probationary period will not be less than one year and will not exceed three years for all newly hired employees as defined in 5 CFR part 315.

The specific probationary period will be defined and controlled by the ARDEC Director. The purpose of the probationary period is to allow supervisors an adequate period of time to fully evaluate an employee's ability to complete a cycle of work and to fully assess an employee's contribution and conduct. All other features of the current probationary period are retained including the potential to remove an employee without providing the full substantive and procedural rights afforded a non-probationary employee. Any employee fulfilling this probationary period prior to the implementation date will not be affected.

8. Termination of Initial Probationary Period Employees

Probationary employees may be terminated when they fail to demonstrate proper conduct, technical competency, and/or acceptable performance for continued employment and for conditions arising before employment. When a supervisor decides to terminate an employee during the probationary period because his/her work performance or conduct is unacceptable, the supervisor shall terminate the employee's services by written notification subject to higher level management approval. This notification shall state the reason(s) for termination and the effective date of the action. The information in the notice shall, at a minimum, consist of the supervisor's conclusions as to the inadequacies of the employee's performance or conduct or those conditions arising before employment that support the termination.

9. Supervisory and Managerial Probationary Periods

Supervisory and managerial probationary periods will be made consistent with 5 CFR part 315. Current government employees, selected for an initial appointment to a supervisory or managerial position in ARDEC are required to successfully complete a two-year probationary period. If the employee is transferred to a different supervisory position, he or she does not have to repeat the probationary period, but may continue the duration of the probationary period if the time was not completed in the previous supervisory position. If, during this probationary period, the decision is made to return the employee to a non-supervisory/managerial position for reasons related to supervisory/managerial performance, the employee will be returned to a comparable position of no lower pay than the position from which promoted or reassigned. When a supervisor determines to reassign a probationary supervisor to a non-supervisory position during the probationary period because of his/her work performance or conduct is unacceptable, the probationary employee's supervisor will provide written notification subject to higher level management approval.

10. Volunteer Emeritus Corps

Under the demonstration project, the ARDEC Director will have the authority to offer retired or separated employees voluntary positions. The ARDEC Director may re-delegate this authority. Volunteer Emeritus Corps assignments are not considered employment by the Federal government (except for purposes of injury compensation). Thus, such assignments do not affect an employee's entitlement to buyouts or severance payments based on an earlier separation from Federal service. The volunteer's Federal retirement pay (whether military or civilian) is not affected while serving in a voluntary capacity. Retired or separated Federal employees may accept an emeritus position without a break or mandatory waiting period.

The Volunteer Emeritus Corps will ensure continued quality services while reducing the overall salary line by allowing higher paid employees to accept retirement incentives with the opportunity to retain a presence in the ARDEC community. The program will be beneficial during manpower reductions, as employees accept retirement and return to provide a continuing source of corporate knowledge and valuable on-the-job training or mentoring to less experienced employees.

To be accepted into the Volunteer Emeritus Corps, a volunteer must be recommended by an ARDEC manager to the Director or delegated authority. Not everyone who applies is entitled to an emeritus position. The responsible official will document acceptance or rejection of the applicant. For acceptance, documentation must be retained throughout the assignment. For rejection, documentation will be maintained for two years.

Volunteer Emeritus Corps volunteers will not be permitted to monitor contracts on behalf of the Government or to participate on any contracts or solicitations where a conflict of interest exists. The volunteers may be required to submit a financial disclosure form annually. The same rules that currently apply to source selection members will apply to volunteers.

An agreement will be established among the volunteer, the responsible official, and the CPAC. The agreement must be finalized before the assumption of duties and shall include the following:

(a) Statement that the voluntary assignment does not constitute an appointment in the Civil Service, is without compensation, and the volunteer waives any claims against the Government based on the voluntary assignment;

(b) statement that the volunteer will be considered a Federal employee only for the purpose of injury compensation;

(c) volunteer's work schedule;

(d) length of agreement (defined by length of project or time defined by weeks, months, or years);

(e) support provided by the organization (travel, administrative support, office space, and supplies);

(f) statement of duties;

(g) statement providing that no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a volunteer;

(h) provision allowing either party to void the agreement with two working days written notice;

(i) level of security access required by the volunteer (any security clearance required by the position will be managed by the employing organization);

(j) provision that any publication(s) resulting from his/her work will be submitted to the ARDEC Director for review and approval;

(k) statement that he/she accepts accountability for loss or damage to Government property occasioned by his/her negligence or willful action;

(l) statement that his/her activities on the premises will conform to the regulations and requirements of the organization;

(m) statement that he/she will not release any sensitive or proprietary information without the written approval of the employing organization and further agrees to execute additional non-disclosure agreements as appropriate, if required, by the nature of the anticipated services;

(n) statement that he/she agrees to disclose any inventions made in the course of work performed at ARDEC. The ARDEC Director has the option to obtain title to any such invention on behalf of the U.S. Government. Should the ARDEC Director elect not to take title, the ARDEC, shall at a minimum, retain a non-exclusive, irrevocable, paid-up, royalty-free license to practice or have practiced the invention worldwide on behalf of the U.S. Government; and

(o) statement that he/she agrees to comply with designated mandatory training.

Exceptions to the provisions in this procedure may be granted by the ARDEC Director on a case-by-case basis.

E. Internal Placement

1. Promotion

A promotion is the movement of an employee to a higher pay band in the same Occupational Family or to another pay band in a different Occupational Family, wherein the band in the new Occupational Family has a higher maximum base pay than the band from which the employee is moving. The move from one band to another must result in an increase in the employee's base pay to be considered a promotion unless the employee is on retained pay. Positions with known promotion potential to a higher band within an Occupational Family career path will be identified when they are filled. Movement from one Occupational Family to another will depend upon individual competencies, qualifications, and the needs of the organization. Supervisors may consider promoting employees at any time, since promotions are not tied to the CBCS. Progression within a pay band is based upon contribution base pay increases; as such, these actions are not considered promotions and are not subject to the provisions of this section. Except as specified in III.E.6, promotions will be processed under competitive procedures in accordance with Merit System Principles and requirements of the local merit promotion plan.

To be promoted competitively or non-competitively from one band to the next, an employee must meet the minimum qualifications for the job and have an acceptable level of performance. If an employee does not have a current performance rating, the employee will be treated the same as an employee with an acceptable rating as long as there is no documented evidence of unacceptable performance.

2. Reassignment

A reassignment is the movement of an employee from one position to a different position within the same Occupational Family and pay band or to another Occupational Family and pay band wherein the pay band in the new family has the same maximum base pay. The employee must meet the qualifications requirements for the Occupational Family and pay band.

3. Demotion or Placement in a Lower Pay Band

A demotion is a placement of an employee into a lower pay band within the same Occupational Family or placement into a pay band in a different Occupational Family with a lower maximum base pay. Demotions may be for cause (performance or conduct) or for reasons other than cause (e.g., erosion of duties, reclassification of duties to a lower pay band, application under competitive announcements, at the employee's request, or placement actions resulting from RIF procedures).

4. Simplified Assignment Process

Today's environment of downsizing and workforce fluctuations mandates that the organization have maximum flexibility to assign duties and responsibilities to individuals. Pay banding can be used to address this need, as it enables the organization to have maximum flexibility to assign an employee with either no change or an increase in base pay within broad descriptions consistent with the needs of the organization and the individual's qualifications and level. Subsequent assignments to projects, tasks, or functions anywhere within the organization requiring the same level, area of expertise, and qualifications would not constitute an assignment outside the scope or coverage of the current position description. For instance, a technical expert could be assigned to any project, task, or function requiring similar technical expertise. Likewise, a manager could be assigned to manage any similar function or organization consistent with that individual's qualifications. This flexibility allows broader latitude in assignments and further streamlines the administrative process and system while providing management the option of granting additional base pay in recognition of more complex work or broader scope of responsibility.

5. Detail Assignment

Under the demonstration project, the ARDEC's approving manager would have the authority:

(1) To effect details up to one year to demonstration project positions without the current 120-day renewal requirement; and

(2) To effect details to a higher level position in the demonstration project up to one year within a 24-month period without competition.

Detail assignments beyond one-year require the approval of the ARDEC Director, and are not subject to the 120-day renewal requirement.

6. Expanded Temporary Promotions

Current regulations require that temporary promotions for more than 120 days to a higher level position than previously held must be made competitively. Under the demonstration project, the ARDEC would be able to effect temporary promotions of not more than one year within a 24-month period without competition to positions within the demonstration project.

7. Exceptions to Competitive Procedures

The following actions are excepted from competitive procedures:

(a) Re-promotion to a position which is in the same pay band or GS equivalent and Occupational Family as the employee previously held on a permanent basis within the competitive service.

(b) Promotion, reassignment, demotion, transfer, or reinstatement to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service.

(c) A position change permitted by reduction-in-force procedures.

(d) Promotion without current competition when the employee was appointed through competitive procedures to a position with a documented career ladder.

(e) A temporary promotion or detail to a position in a higher pay band of one year or less in a 24-month period.

(f) A promotion due to the reclassification of positions based on accretion (addition) of duties.

(g) A promotion resulting from the correction of an initial classification error or the issuance of a new classification standard.

(h) Consideration of a candidate who did not receive proper consideration in a competitive promotion action.

(i) Impact of person in the job and Factor IV process (application of the Research Grade Evaluation Guide, Equipment Development Grade Evaluation Guide, Part III, or similar guides) promotions.

F. Pay Administration

1. General

Pay administration policies will be established by the PMB. These policies will be exempt from Army Regulations or Higher Headquarter pay fixing policies but will conform to basic governmental pay fixing policy. Employees whose performance is acceptable and not on pay retention will receive the full annual general pay increase and the full locality pay, with the exception of those employees'

whose rating is as described in paragraph III.C.5.c.(3). The ARDEC may make full use of recruitment, retention, and relocation payments as provided for by OPM under 5 U.S.C. and 5 CFR pay flexibilities except as waived by this FRN.

2. Pay and Compensation Ceilings

An employee's total monetary compensation paid in a calendar year may not exceed the rate of pay for Level I of the Executive Schedule consistent with 5 CFR 530.201. In addition, each pay band will have its own base pay ceiling. Base pay rates for the various pay bands were established to approximately cover the pay ranges for the GS grade equivalents. Other than where retained rate applies, base pay will be limited to the maximum base pay rate for each pay band. (See Table 4)

3. Pay Setting for Appointment

Upon initial appointment, the individual's pay may be set at the lowest base pay in the pay band or anywhere within the band level consistent with the special qualifications of the individual and the unique requirements of the position. These special qualifications may be in the form of education, training, experience, or any combination thereof that is pertinent to the position in which the employee is being placed. Guidance on pay setting for new hires will be established by the PMB.

4. Highest Previous Rate

Highest Previous Rate (HPR) will be considered in placement actions authorized under rules similar to the HPR rules in 5 CFR 531.221. Use of HPR will be at the supervisor's discretion; but if used, HPR is subject to policies established by the PMB.

5. Pay Setting for Promotion

The minimum base pay increase upon promotion to a higher pay band will be six percent or the amount necessary to set the new base pay at the minimum base pay rate of the new pay band, whichever is greater. The maximum amount of a base pay increase for a promotion will not exceed $10,000 or other such amount as established by the PMB. The maximum base pay increase for promotion may be exceeded when necessary to allow for the minimum base pay increase. For employees promoted from positions external to Lab Demo covered by special rates, the new demonstration project base pay rate will be calculated to assure an adjusted base pay increase of a minimum of six percent.

When a temporary promotion is terminated, the employee's pay entitlements will be re-determined based on the employee's position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established by the PMB. In no case may those adjustments increase the base pay for the position of record beyond the applicable pay band maximum base pay rate.

6. Pay Setting for Reassignment

A reassignment may be effected without a change in base pay. However, a base pay increase may be granted where a reassignment significantly increases the complexity, responsibility, and authority or for other compelling reasons. Such an increase is subject to the specific guidelines established by the PMB.

7. Pay Setting for Demotion or Placement in a Lower Pay Band

Employees demoted for cause (performance or conduct) are not entitled to pay retention and will receive a minimum of a five percent decrease in base pay provided that decrease does not result in base pay falling below the minimum rate for the pay band. Employees demoted for reasons other than cause (e.g., erosion of duties, reclassification of duties to a lower pay band, application under competitive announcements, at the employee's request, or placement actions resulting from RIF procedures) may be entitled to pay retention in accordance with the provisions of 5 U.S.C. 5363 and 5 CFR part 536, except as waived or modified in section X of this plan.

8. Pay Setting for Employees on a CIP

Employees who are on a CIP do not receive contribution payouts or the general pay increase. This action may result in a base pay that is below the assigned band. This occurs because the minimum rate of base pay in a pay band increases as the result of the general pay increase (5 U.S.C. 5303). For this situation, the employee will remain in the assigned band until such time as the CIP is resolved. Upon resolution of the CIP, pay or band adjustments shall be made in accordance with this document. This action will not be considered an adverse action, nor will it be grievable.

9. Supervisory and Team Leader Pay Adjustments

a. Supervisory and team leader pay adjustments may be approved by the ARDEC Director based on the recommendation of the PMB to compensate employees with supervisory or team leader responsibilities. Only employees in supervisory or team leader positions may be considered for the pay adjustment. These pay adjustments are funded separately from performance pay pools. These pay adjustments are increases to base pay ranging up to ten percent of the employee's base pay rate. Pay adjustments are subject to the constraint that the adjustment may not cause the employee's base pay to exceed the pay band maximum base pay. Criteria to be considered in determining the base pay increase percentage include:

(1) Needs of the organization to attract, retain, and motivate high-quality supervisors/team leaders;

(2) budgetary constraints;

(3) years and quality of related experience;

(4) relevant training;

(5) performance appraisals and experience as a supervisor/team leader;

(6) organizational level of position; and

(7) impact on the organization.

b. After the date of conversion into the demonstration project, a base pay adjustment may be considered under the following conditions:

(1) New hires into supervisory/team leader positions will have their initial rate of base pay set at the supervisor's discretion within the base pay range of the applicable pay band, subject to approval of the ARDEC Director. This rate of pay may include a base pay adjustment determined by using the ranges and criteria outlined above.

(2) A career employee selected for a supervisory/team leader position that is within the employee's current pay band may also be considered for a base pay adjustment. If a supervisor/team leader is already authorized a base pay adjustment and is subsequently selected for another supervisor/team leader position within the same pay band, the base pay adjustment will be re-determined.

c. Supervisors and team leaders will not receive a base pay adjustment at the time of initial conversion into the demonstration project. The supervisor/team leader pay adjustment will be reviewed annually, with possible increases or decreases based on the AOCS. The initial dollar amount of a base pay adjustment will be removed when the employee voluntarily leaves the position. The cancellation of the base pay adjustment under these circumstances is not an adverse action and is not subject to appeal. If an employee is removed from a supervisory/team leader position for

personal cause (performance or conduct), the base pay adjustment will be removed under adverse action procedures. However, if an employee is removed from a non-probationary supervisory/team leader position for conditions other than voluntary or for personal cause, pay retention will follow current law and regulations at 5 U.S.C. 5362 and 5363 and 5 CFR part 536, except as waived or modified in section X.

10. Supervisory and Team Leader Pay Differentials

a. Supervisory and team leader pay differentials may be used by the ARDEC Director to provide an incentive and reward supervisors and team leaders. Pay differentials are not funded from performance pay pools. A pay differential is a cash incentive that may range up to ten percent of base pay for supervisors and for team leaders. It is paid on a pay period basis with a specified not-to-exceed (NTE) of one year or less and is not included as part of the base pay. Criteria to be considered in determining the amount of the pay differential are the same as those identified for Supervisory and Team Leader Pay Adjustments. The differential must be terminated if the employee is removed from a supervisory/team leader position, regardless of cause.

b. After initiation of the demonstration project, all personnel actions involving a supervisory or team leader differential will require a statement signed by the employee acknowledging that the differential may be terminated or reduced at the discretion of the ARDEC Director. The termination or reduction of the differential is not an adverse action and is not subject to appeal.

11. Staffing Supplements

Employees assigned to occupational categories and geographic areas covered by GS special rates will be entitled to a staffing supplement if the maximum adjusted base pay for the banded GS grades to which assigned is a special rate that exceeds the maximum GS locality rate for the banded grades. The staffing supplement is added to the base pay, much like locality rates are added to base pay. For employees being converted into the demonstration project, total pay immediately after conversion will be the same as immediately before (excluding the impact of any WGI buy-in for GS employees), but a portion of the total pay will be in the form of a staffing supplement. Adverse action and pay retention provisions will not apply to the conversion process, as there will be no loss or decrease in total pay.

The staffing supplement is calculated as follows. Upon conversion, the demonstration base rate will be established by dividing the employee's former GS basic pay (including any locality pay or special salary rate) or, for former NSPS employees, the NSPS adjusted base salary (the higher of GS special rate, NSPS targeted local market supplement, or locality rate) by the staffing factor. The staffing factor will be determined by dividing the maximum special rate for the banded grades by the GS unadjusted rate corresponding to that special rate (step 10 of the GS rate for the same grade as the special rate). The employee's demonstration staffing supplement is derived by multiplying the demonstration base pay rate by the staffing factor minus one. Therefore, the employee's final demonstration special staffing rate equals the demonstration base pay rate plus the staffing supplement. This amount will equal the employee's former GS adjusted basic pay rate or NSPS adjusted base salary rate. Simplified, the formula is this:

$$\text{Staffing Factor} = \frac{\text{Maximum special rate for the banded grades}}{\text{GS unadjusted rate corresponding to that special rate}}$$

$$\text{Demonstration base pay rate} = \frac{\text{Former GS or NSPS adjusted pay rate or equivalent (specialty or locality rate)}}{\text{Staffing factor}}$$

$$\text{Staffing supplement} = \text{Demo base pay or NSPS base salary rate* (staffing factor-1)}$$

$$\text{Pay upon conversion} = \text{Demonstration base pay rate + staffing supplement (sum will equal existing adjusted rate)}$$

If an employee is in a band where the maximum GS adjusted basic pay or NSPS adjusted base salary rate for the banded grades is a locality rate, when the employee enters into the demonstration project, the demonstration base pay rate is derived by dividing the employee's former GS adjusted basic pay rate (the higher of locality rate or special rate) by the applicable locality pay factor. The employee's demonstration locality-adjusted base pay rate will equal the employee's former GS adjusted basic pay rate in accordance with the above provisions using the new special salary rate. Any GS or special rate schedule adjustment will require computing the staffing supplement again. Employees receiving a staffing supplement remain entitled to an underlying locality rate, which may over time supersede the need for a staffing supplement. If OPM discontinues or decreases a special rate schedule, pay retention provisions will be applied. Upon geographic movement, an employee who receives the staffing supplement will have the supplement recomputed. Any resulting reduction in pay will not be considered an adverse action or a basis for pay retention.

An established base pay rate plus the staffing supplement will be considered

adjusted base pay for the same purposes as a locality rate under 5 CFR 531.610, e.g., for purposes of retirement, life insurance, premium pay, severance pay, and advances in pay. It will also be used to compute worker's compensation payments and lump-sum payments for accrued and accumulated annual leave.

If an employee is in an occupational category covered by a new or modified special salary rate table, and the pay band to which assigned is not entitled to a staffing supplement, then the employee's adjusted base pay may be reviewed and adjusted to accommodate the rate increase provided by the special salary rate table. The review may result in a one-time base pay increase if the employee's adjusted base pay equals or is less than the highest special salary rate grade and step that exceeds the comparable locality grade and step. Demonstration project operating procedures will identify the officials responsible to make such reviews and determinations.

12. Pay Retention

For purposes of actions within the ARDEC demonstration project that provide entitlement to pay retention, the standard provisions of pay retention under 5 U.S.C. 5362 and 5363 and 5 CFR part 536 shall apply to employees after conversion to the demonstration project, except as waived or modified in Section X of this plan. Wherever the term "grade" is used in the law or regulation, the term "pay band" will be substituted. The intent is to only use pay retention for all situations. Grade retention provisions will not be applicable to the ARDEC Demonstration Project. The ARDEC Director may grant pay retention to employees who meet general eligibility requirements, but do not have specific entitlement by law, provided they are not specifically excluded.

G. Employee Development

1. Expanded Developmental Opportunity Program

The Expanded Developmental Opportunity Program will be available to all demonstration project employees. Expanded developmental opportunities complement existing developmental opportunities such as long-term training; rotational job assignments; developmental assignments to Army Materiel Command, Army, or DoD; and self-directed study via correspondence courses, local colleges, and universities. Each developmental opportunity must result in a product, service, report, or study that will benefit the ARDEC or customer organization as well as increase the employee's individual effectiveness. The developmental opportunity period will not result in loss of (or reduction) in base pay, leave to which the employee is otherwise entitled, or credit for service time. The positions of employees on expanded developmental opportunities may be back-filled (i.e., with temporarily assigned, detailed, or promoted employees or with term employees). However, that position or its equivalent must be made available to the employee upon return from the developmental period. The PMB will provide written guidance for employees on application procedures and develop a process that will be used to review and evaluate applicants for development opportunities.

a. Sabbatical. The ARDEC Director has the authority to grant paid or unpaid sabbaticals to all career employees. The purpose of a sabbatical will be to permit employees to engage in study or uncompensated work experience that will benefit the organization and contribute to the employee's development and effectiveness. Each sabbatical must result in a product, service, report, or study that will benefit the ARDEC mission as well as increase the employee's individual effectiveness. Various learning or developmental experiences may be considered, such as advanced academic teaching, research, self-directed or guided study, and on-the-job work experience.

One paid sabbatical of up to twelve months in duration or one unpaid sabbatical of up to six months in a calendar year may be granted to an employee in any seven-year period. Employees will be eligible to request a sabbatical after completion of seven years of Federal service. Employees approved for a paid sabbatical must sign a service obligation agreement to continue in service in the ARDEC for a period three times the length of the sabbatical. If an employee voluntarily leaves the ARDEC organization before the service obligation is completed, he/she is liable for repayment of expenses incurred by ARDEC that are associated with training during the sabbatical. Expenses do not include salary costs. The ARDEC Director has the authority to waive this requirement. Criteria for such waivers will be addressed in the operating procedures. Specific procedures will be developed for processing sabbatical applications upon implementation of the demonstration project.

b. Critical Skills Training. The ARDEC Director has the authority to approve academic degree training consistent with 5 U.S.C. 4107. Training is an essential component of an organization that requires continuous acquisition of advanced and specialized knowledge. Degree training is also a critical tool for recruiting and retaining employees with or requiring critical skills.

Each academic degree training program in its entirety can be approved based upon a complete individual degree study program plan; it will ensure continuous acquisition of advanced specialized knowledge essential to the organization and enhance our ability to recruit and retain personnel critical to the present and future requirements of the organization. Degree or certificate payment may not be authorized where it would result in a tax liability for the employee without the employee's express and written consent. Any variance from this policy must be rigorously determined and documented. Guidelines will be developed to ensure competitive approval of degree or certificate payment and that such decisions are fully documented. Employees approved for degree training must sign a service obligation agreement to continue service in the ARDEC for a period three times the length of the training period commencing after the completion of the entire degree program. If an employee voluntarily leaves the ARDEC before the service obligation is completed, he/she is liable for repayment of expenses incurred by the ARDEC that are related to the critical skills training. Expenses do not include salary costs. The ARDEC Director has the authority to waive this requirement. Criteria for such waivers will be addressed in the operating procedures.

c. Student Career Experience Program (SCEP) Service Agreement. The extended repayment period also applies to employees under the SCEP who have received tuition assistance. They will be required to sign a service agreement up to three times the length of the academic training period or periods (semesters, trimesters, or quarters).

H. Reduction-in-Force (RIF) Procedures

The competitive area may be determined by Occupational Family, lines of business, product lines, organizational units, funding lines, occupational series, functional area, and/or geographical location, or a combination of these elements, and must include all Demonstration Project employees within the defined competitive area. The RIF system has a single round of competition to replace the current GS two-round process. Once the position to be abolished has been identified, the incumbent of that position may displace another employee

when the incumbent has a higher retention standing and is fully qualified for the position occupied by the employee with a lower standing.

Retention standing is based on tenure, veterans' preference, and length of service augmented by performance. Modified term appointment and temporary employees are in tenure group III for RIF purposes. RIF procedures are not required when separating these employees when their appointments expire.

Displacement is limited to one pay band level below the employee's present pay band level within the Occupational Family career path. Pay band level I employees can displace within their current pay band level. A veterans' preference eligible employee with a compensable service connected disability of 30 percent or more may displace up to two pay band levels below the employee's present level within the Occupational Family career path. A pay band level I preference eligible employee (with a compensable service connected disability of 30 percent or more) can displace within their current pay band. Employees bumped to lower pay band levels are entitled to pay retention. The same "undue disruption" standard currently utilized, serves as the criteria to determine if an employee is fully qualified.

The additional reduction-in-force years of service augmentation for performance shall be based upon the delta between an employee's AOCS and an employee's EOCS at the end of a rating cycle. The following are the years of service augmentation rules:

a. Seven (7) years of service augmentation for each year the AOCS is greater than or equal to the EOCS minus 3 (AOCS $\geq$ EOCS -3).

b. Four (4) years of service augmentation for each year the AOCS is less than the EOCS minus 3 (AOCS $<$ EOCS -3).

c. Zero (0) years of service augmentation for each year the employee was placed on a CIP at any time during the rating cycle.

An employee on a CIP, any time during the rating cycle, may only displace an employee who was also on a CIP during the same rating cycle. The displaced individual may similarly displace another employee on a CIP during the same rating cycle. If there is no position in which an employee can be placed by this process or assigned to a vacant position, that employee will be separated. If an employee has not been rated under the demonstration project, their rating will be considered acceptable and they will be given the full 21 years of service augmentation. After completion of the first or second rating cycle, the total years of service augmentation will be prorated based on ratings received to date.

IV. Implementation Training

A. Critical to the success of the demonstration project is the training developed to promote understanding of the broad concepts and finer details needed to implement and successfully execute this project. Pay banding, a new position classification system, and a new CBCS all represent significant cultural change for the organization. Training will be tailored to address employee concerns and to encourage comprehensive understanding of the demonstration project. Training will be required both prior to implementation and at various times during the life of the demonstration project.

B. A training program will begin prior to implementation and will include modules tailored for employees, supervisors, senior managers, and administrative staff. Typical modules are:

1. An overview of the demonstration project;
2. conversion in and out of the system;
3. pay banding;
4. the CBCS;
5. defining objectives;
6. assigning weights;
7. assessing performance, including feedback;
8. new position descriptions; and
9. demonstration project administration and formal evaluation.

C. Various types of training are being considered, including videos, on-line tutorials, and train-the-trainer concepts.

V. Conversion

A. Conversion From the GS System to the Demonstration Project

1. Placement Into Demonstration Project Occupational Families, Career Paths, and Pay Bands

Conversion will be into the Occupational Family and career path that corresponds to the employee's current GS grade and basic pay. If conversion into the demonstration project is accompanied by a simultaneous change in the geographic location of the employee's duty station, the employee's overall GS entitlements (including locality rate) in the new area will be determined before converting the employee's pay to the demonstration project pay system. Employees will be assured of placement within the new system without loss of total pay.

2. WGI Buy-In

For GS employees, rules governing WGIs will continue in effect until conversion. Adjustments to the employee's GS basic pay for WGI equity will be computed as of the effective date of conversion. WGI equity will be acknowledged by increasing basic pay by a prorated share based upon the number of full weeks an employee has completed toward the next higher step. Payment will equal the value of the employee's next WGI times the proportion of the waiting period completed (weeks completed in waiting period/weeks in the waiting period) at the time of conversion. GS employees at step 10 or receiving a retained rate, on the day of implementation will not be eligible for WGI equity adjustments. GS employees serving on retained grade will receive WGI equity adjustments provided they are not at step 10 or receiving a retained rate.

3. Conversion of Term and Temporary Limited Appointments

Employees serving under a term appointment at the time of demonstration project implementation will be converted to the modified term appointment if all requirements (refer to III.D.6, Modified Term Appointments) have been satisfied. Employees serving under temporary limited appointments at the time of demonstration implementation will be converted to temporary limited appointments.

4. Conversion of Special Salary Rate Employees

Employees who are in positions covered by a special salary rate prior to the demonstration project will no longer be considered a special salary rate employee under the demonstration project. These employees will be eligible for full locality pay. The adjusted pay for these employees will not change. The employees will receive a new staffing adjusted base pay rate computed under the staffing supplement rules in section III.F.11.

5. Probationary Periods

a. Initial probationary period. GS employees who have completed an initial probationary period prior to conversion from GS will not be required to serve a new or extended initial probationary period. GS employees who are serving an initial probationary period upon conversion from GS will serve the time remaining on their initial probationary period.

b. Supervisory probationary period. GS employees who have completed a supervisory probationary period prior to conversion from GS will not be required

to serve a new or extended supervisory probationary period while in their current position. GS employees who are serving a supervisory probationary period upon conversion from GS will serve the time remaining on their supervisory probationary period.

6. Transition Equity

During the first 12 months following conversion to the demonstration project, management may approve certain adjustments within the pay band for pay equity reasons stemming from conversion. For example, if an employee would have been otherwise promoted but demonstration project pay band placement no longer provides the opportunity for promotion, a pay equity adjustment may be authorized provided the adjustment does not cause the employee's base pay to exceed the maximum rate of his or her assigned pay band and the employee's performance warrants an adjustment. The decision to grant a pay equity adjustment is at the sole discretion of the ARDEC Director and is not subject to employee appeal procedures.

During the first 12 months following conversion, management may approve an adjustment of not more than 20 percent, provided the adjustment does not cause the employee's base pay to exceed the maximum rate of his or her assigned pay band and the employee's performance warrants an adjustment, to mitigate compensation inequities that may be caused by artifacts of the process of conversion into STRL pay bands.

B. Conversion From NSPS to the Demonstration Project

1. Placement Into Demonstration Project Occupational Families, Career Paths, Pay Plans, and Pay Bands

The employee's NSPS occupational series, pay plan, pay band, and supervisory code will be considered upon converting into the demonstration project as follows.

a. Determine the appropriate demonstration project pay plan. Employees will be converted into an occupational family career path and pay plan based on the occupational series of their position. In cases where the employee is assigned to a NSPS-unique occupational series, a corresponding OPM occupational series must be identified using OPM GS classification standards and guidance to determine the proper demonstration project pay plan.

b. Determine the appropriate demonstration project pay band. The appropriate pay band will be determined by establishing the corresponding GS grade for the employee's NSPS position using OPM GS classification standards and guidance. Once the GS grade has been determined, the employee's position will be placed in the appropriate demonstration project pay band in the occupational family career path.

2. Pay Upon Conversion From NSPS

Conversion from NSPS into the demonstration project will be accomplished with full employee pay protection. Adverse action provisions will not apply to the conversion action. In accordance with section 1113(c)(1) of NDAA 2010, which prohibits a loss of or decrease in pay upon transition from NSPS, employees converting to the demonstration project will retain the adjusted salary (as defined in 5 CFR 9901.304) from their NSPS permanent or temporary position at the time the position converts. Upon conversion, the retained NSPS adjusted salary may not exceed Level IV of the Executive Schedule plus five percent. If the employee's base pay exceeds the maximum rate for his or her assigned demonstration project pay band, the employee will be placed on indefinite pay retention until an event, as described in 5 CFR 536.308, results in a loss of eligibility for or termination of pay retention. If an employee's base pay is less than the minimum rate for his/her assigned demonstration project pay band, the employee will have his/her base pay rate increased to the minimum of the pay band.

Employees covered by an NSPS targeted local market supplement (TLMS) prior to conversion to the demonstration project will no longer be covered by a TLMS. Instead, they will receive a staffing supplement. The adjusted base pay upon conversion will not change.

3. Fair Labor Standards Act (FLSA) Status

Since FLSA provisions were not waived under NSPS and duties do not change upon conversion to the demonstration project, the FLSA status determination will remain the same upon conversion. Employees will be converted to the demonstration project with the same FLSA status they had under NSPS.

4. Transition Equity

During the first 12 months following conversion to the demonstration project, management may approve certain adjustments within the pay band for pay equity reasons stemming from conversion. For example, if an employee would have been otherwise promoted but demonstration project pay band placement no longer provides the opportunity for promotion, a pay equity adjustment may be authorized provided the adjustment does not cause the employee's base pay to exceed the maximum rate of his or her assigned pay band and the employee's performance warrants an adjustment. The decision to grant a pay equity adjustment is at the sole discretion of the ARDEC Director and is not subject to employee appeal procedures.

During the first 12 months following conversion, management may approve an adjustment of not more than 20 percent, provided the adjustment does not cause the employee's base pay to exceed the maximum rate of his or her assigned pay band and the employee's performance warrants an adjustment, to mitigate compensation inequities that may be caused by artifacts of the process of conversion into STRL pay bands.

5. Pay Band Retention

Employees converting from NSPS to the demonstration project will not be granted pay band retention based on the pay band formerly assigned to their NSPS position.

6. Converting Employees on NSPS Term and Temporary Appointments

a. Employees serving under term appointments at the time of conversion to the demonstration project will be converted to modified term appointments provided they were hired for their current positions under competitive procedures. These employees will be eligible for conversion to career or career-conditional appointments in the competitive service provided they:

(1) Have served two years of continuous service in the term position;

(2) were selected for the term position under competitive procedures; and

(3) are performing at a satisfactory level.

Converted term employees who do not meet these criteria may continue on their term appointment up to the not-to-exceed date established under NSPS. Extensions of term appointments after conversion may be granted in accordance with 5 CFR part 316, subpart D.

b. Employees serving under temporary appointments under NSPS when their organization converts to the demonstration project will be converted and may continue on their temporary appointment up to the not-to-exceed date established under NSPS. Extensions of temporary appointments after conversion may be granted in

accordance with 5 CFR 213.104 for excepted service employees and 5 CFR part 316, subpart D, for competitive service employees.

7. Probationary Periods

a. Initial probationary period. NSPS employees who have completed an initial probationary period prior to conversion from NSPS will not be required to serve a new or extended initial probationary period. NSPS employees who are serving an initial probationary period upon conversion from NSPS will serve the time remaining on their initial probationary period.

b. Supervisory probationary period. NSPS employees who have completed a supervisory probationary period prior to conversion from NSPS will not be required to serve a new or extended supervisory probationary period while in their current position. NSPS employees who are serving a supervisory probationary period upon conversion from NSPS will serve the time remaining on their supervisory probationary period.

C. Conversion From Other Personnel Systems

Employees who enter the demonstration project from other personnel systems (e.g., Defense Civilian Intelligence Personnel System, Civilian Acquisition Workforce Demonstration Project, or other STRLs) will be subject to the pay rules that govern conversion out of their respective systems. Conversion into Lab Demo will be based upon the position classification of the employee's new position and the Lab Demo rules, consistent with the intent as outlined for GS and NSPS above.

D. Movement out of the ARDEC Demonstration Project

1. Termination of Coverage Under the ARDEC Demonstration Project Pay Plans

In the event employees' coverage under the ARDEC demonstration project pay plans is terminated, employees move with their demonstration project position to another system applicable to ARDEC employees. The grade of their demonstration project position in the new system will be based upon the position classification criteria of the gaining system. Employees when converted to their positions classified under the new system will be eligible for pay retention under 5 CFR part 536, if applicable.

2. Determining a GS-Equivalent Grade and GS-Equivalent Rate of Pay for Pay Setting Purposes When an ARDEC Employee's Coverage by a Demonstration Project Pay Plan Terminates or the Employee Voluntarily Exits the ARDEC Demonstration Project

a. If a demonstration project employee is moving to a GS or other pay system position, the following procedures will be used to translate the employee's project pay band to a GS-equivalent grade and the employee's project base pay to the GS-equivalent rate of pay for pay setting purposes. The equivalent GS grade and GS rate of pay must be determined before movement out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For lateral reassignments, the equivalent GS grade and rate will become the employee's converted GS grade and rate after leaving the demonstration project (before any other action). For transfers, promotions, and other actions, the converted GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (e.g., promotion rules, highest previous rate rules, pay retention rules), as if the GS converted grade and rate were actually in effect immediately before the employee left the demonstration project.

(1) Equivalent GS-Grade-Setting Provisions

An employee in a pay band corresponding to a single GS grade is provided that grade as the GS-equivalent grade. An employee in a pay band corresponding to two or more grades is determined to have a GS-equivalent grade corresponding to one of those grades according to the following rules:

(a) The employee's adjusted base pay under the demonstration project (including any locality payment or staffing supplement) is compared with step 4 rates in the highest applicable GS rate range. For this purpose, a GS rate range includes a rate in:

i. the GS base schedule;

ii. the locality rate schedule for the locality pay area in which the position is located; or

iii. the appropriate special rate schedule for the employee's occupational series, as applicable.

If the series is a two-grade interval series, only odd-numbered grades are considered below GS–11.

(b) If the employee's adjusted base pay under the demonstration project equals or exceeds the applicable step 4 adjusted base pay rate of the highest GS grade in the band, the employee is converted to that grade.

(c) If the employee's adjusted base pay under the demonstration project is lower than the applicable step 4 adjusted base pay rate of the highest grade, the adjusted base pay under the demonstration project is compared with the step 4 adjusted base pay rate of the second highest grade in the employee's pay band. If the employee's adjusted base pay under the demonstration project equals or exceeds the step 4 adjusted base pay rate of the second highest grade, the employee is converted to that grade.

(d) This process is repeated for each successively lower grade in the band until a grade is found in which the employee's adjusted base pay under the demonstration project rate equals or exceeds the applicable step 4 adjusted base pay rate of the grade. The employee is then converted at that grade. If the employee's adjusted base pay is below the step 4 adjusted base pay rate of the lowest grade in the band, the employee is converted to the lowest grade.

(e) Exception: An employee will not be provided a lower grade than the grade held by the employee immediately preceding a conversion, lateral reassignment, or lateral transfer into the project, unless since that time the employee has either undergone a reduction in band or a reduction within the same pay band due to unacceptable performance.

(2) Equivalent GS-Rate-of-Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the employee's demonstration project rates of pay to GS rates of pay in accordance with the following rules:

(a) The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project.

(b) An employee's adjusted base pay under the demonstration project (i.e., including any locality payment or staffing supplement) is converted to a GS adjusted base pay rate on the highest applicable GS rate range for the converted GS grade. For this purpose, a GS rate range includes a rate range in:

i. the GS base schedule,

ii. an applicable locality rate schedule, or

iii. an applicable special rate schedule.

(c) If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted base pay under the demonstration project is converted to a

GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted GS unadjusted rate of base pay would be the GS base rate corresponding to the converted GS locality rate (i.e., same step position).

(d) If the highest applicable GS rate range is a special rate range, the employee's adjusted base pay under the demonstration project is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rate must be set at the higher step. The converted GS unadjusted rate of base pay will be the GS rate corresponding to the converted special rate (i.e., same step position).

(3) Employees With Pay Retention

If an employee is receiving a retained rate under the demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in his or her pay band level. Demonstration project operating procedures will outline the methodology for determining the GS-equivalent pay rate for an employee retaining a rate under the demonstration project.

VI. Other Provisions

A. Personnel Administration

All personnel laws, regulations, and guidelines not waived by this plan will remain in effect. Basic employee rights will be safeguarded and Merit System Principles will be maintained. Servicing CPACs will continue to process personnel-related actions and provide consultative and other appropriate services.

B. Automation

The ARDEC will continue to use standard systems such as the Defense Civilian Personnel Data System (DCPDS) for the processing of personnel-related data. Payroll servicing will continue from the respective payroll offices.

An automated tool will be used to support computation of performance related pay increases and bonus and other personnel processes and systems associated with this project.

C. Experimentation and Revision

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the new system is working. DoDI 1400.37, July 28, 2009, provides instructions for making minor changes to an existing demonstration project and requesting new initiatives.

VII. Project Duration

Public Law 103–337 removed any mandatory expiration date for section 342(b) demonstration projects. The ARDEC, DA, and DoD will ensure this project is evaluated for the first five years after implementation in accordance with 5 U.S.C. 4703. Modifications to the original evaluation plan or any new evaluation will ensure the project is evaluated for its effectiveness, its impact on mission, and any potential adverse impact on any employee groups. Major changes and modifications to the interventions would be made if formative evaluation data warrants and will be published in the **Federal Register** to the extent required. At the five-year point, the demonstration will be reexamined for permanent implementation, modification and additional testing, or termination of the entire demonstration project.

VIII. Evaluation Plan

A. Overview

Chapter 47 of 5 U.S.C. requires that an evaluation be performed to measure the effectiveness of the demonstration project and its impact on improving public management. A comprehensive evaluation plan for the entire demonstration program, originally covering 24 DoD laboratories, was developed by a joint OPM/DoD Evaluation Committee in 1995. This plan was submitted to the Office of Defense Research and Engineering and was subsequently approved. The main purpose of the evaluation is to determine whether the waivers granted result in a more effective personnel system and improvements in ultimate outcomes (i.e., organizational effectiveness, mission accomplishment, and customer satisfaction).

B. Evaluation Model

1. Appendix D shows an intervention model for the evaluation of the demonstration project. The model is designed to evaluate two levels of organizational performance: Intermediate and ultimate outcomes. The intermediate outcomes are defined as the results from specific personnel system changes and the associated waivers of law and regulation expected to improve human resource (HR) management (i.e., cost, quality, and timeliness). The ultimate outcomes are determined through improved organizational performance, mission accomplishment, and customer satisfaction. Although it is not possible to establish a direct causal link between changes in the HR management system and organizational effectiveness, it is hypothesized that the new HR system will contribute to improved organizational effectiveness.

2. Organizational performance measures established by the organization will be used to evaluate the impact of a new HR system on the ultimate outcomes. The evaluation of the new HR system for any given organization will take into account the influence of three factors on organizational performance: Context, degree of implementation, and support of implementation. The context factor refers to the impact which intervening variables (i.e., downsizing, changes in mission, or the economy) can have on the effectiveness of the program. The degree of implementation considers:

a. The extent to which the HR changes are given a fair trial period;

b. the extent to which the changes are implemented; and

c. the extent to which the changes conform to the HR interventions as planned.

The support of implementation factor accounts for the impact that factors such as training, internal regulations, and automated support systems have on the support available for program implementation. The support for program implementation factor can also be affected by the personal characteristics (e.g., attitudes) of individuals who are implementing the program.

3. The degree to which the project is implemented and operated will be tracked to ensure that the evaluation results reflect the project as it was intended. Data will be collected to measure changes in both intermediate and ultimate outcomes as well as any unintended outcomes, which may happen as a result of any organizational change. In addition, the evaluation will track the impact of the project and its interventions on veterans and other protected groups, the Merit System Principles, and the Prohibited Personnel Practices. Additional measures may be added to the model in the event that changes or modifications are made to the demonstration plan.

4. The intervention model at Appendix D will be used to measure the effectiveness of the personnel system interventions implemented. The intervention model specifies each personnel system change or intervention that will be measured and shows:

a. The expected effects of the intervention,

b. the corresponding measures, and

c. the data sources for obtaining the measures.

Although the model makes predictions about the outcomes of specific intervention, causal attributions about the full impact of specific interventions will not always be possible for several reasons. For example, many of the initiatives are expected to interact with each other and contribute to the same outcomes. In addition, the impact of changes in the HR system may be mitigated by context variables (e.g., the job market, legislation, and internal support systems) or support factors (e.g., training, automation support systems).

C. Evaluation

A modified quasi-experimental design will be used for the evaluation of the STRL Personnel Demonstration Program. Because most of the eligible laboratories are participating in the program, a title 5 U.S.C. comparison group will be compiled from the Central Personnel Data File (CPDF). This comparison group will consist of workforce data from Government-wide research organizations in civilian Federal agencies with missions and job series matching those in the DoD laboratories. This comparison group will be used primarily in the analysis of pay banding costs and turnover rates.

D. Method of Data Collection

1. Data from several sources will be used in the evaluation. Information from existing management information systems and from personnel office records will be supplemented with perceptual survey data from employees to assess the effectiveness and perception of the project. The multiple sources of data collection will provide a more complete picture as to how the interventions are working. The information gathered from one source will serve to validate information obtained through another source. In so doing, the confidence of overall findings will be strengthened as the different collection methods substantiate each other.

2. Both quantitative and qualitative data will be used when evaluating outcomes. The following data will be collected:

a. Workforce data;
b. personnel office data;
c. employee attitude surveys;
d. focus group data;
e. local site historian logs and implementation information;
f. customer satisfaction surveys; and
g. core measures of organizational performance.

3. The evaluation effort will consist of two phases, formative and summative evaluation, covering at least five years to permit inter- and intra-organizational estimates of effectiveness. The formative evaluation phase will include baseline data collection and analysis, implementation evaluation, and interim assessments. The formal reports and interim assessments will provide information on the accuracy of project operation, and current information on impact of the project on veterans and protected groups, Merit System Principles, and Prohibited Personnel Practices. The summative evaluation will focus on an overall assessment of project outcomes after five years. The final report will provide information on how well the HR system changes achieved the desired goals, which interventions were most effective, and whether the results can be generalized to other Federal installations.

IX. Demonstration Project Costs

A. Cost Discipline

An objective of the demonstration project is to ensure in-house cost discipline. A baseline will be established at the start of the project and labor expenditures will be tracked yearly. Implementation costs (including project development, automation costs, step buy-in costs, and evaluation costs) are considered one-time costs and will not be included in the cost discipline.

The PMB will track personnel cost changes and recommend adjustments if required to achieve the objective of cost discipline.

B. Developmental Costs

Costs associated with the development of the personnel demonstration project include software automation, training, and project evaluation. All funding will be provided through the organization's budget. The Projected Annual Expenses are summarized in Table 6. Project evaluation costs are not expected to continue beyond the first five years unless the results and external requirements warrant further evaluation.

TABLE 6—PROJECTED ANNUAL EXPENSES

	FY10	FY11	FY12	FY13	FY14
Training	0K	15K	10K	5K	5K
Project Evaluation	0K	80K	30K	30K	30K
Design	40K	0K	0K	0K	0K
Automation	97K	400K	400K	50K	50K
Totals	137K	495K	440K	85K	85K

X. Required Waivers to Law and Regulation

Public Law 106–398 gave the DoD the authority to experiment with several personnel management innovations. In addition to the authorities granted by the law, the following are waivers of law and regulation that will be necessary for implementation of the demonstration project. In due course, additional laws and regulations may be identified for waiver request.

The following waivers and adaptations of certain title 5 U.S.C. and 5 CFR provisions are required only to the extent that these statutory provisions limit or are inconsistent with the actions contemplated under this demonstration project. Nothing in this plan is intended to preclude the demonstration project from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this demonstration project.

A. Waivers to Title 5, U.S.C.

Chapter 5, section 552a: Records maintained on individuals. This section is waived only to the extent required to clarify that volunteers under the Volunteer Emeritus Corps are considered employees of the Federal government for purposes of this section.

Chapter 31, section 3111: Acceptance of Volunteer Service. Waived to allow for a Volunteer Emeritus Corps in addition to student volunteers.

Chapter 33, subchapter 1, section 3318(a): Competitive Service, Selection from Certificate. Waived to the extent necessary to eliminate the requirement for selection using the "Rule of Three."

Chapter 33, section 3319: Alternative Ranking and Selection Procedures. This

section is waived to eliminate quality categories.

Chapter 33, section 3321: Competitive Service; Probationary Period. This section waived only to the extent necessary to replace grade with "pay band level."

Chapter 33, section 3341: Details. Waived in entirety.

Chapter 41, section 4107a(1) and b(2) to the extent required to allow ARDEC to pay for all courses related to a degree program approved by the ARDEC Director.

Chapter 41, section 4108(a)–(c): Employee Agreements; Service After Training. Waived to the extent necessary to: (1) Provide that the employee's service obligation is to the ARDEC organization for the period of the required service; (2) permit the Director, ARDEC, to waive in whole or in part a right of recovery; and (3) require employees under the Student Career Experience Program who have received tuition assistance to sign a service agreement up to three times the length of the training.

Chapter 43, section 4302 and 4303: Waived to the extent necessary to: (1) Substitute pay band for grade and (2) provide that moving to a lower pay band as a result of not receiving the general pay increase because of poor performance is not an action covered by the provisions of sections 4303(a) through (d).

Chapter 43, section 4304(b)(1) and (3): Responsibilities of the OPM. Waived in its entirety to remove the responsibilities of the OPM with respect to the performance appraisal system.

Chapter 45, subchapter I, section 4502(a) and (b)-Waiver to permit ARDEC to approve awards up to $25,000 for individual employees.

Chapter 51, sections 5101–5112: Classification. Waived as necessary to allow for the demonstration project pay banding system.

Chapter 53, sections 5301, 5302 (8) and (9), 5303, and 5304: Pay Comparability System. Sections 5301, 5302, and 5304 are waived to the extent necessary to allow:

(1) Demonstration project employees to be treated as GS employees and (2) basic rates of pay under the demonstration project to be treated as scheduled rates of pay. Occupational Family Chapter 53, section 5305: Special Pay Authority. Waived to the extent necessary to allow for use of a staffing supplement in lieu of the special pay authority.

Chapter 53, sections 5331–5336: General Schedule Pay Rates. Waived in its entirety to allow for the demonstration project's pay banding system and pay provisions.

Chapter 53, sections 5361–5366: Grade and Pay Retention. These sections waived to the extent necessary to: (1) Replace grade with "pay band;" and (2) allow Demonstration project employees to be treated as GS employees.

Chapter 55, section 5542(a)(1)–(2): Overtime rates; computation. Waived to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the "applicable special rate" in applying the pay cap provisions.

Chapter 55, section 5545(d): Hazardous duty differential. Waived to the extent necessary to allow demonstration project employees to be treated as GS employees.

Chapter 55, section 5547(a)–(b): Limitation on premium pay. Waived to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which an employee belongs is deemed to be the applicable special rate in applying the pay cap provisions in 5 U.S.C. 5547.

Chapter 57, section 5753, 5754, and 5755: Recruitment and relocation bonuses, retention incentives and supervisory differentials. Waived to the extent necessary to allow: (1) Employees and positions under the demonstration project to be treated as employees and positions under the GS; and (2) that management may offer a bonus to incentivize geographic mobility to a SCEP student.

Chapter 59, section 5941: Allowances based on living costs and conditions of environment; employees stationed outside continental U.S. or Alaska. Waived to the extent necessary to provide that cost of living allowances paid to employees under the demonstration project are paid in accordance with regulations prescribed by the President (as delegated to OPM).

Chapter 75, sections 7501(1), 7511(a)(1)(A)(ii), and 7511(a)(1)(C)(ii): Adverse Actions—Definitions. Waived to the extent necessary to allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.

Chapter 75, section 7512(3): Adverse actions. Waived to the extent necessary to replace "Grade" with "Pay Band."

Chapter 75, section 7512(4): Adverse actions. Waived to the extent necessary to provide that adverse action provisions do not apply to: (1) Conversions from GS special rates to demonstration project pay, as long as total pay is not reduced; (2) reductions in pay due to the removal of a supervisory or team leader pay adjustment upon voluntary movement to a non-supervisory or non-team leader position; and (3) reduction in supervisory pay due to a performance review.

B. Waivers to Title 5, CFR

Part 300, sections 300.601 through 605: Time-in-Grade restrictions. Waived to eliminate time-in-grade restrictions in the demonstration project.

Part 308, sections 308.101 through 308.103: Volunteer service. Waived to allow for a Volunteer Emeritus Corps in addition to student volunteers.

Part 315, section 315.801(a), 315.801(b)(1), (c), and (e), and 315.802(a) and (b)(1): Probationary period and Length of probationary period. Waived to the extent necessary to allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.

Part 315, section 315.901 and 315.907: Probation on Initial Appointment to a Supervisory or Managerial Position. This section waived only to the extent necessary to replace "grade" with "pay band level."

Part 316, sections 316.301, 316.303, and 316.304: Term Employment. These sections are waived to allow modified term appointments as described in this **Federal Register** notice.

Part 332, sections 332.401 and 332.404: Order on Registers and Order of Selection from Certificates. These sections are waived to the extent necessary to allow: (1) No rating and ranking when there are 15 or fewer qualified applicants and no preference eligibles; (2) the hiring and appointment authorities as described in this **Federal Register** notice; and (3) elimination of the "rule of three."

Part 335, section 335.103: Agency promotion programs. Waived to the extent necessary to extend the length of details and temporary promotions without requiring competitive procedures or numerous short-term renewals.

Part 337, section 337.101(a): Rating applicants. Waived to the extent necessary to allow referral without rating when there are 15 or fewer qualified candidates and no qualified preference eligibles.

Part 340, subpart A, subpart B, and subpart C: Other than Full-Time Career Employment. These subparts are waived to the extent necessary to allow a Volunteer Emeritus Corps.

Part 351, Reduction in Force. This part is waived to the extent necessary to allow provisions of the RIF plan as described in this **Federal Register** notice. In accordance with this FR, ARDEC will define the competitive area, retention standing, and displacement limitations. Specific waivers include:

Sections 351.402–351.404: Scope of Competition: this part is waived to the extent necessary to allow for modification of the competitive area;

Sections 351.501–351.504: Retention Standing: this part is waived to the extent necessary to allow for modification of the calculation of the retention standing;

Sections 351.601–351.608: Release from Competitive Level: this part is waived to the extent necessary to allow for the use of pay bands in lieu of grades; and

Section 351.701: Assignment involving displacement. Waived to the extent that bump and retreat rights are limited to one pay band with the exception of 30 percent preference eligibles who are limited to two pay bands (or equivalent of five GS grades), and to limit the assignment rights of employees with an unacceptable current rating of record to a position held by another employee with an unacceptable rating of record.

Part 410, section 410.308(a) and (c) sufficient to allow ARDEC to pay for all courses related to an academic degree program approved by the ARDEC Director.

Part 410, section 410.309: Agreements to continue in service. Waived to the extent necessary to allow the ARDEC Director to determine requirements related to continued service agreements, including employees under the Student Career Experience Program who have received tuition assistance.

Part 430, subpart B: Performance Appraisal for GS and Certain Other Employees. Waived to the extent necessary to be consistent with the CBCS.

Part 430, section 430.208(a)(1) and (2): Rating Performance. Waived to allow presumptive ratings for new employees hired 90 days or less before the end of the appraisal cycle or for other situations not providing adequate time for an appraisal.

Part 432, sections 432.101–432.105: Regarding performance based reduction in grade and removal actions. These sections are waived to the extent necessary to: (1) Replace grade with "pay band"; (2) exclude reductions in pay band level not accompanied by a reduction in pay; and (3) allow provisions of CBCS. For employees who are reduced in pay band level without a reduction in pay, sections 432.105 and 432.106 (a) do not apply.

Part 451, subpart A, section 451.103(c)(2): Waived with respect to performance awards under the ARDEC CBCS.

Part 451, sections 451.106(b) and 451.107(b): Awards. Waived to permit ARDEC to approve awards up to $25,000 for individual employees.

Part 511, subpart A: General Provisions and subpart B: Coverage of the GS. Waived to the extent necessary to allow for the demonstration project classification system and pay banding structure.

Part 511, section 511.601: Applicability of regulations. Classification appeals modified to the extent that white collar positions established under the project plan, although specifically excluded from title 5 CFR, are covered by the classification appeal process outlined in this FRN section III.B.5., as amended below.

Part 511, section 511.603(a): Right to appeal. Waived to the extent necessary to substitute pay band for grade.

Part 511, section 511.607(b): Non-Appealable Issues. Add to the list of issues that are neither appealable nor reviewable, the assignment of series under the project plan to appropriate Occupational Families and the demonstration project classification criteria.

Part 530, subpart C: Special Rate Schedules for Recruitment and Retention. Waived in its entirety to allow for staffing supplements.

Part 531, subparts B: Determining Rate of Basic Pay. Waived to the extent necessary to allow for pay setting and pay for performance under the provisions of the demonstration project.

Part 531, subparts D and E: Within-Grade Increases and Quality Step Increases. Waived in its entirety.

Part 531, subpart F: Locality-Based Comparability Payments. Waived to the extent necessary to allow (1) demonstration project employees to be treated as GS employees, and (2) base rates of pay under the demonstration project to be treated as scheduled annual rates of pay.

Part 536: Grade and Pay Retention: These sections waived to the extent necessary to: (1) Replace grade with "pay band;" (2) allow demonstration project employees to be treated as GS employees; and (3) to allow provisions of this **Federal Register** notice pertaining to ARDEC pay band and pay retention provisions.

Part 550, sections 550.105 and 550.106: Bi-weekly and annual maximum earnings limitations. Waived to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the applicable special rate in applying the pay cap provisions in 5 U.S.C. 5547.

Part 550, section 550.703: Definitions. Waived to the extent necessary to modify the definition of "reasonable offer" by replacing "two grade or pay levels" with "one band level" and "grade or pay level" with "band level."

Part 550, section 550.902: Definitions. Waived to the extent necessary to allow demonstration project employees to be treated as GS employees.

Part 575, subparts A, B, and C: Recruitment, Relocation, and Retention Incentives. Waived to the extent necessary to allow: (1) Employees and positions under the demonstration project covered by pay banding to be treated as employees and positions under the GS; (2) Occupational Family relocation incentives to new SCEP students; and (3) relocation incentives to SCEP students whose worksite is in a different geographic location than that of the college enrolled.

Part 575, subpart D: Supervisory Differentials. Subpart D is waived in its entirety.

Part 591, subpart B: Cost-of-Living Allowance and Post Differential—Non-foreign Areas. Waived to the extent necessary to allow demonstration project employees to be treated as employees under the GS system.

Part 752, sections 752.101, 752.201, 752.301 and 752.401: Principal statutory requirements and Coverage. Waived to the extent necessary to allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference.

Part 752, section 752.401: Coverage. Waived to the extent necessary to replace grade with pay band and to provide that a reduction in pay band level is not an adverse action if it results from the employee's rate of base pay being exceeded by the minimum rate of base pay for his/her pay band.

Part 752, section 752.401(a)(4): Coverage. Waived to the extent necessary to provide that adverse action provisions do not apply to: (1) Conversions from GS special rates or

NSPS Targeted Local Market Supplements to demonstration project pay, as long as total pay is not reduced; (2) reductions in pay due to the removal of a supervisory or team leader pay adjustment upon voluntary movement to a non-supervisory or non-team leader position; or (3) decreases in the amount of a supervisory or team leader pay adjustment based on the annual review.

APPENDIX A—ARDEC EMPLOYEES BY DUTY LOCATION

[Totals exclude SES, ST, DCIPS and FWS employees]

Duty location	Employees	Servicing Personnel Office
Picatinny Arsenal, NJ	2,956	NE Region.
Aberdeen Proving Ground, MD	23	NE Region.
Rock Island, IL	155	NC Region.
Adelphi, MD	31	NE Region.
Watervliet, NY	239	NE Region.
Washington, DC	5	NE Region.
Ft. Benning, GA	1	NE Region.
Ft. Knox, KY	1	NE Region.
Ft. Lee, VA	1	NE Region.
Ft. Leonardwood, MO	1	NE Region.
Ft. Shafter, HI	1	NE Region.
Ft. Sill, OK	2	NE Region.
Indianhead, MD	1	NE Region.
MacDill AFB, FL	1	NE Region.
Redstone Arsenal, AL	3	SC Region.
Total All Employees	3,421	

Appendix B: Occupational Series by Occupational Family

I. Engineering & Science

0601 General Health Science Series
0801 General Engineering Series
0803 Safety Engineering Series
0806 Materials Engineering Series
0819 Environmental Engineering Series
0830 Mechanical Engineering Series
0840 Nuclear Engineering Series
0850 Electrical Engineering Series
0854 Computer Engineering Series
0855 Electronics Engineering Series
0858 Bioengineering and Biomedical Engineering Series
0861 Aerospace Engineering Series
0893 Chemical Engineering Series
0896 Industrial Engineering Series
0899 Engineering and Architecture Trainee Series
1301 General Physical Science Series
1306 Health Physics Series
1310 Physics Series
1320 Chemistry Series
1321 Metallurgy Series
1399 Physical Science Student Trainee Series
1501 General Mathematics and Statistics Series
1515 Operations Research Series
1520 Mathematics Series
1550 Computer Science Series
1599 Mathematics and Statistics Student Trainee Series

II. Business/Technical

0018 Safety and Occupational Health Management Series
0301 Miscellaneous Administration and Program Series
0340 Program Management Series
0341 Administrative Officer Series
0342 Support Services Administration Series
0343 Management and Program Analysis Series
0346 Logistics Management Series
0501 Financial Administration and Program Series
0510 Accounting Series
0802 Engineering Technical Series
0856 Electronics Technical Series
0895 Industrial Engineering Technical Series
0905 General Attorney Series
0950 Paralegal Specialist Series
1001 Information and Arts Group Series General Arts and Information Series
1035 Public Affairs Series
1071 Audiovisual Production Series
1083 Technical Writing and Editing Series
1084 Visual Information Series
1101 Business and Industry Series
1102 Contracting Series
1222 Patent Attorney Series
1311 Physical Science Technician Series
1410 Librarian Series
1412 Technical Information Services Series
1670 Equipment Services Series
1702 Education and Training Technician Series
1712 Training Instruction Series
1801 General Inspection, Investigation, Enforcement, and Compliance Series
1910 Quality Assurance Series
2032 Packaging Series
2210 Information Technology Management Series

III. General Support

0303 Miscellaneous Clerk and Assistant Series
0318 Secretary Series
0326 Office Automation Clerical and Assistance Series
0335 Computer Clerk and Assistant Series
0344 Management and Program Clerical and Assistance Series

Appendix C: Contribution Factors and Level Descriptors

1. Occupational Family DB—Engineering and Science (E&S)

Factor 1–1: Problem Solving

Factor Description: This factor describes/captures personal and organizational problem-solving results.

Expected Performance Criteria (Applicable to all contributions at all levels): Work is timely, efficient, appropriately coordinated and of acceptable quality. Completed work meets projects/programs objectives. Recommendations are sound. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
LEVEL I:	
• Performs activities on a task; assists supervisor or other appropriate personnel	—Scope/Impact.
• Resolves routine problems within established guidelines	—Complexity/Difficulty.
• Independently performs assigned tasks within area of responsibility; refers situations to supervisor or other appropriate personnel when existing guidelines do not apply.	—Independence.
• Takes initiative in determining and implementing appropriate procedures	—Creativity.
LEVEL II:	
• Plans and conducts functional technical activities for projects/programs	—Scope/Impact.
• Identifies, analyzes, and resolves moderately complex/difficult problems	—Complexity/Difficulty.
• Independently identifies and resolves conventional problems which may require deviations from accepted policies or instructions.	—Independence.
• Adapts existing plans and techniques to accomplish moderately complex projects/programs. Recommends improvements to the design or operation of systems, equipment, or processes.	—Creativity.
LEVEL III:	
• Independently defines, directs, or leads highly challenging projects/programs. Identifies and resolves highly complex problems not susceptible to treatment by accepted methods.	—Scope/Impact.
• Develops, integrates, and implements solutions to diverse, highly complex problems across multiple areas and disciplines.	—Complexity/Difficulty.
• Anticipates problems, develops sound solutions and action plans to ensure program/mission accomplishment.	—Independence.
• Develops plans and techniques to fit new situations to improve overall program and policies. Establishes precedents in application of problem-solving techniques to enhance existing processes.	—Creativity.
LEVEL IV:	
• Plans and performs work across a broad range of highly complex activities that require substantial depth of analysis and expertise and/or organizational problem solving skills. The work significantly affects policies/major programs. Actively engages in organizational planning.	—Scope/Impact.
• Resolves critical, multifaceted problems and/or develops new theories or methods that affect the work of other experts, major aspects of management programs, or a large number of people.	—Complexity/Difficulty.
• Independently plans and carries out work from general objectives. Work results are considered authoritative. Expertise is recognized both internally and externally.	—Independence.
• Uses judgment and ingenuity in making decisions or developing methodologies for areas with substantial uncertainty. Adapts to tasks with changing/competing requirements. Approaches to solving problems require interpretation, deviation from traditional methods, or research of trends and patterns to develop new methods, scientific knowledge, or organizational principles.	—Creativity.
LEVEL V:	
• Defines, establishes, and directs organizational focus (on challenging and highly complex project/programs). Identifies and resolves highly complex problems that cross organizational boundaries and promulgates solutions. Resolution of problems requires mastery of the field to develop new hypotheses or fundamental new concepts.	— Scope/Impact.
• Assesses and provides strategic direction for resolution of mission critical problems, policies, and procedures.	—Complexity/Difficulty.
• Works at senior level to define, integrate, and implement strategic direction for vital programs with long-term impact on large numbers of people. Initiates actions to resolve major organizational issues. Promulgates innovative solutions and methodologies.	—Independence.
• Works strategically with senior management to establish new fundamental concepts and criteria and stimulate the development of new policies, methodologies, and techniques. Converts strategic goals into programs or policies.	—Creativity.
LEVEL VI:	
• TBD.	

Factor 1–2: Teamwork/Cooperation

Factor Description: This factor, applicable to all teams, describes/captures individual and organizational teamwork and cooperation.

Expected Performance Criteria (Applicable to all contributions at all levels): Work is timely, efficient, appropriately coordinated and of acceptable quality. Personal and organizational interactions exhibit and foster cooperation and teamwork. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
LEVEL I:	
• Works with others to accomplish routine tasks	—Scope of Team Effort.
• Contributes ideas in own area of expertise. Interacts cooperatively with others	—Contribution to Team.
• Regularly completes assignments in support of team goals	—Effectiveness.

Level descriptors	Discriminators
LEVEL II:	
• Works with others to accomplish projects/programs	—Scope of Team Effort.
• Uses varied approaches to resolve or collaborate on projects/programs issues. Facilitates cooperative interactions with others.	—Contribution to Team.
• Guides/supports others in executing team assignments. Proactively functions as an integral part of the team.	—Effectiveness.
LEVEL III:	
• Works with/leads others to accomplish complex projects/programs	—Scope of Team Effort.
• Applies innovative approaches to resolve unusual/difficult issues significantly impacting important policies or programs. Promotes and maintains environment for cooperation and teamwork.	—Contribution to Team.
• Leads, guides and mentors others in formulating and executing team plans. Expertise is sought by peers.	—Effectiveness.
LEVEL IV:	
• Leads team(s) working on critical aspects of technology areas or programmatic/business management efforts. Team results significantly affect internal/external organizations and/or relationships.	—Scope of Team Effort.
• Is accountable for quality and effectiveness of team efforts. Integrates efforts across disciplines.	—Contribution to Team.
• Leads/guides/mentors team(s) on highly complex, high priority programs. Is sought out for leadership roles and for consultation on complex issues with internal/external impact.	—Effectiveness.
LEVEL V:	
• Leads/guides/mentors workforce in dealing with complex problems	—Scope of Team Effort.
• Solves broad organizational issues. Implements strategic plans within and across organizational components. Ensures a cooperative teamwork environment. Develops future team leaders and supervisors.	—Contribution to Team.
• Leads/guides workforce in achieving organizational goals. Is sought out for leadership roles for critical issues and strategy. Fosters teamwork throughout the organization.	— Effectiveness.
LEVEL VI:	
• TBD.	

Factor 1–3: Customer Relations

Factor Description: This factor describes/captures the effectiveness of personal and organizational interactions with customers (anyone to whom services or products are provided), both internal (within an assigned organization) and external (outside an assigned organization).

Expected Performance Criteria (Applicable to all contributions at all levels): Work is timely, efficient, appropriately coordinated and of acceptable quality. Personal and organizational interactions enhance customer relations and actively promote rapport with customers. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
LEVEL I:	
• Independently carries out routine customer requests	—Breadth of Influence.
• Participates as a team member to meet customer needs	—Customer Needs.
• Interacts with customers on routine issues with appropriate guidance	—Customer Interaction Level.
LEVEL II:	
• Guides the technical/functional efforts of individuals or team members as they interact with customers.	—Breadth of Influence.
• Initiates meetings and interactions with customers to understand customer needs/expectations.	—Customer Needs.
• Interacts independently with customers to communicate information and coordinate actions.	—Customer Interaction Level.
LEVEL III:	
• Guides and integrates functional efforts of individuals or teams in support of customer interaction. Seeks innovative approaches to satisfy customers.	—Breadth of Influence.
• Establishes customer alliances, anticipates and fulfills customer needs, and translates customer needs to programs/projects.	—Customer Needs.
• Interacts independently and proactively with customers to identify and define complex/difficult problems and to develop and implement strategies or techniques for resolving program/project problems (e.g., determining priorities and resolving conflict among customers' requirements).	—Customer Interaction Level.
LEVEL IV:	
• Leads efforts involving extensive customer interactions and partnerships. Establishes successful working relationships with customers to address and resolve highly complex or controversial issues.	—Breadth of Influence.
• Identifies and fosters new customer alliances. Anticipates customer needs to avoid potential problems and improve customer satisfaction.	—Customer Needs.

Level descriptors	Discriminators
• Works proactively at senior level to assure customer satisfaction on programs and issues with a high level of customer interest and concern.	—Customer Interaction Level.
LEVEL V:	
• Leads and manages the organizational interactions with customers from a strategic standpoint.	—Breadth of Influence.
• Works to assess and promulgate political, fiscal, and other factors affecting customer and program/project needs. Works with customer at management levels to resolve problems affecting programs/projects (e.g., problems that involve determining priorities and resolving conflicts among customers' requirements).	—Customer Needs.
• Collaborates at senior level to stimulate customer alliances for program/project support. Stimulates, organizes, and leads overall customer interactions.	—Customer Interaction Level.
LEVEL VI:	
• TBD.	

Factor 1–4: Leadership/Supervision

Factor Description: This factor describes/captures individual and organizational leadership and/or supervision. Recruits, develops, motivates, and retains quality team members in accordance with EEO/AA and Merit Principles. Takes timely/appropriate personnel actions, communicates mission and organizational goals; by example, creates a positive, safe, and challenging work environment; distributes work and empowers team members.

Expected Performance Criteria (Applicable to all contributions at all levels): Work is timely, efficient, appropriately coordinated and of acceptable quality. Leadership and/or supervision effectively promotes commitment to mission accomplishment. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
LEVEL I:	
• Takes initiative in accomplishing assigned tasks	—Leadership Role.
• Provides inputs to others in own technical/functional area	—Breadth of Influence.
• Seeks and takes advantage of developmental opportunities	—Mentoring/Employee Development.
LEVEL II:	
• Actively contributes as a team member/leader; provides insight and recommends changes or solutions to problems.	—Leadership Role.
• Proactively guides, coordinates, and consults with others to accomplish projects	—Breadth of Influence.
• Identifies and pursues individual/team development opportunities	—Mentoring/Employee Development.
LEVEL III:	
• Provides guidance to individuals/teams; resolves conflicts. Considered a functional/technical expert by others in the organization; is regularly sought out by others for advice and assistance.	—Leadership Role.
• Fosters individual/team development by mentoring	—Breadth of Influence.
• Pursues or creates training development programs for self and others	—Mentoring/Employee Development.
LEVEL IV:	
• As a program area expert, resolves highly complex team problems and conflicts. Effectively seeks out and capitalizes on opportunities for teams/work units to achieve significant results that support organizational goals. Is sought out for consultation and leadership roles.	—Leadership Role.
• Leads teams engaged in highly complex and critical work, with accountability for employee motivation, quality, and effectiveness and for team success.	—Breadth of Influence.
• Fosters and initiates effective team development to meet current and future organizational needs. Actively seeks out opportunities for and engages in mentoring, coaching, and instruction. Pursues personal professional development.	—Mentoring/Employee Development.
LEVEL V:	
• Establishes and/or leads teams to carry out complex projects or programs. Creates an organizational climate where empowerment and creativity thrive. Mentors and motivates workforce.	—Leadership Role.
• Leads, defines, manages, and integrates efforts involving large numbers of people. Ensures organizational mission and program success.	—Breadth of Influence.
• Fosters workforce development. Encourages cross functional growth to meet mission needs. Pursues personal professional development as a model for staff.	—Mentoring/Employee Development.
LEVEL VI:	
• TBD.	

Factor 1–5: Communication

Factor Description: This factor describes/captures the effectiveness of oral/written communications.

Expected Performance Criteria (Applicable to all contributions at all levels): Work is timely, efficient, appropriately coordinated and of acceptable quality.

Communications are clear, concise, and at appropriate level. Flexibility,

adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
LEVEL I:	
• Communicates routine task status/results as required	—Level of Interaction (Audience).
• Provides timely data and written analyses for input to management/technical reports or contractual documents.	—Written.
• Explains status/results of assigned tasks	—Oral.
LEVEL II:	
• Communicates team or group tasking results, internally and externally, at peer levels.	—Level of Interaction (Audience).
• Writes, or is a major contributor to, management/technical reports or contractual documents.	—Written.
• Presents informational briefings	—Oral.
LEVEL III:	
• Communicates project or program results to all levels, internally and externally	—Level of Interaction (Audience).
• Reviews and approves, or is a major contributor to/lead author of, management reports or contractual documents for external distribution. Provides inputs to policies.	—Written.
• Presents briefings to obtain consensus/approval	—Oral.
LEVEL IV:	
• Communicates complex technical, programmatic, and/or management information across multiple organizational levels to drive decisions by senior leaders internally and externally.	—Level of Interaction (Audience).
• Leads efforts in documenting diverse and highly complex information, concepts, and ideas. Authors and enables authoritative reports pertaining to multiple areas of expertise, incorporating diverse viewpoints. Reviews communications of others for appropriate and accurate content.	—Written.
• Demonstrates expert speaking skills and the adaptability to be effective in critical briefings.	—Oral.
LEVEL V:	
• Determines and communicates organizational positions on major projects or policies to senior level.	—Level of Interaction (Audience).
• Prepares, reviews, and approves major reports or policies of organization for internal and external distribution. Resolves diverse viewpoints/controversial issues.	—Written.
• Presents organizational briefings to convey strategic vision or organizational policies.	—Oral.
LEVEL VI:	
• TBD.	

Factor 1–6: Resource Management

Factor Description: This factor describes/captures personal and organizational utilization of resources to accomplish the mission. (Resources include, but are not limited to, personal time, equipment and facilities, human resources, and funds.)

Expected Performance Criteria (Applicable to all contributions at all levels): Work is timely, efficient, appropriately coordinated and of acceptable quality. Resources are utilized effectively to accomplish mission. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
LEVEL I:	
• Uses assigned resources needed to accomplish tasks	—Scope of Responsibility.
• Plans individual time and assigned resources to accomplish tasks	—Planning/Budgeting.
• Effectively accomplishes assigned tasks	—Execution/Efficiency.
LEVEL II:	
• Plans and utilizes appropriate resources to accomplish project goals	—Scope of Responsibility.
• Optimizes resources to accomplish projects/programs within established schedules.	—Planning/Budgeting.
• Effectively accomplishes projects/programs goals within established resource guidelines.	—Execution/Efficiency.
LEVEL III:	
• Plans and allocates resources to accomplish multiple projects/programs	—Scope of Responsibility.
• Identifies and optimizes resources to accomplish multiple projects/programs goals	—Planning/Budgeting.
• Effectively accomplishes multiple projects/programs goals within established guidelines.	—Execution/Efficiency.
LEVEL IV:	

Level descriptors	Discriminators
• Plans, allocates, and monitors resources in a complex environment with substantial instability in resources/requirements.	—Scope of Responsibility.
• Anticipates changes in workload and other resource requirements for multiple programs/projects and develops and advocates solutions in advance.	—Planning/Budgeting.
• Leads others in using resources more efficiently and implements innovative ideas to stretch limited resources.	—Execution/Efficiency.
LEVEL V:	
• Develops, acquires, and allocates resources to accomplish mission goals and strategic objectives.	—Scope of Responsibility.
• Formulates organizational strategies, tactics, and budget/action plan to acquire and allocate resources.	—Planning/Budgeting.
• Optimizes, controls, and manages all resources across projects/programs. Develops and integrates innovative approaches to attain goals and minimize expenditures.	—Execution/Efficiency.
LEVEL VI:	
• TBD.	

2. Occupational Family DE—Business and Technical (B&T)

Factor 2–1: Problem Solving

Factor Description: This factor describes/captures personal and organizational problem-solving results.

Expected Performance Criteria (Applicable to all contributions at all levels): Work is timely, efficient, appropriately coordinated and of acceptable quality. Completed work meets projects/programs objectives. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
LEVEL I:	
• Performs activities on a task; assists supervisor or other appropriate personnel	—Scope/Impact.
• Resolves routine problems within established guidelines	—Complexity/Difficulty.
• Independently performs assigned tasks within area of responsibility; refers situations to supervisor or other appropriate personnel when existing guidelines do not apply.	—Independence.
• Takes initiative in determining and implementing appropriate procedures	—Creativity.
LEVEL II:	
• Plans and conducts functional technical activities for projects/programs	—Scope/Impact.
• Identifies, analyzes, and resolves complex/difficult problems	—Complexity/Difficulty.
• Independently identifies and resolves conventional problems which may require deviations from accepted policies or instructions.	—Independence.
• Adapts existing plans and techniques to accomplish complex projects/programs. Recommends improvements to the design or operation of systems, equipment, or processes.	—Creativity.
LEVEL III:	
• Independently defines, directs, or leads highly challenging projects/programs. Identifies and resolves highly complex problems not susceptible to treatment by accepted methods.	—Scope/Impact.
• Develops, integrates, and implements solutions to diverse, highly complex problems across multiple areas and disciplines.	—Complexity/Difficulty.
• Anticipates problems, develops sound solutions and action plans to ensure program/mission accomplishment.	—Independence.
• Develops plans and techniques to fit new situations to improve overall program and policies. Establishes precedents in application of problem-solving techniques to enhance existing processes.	—Creativity.
LEVEL IV:	
• Plans and performs work across a broad range of highly complex activities that require substantial depth of analysis and expertise and/or organizational problem solving skills. The work significantly affects policies/major programs. Actively engages in organizational planning.	—Scope/Impact.
• Resolves critical, multifaceted problems and/or develops new theories or methods that affect the work of other experts, major aspects of management programs, or a large number of people.	—Complexity/Difficulty.
• Independently plans and carries out work from general objectives. Work results are considered authoritative. Expertise is recognized both internally and externally.	—Independence.
• Uses judgment and ingenuity in making decisions or developing methodologies for areas with substantial uncertainty. Adapts to tasks with changing/competing requirements. Approaches to solving problems require interpretation, deviation from traditional methods, or research of trends and patterns to develop new methods, scientific knowledge, or organizational principles.	—Creativity.
LEVEL V:	

Level descriptors	Discriminators
• Defines, establishes, and directs organizational focus (on challenging and highly complex project/programs). Identifies and resolves highly complex problems that cross organizational boundaries and promulgates solutions. Resolution of problems requires mastery of the field to develop new hypotheses or fundamental new concepts.	—Scope/Impact.
• Assesses and provides strategic direction for resolution of mission critical problems, policies, and procedures.	—Complexity/Difficulty.
• Works at senior level to define, integrate, and implement strategic direction for vital programs with long-term impact on large numbers of people. Initiates actions to resolve major organizational issues. Promulgates innovative solutions and methodologies.	—Independence.
• Works strategically with senior management to establish new fundamental concepts and criteria and stimulate the development of new policies, methodologies, and techniques. Converts strategic goals into programs or policies.	—Creativity.

Factor 2–2: Teamwork/Cooperation

Factor Description: This factor, applicable to all teams, describes/captures individual and organizational teamwork and cooperation.

Expected Performance Criteria (Applicable to all contributions at all levels): Work is timely, efficient, appropriately coordinated and of acceptable quality. Personal and organizational interactions exhibit and foster cooperation and teamwork. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
LEVEL I:	
• Works with others to accomplish routine tasks	—Scope of Team Effort.
• Contributes ideas in own area of expertise. Interacts cooperatively with others	—Contribution to Team.
• Regularly completes assignments in support of team goals	—Effectiveness.
LEVEL II:	
• Works with others to accomplish projects/programs	—Scope of Team Effort.
• Uses varied approaches to resolve or collaborate on projects/programs issues. Facilitates cooperative interactions with others.	—Contribution to Team.
• Guides/supports others in executing team assignments. Proactively functions as an integral part of the team.	—Effectiveness.
LEVEL III:	
• Works with/leads others to accomplish complex projects/programs	—Scope of Team Effort.
• Applies innovative approaches to resolve unusual/difficult issues significantly impacting important policies or programs. Promotes and maintains environment for cooperation and teamwork.	—Contribution to Team.
• Leads guides and mentors others in formulating and executing team plans. Expertise is sought by peers.	—Effectiveness.
LEVEL IV:	
• Leads team(s) working on critical aspects of technology areas or programmatic/business management efforts. Team results significantly affect internal/external organizations and/or relationships.	—Scope of Team Effort.
• Is accountable for quality and effectiveness of team efforts. Integrates efforts across disciplines.	—Contribution to Team.
• Leads/guides/mentors team(s) on highly complex, high priority programs. Is sought out for leadership roles and for consultation on complex issues with internal/external impact.	—Effectiveness.
LEVEL V:	
• Leads/guides/mentors workforce in dealing with complex problems	—Scope of Team Effort.
• Solves broad organizational issues. Implements strategic plans within and across organizational components. Ensures a cooperative teamwork environment. Develops future team leaders and supervisors.	—Contribution to Team.
• Leads/guides workforce in achieving organizational goals. Is sought out for leadership roles for critical issues and strategy. Fosters teamwork throughout the organization.	—Effectiveness.

Factor 2–3: Customer Relations

Factor Description: This factor describes/captures the effectiveness of personal and organizational interactions with customers (anyone to whom services or products are provided), both internal (within an assigned organization) and external (outside an assigned organization).

Expected Performance Criteria (Applicable to all contributions at all levels): Work is timely, efficient, appropriately coordinated and of acceptable quality. Personal and organizational interactions enhance customer relations and actively promote rapport with customers. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high

end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
LEVEL I:	
• Independently carries out routine customer requests	—Breadth of Influence.
• Participates as a team member to meet customer needs	—Customer Needs.
• Interacts with customers on routine issues with appropriate guidance	—Customer Interaction Level.
LEVEL II:	
• Guides the technical/functional efforts of individuals or team members as they interact with customers.	—Breadth of Influence.
• Initiates meetings and interactions with customers to understand customer needs/expectations.	—Customer Needs.
• Interacts independently with customers to communicate information and coordinate actions.	—Customer Interaction Level.
LEVEL III:	
• Guides and integrates functional efforts of individuals or teams in support of customer interaction. Seeks innovative approaches to satisfy customers.	—Breadth of Influence.
• Establishes customer alliances, anticipates and fulfills customer needs, and translates customer needs to programs/projects.	—Customer Needs.
• Interacts independently and proactively with customers to identify and define complex/difficult problems and to develop and implement strategies or techniques for resolving program/project problems (e.g., determining priorities and resolving conflict among customers' requirements).	—Customer Interaction Level.
LEVEL IV:	
• Leads efforts involving extensive customer interactions and partnerships. Establishes successful working relationships with customers to address and resolve highly complex or controversial issues.	—Breadth of Influence.
• Identifies and fosters new customer alliances. Anticipates customer needs to avoid potential problems and improve customer satisfaction.	—Customer Needs.
• Works proactively at senior level to assure customer satisfaction on programs and issues with a high level of customer interest and concern.	—Customer Interaction Level.
LEVEL V:	
• Leads and manages the organizational interactions with customers from a strategic standpoint.	—Breadth of influence.
• Works to assess and promulgate political, fiscal, and other factors affecting customer and program/project needs. Works with customer at management levels to resolve problems affecting programs/projects (e.g., problems that involve determining priorities and resolving conflicts among customers' requirements).	—Customer Needs.
• Collaborates at senior level to stimulate customer alliances for program/project support. Stimulates, organizes, and leads overall customer interactions.	—Customer Interaction Level.

Factor 2–4: Leadership/Supervision

Factor Description: This factor describes/captures individual and organizational leadership and/or supervision. Recruits, develops, motivates, and retains quality team members in accordance with EEO/AA and Merit Principles. Takes timely/appropriate personnel actions, communicates mission and organizational goals; by example, creates a positive, safe, and challenging work environment; distributes work and empowers team members.

Expected Performance Criteria (Applicable to all contributions at all levels):

Work is timely, efficient, appropriately coordinated and of acceptable quality. Leadership and/or supervision effectively promotes commitment to mission accomplishment. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
LEVEL I:	
• Takes initiative in accomplishing assigned tasks	—Leadership Role.
• Provides inputs to others in own technical/functional area	—Breadth of Influence.
• Seeks and takes advantage of developmental opportunities	—Mentoring/Employee Development.
LEVEL II:	
• Actively contributes as a team member/leader; provides insight and recommends changes or solutions to problems.	—Leadership Role.
• Proactively guides, coordinates, and consults with others to accomplish projects	—Breadth of Influence.
• Identifies and pursues individual/team development opportunities	—Mentoring/Employee Development.
LEVEL III:	
• Provides guidance to individuals/teams; resolves conflicts. Considered a functional/technical expert by others in the organization; is regularly sought out by others for advice and assistance.	—Leadership Role.

Level descriptors	Discriminators
• Defines, organizes, and assigns activities to accomplish projects/programs goals. Guides, motivates, and oversees the activities of individuals and teams with focus on projects/programs issues.	—Breadth of Influence.
• Fosters individual/team development by mentoring. Pursues or creates training development programs for self and others.	—Mentoring/Employee Development.
LEVEL IV:	
• As a program area expert, resolves highly complex team problems and conflicts. Effectively seeks out and capitalizes on opportunities for teams/work units to achieve significant results that support organizational goals. Is sought out for consultation and leadership roles.	—Leadership Role.
• Leads teams engaged in highly complex and critical work, with accountability for employee motivation, quality, and effectiveness and for team success.	—Breadth of Influence.
• Fosters and initiates effective team development to meet current and future organizational needs. Actively seeks out opportunities for and engages in mentoring, coaching, and instruction. Pursues personal professional development.	—Mentoring/Employee Development.
LEVEL V:	
• Establishes and/or leads teams to carry out complex projects or programs. Creates an organizational climate where empowerment and creativity thrive. Mentors and motivates workforce.	—Leadership Role.
• Leads, defines, manages, and integrates efforts of several involving large numbers of people. Ensures organizational mission and program success.	—Breadth of Influence.
• Fosters workforce development. Encourage cross-functional growth to meet organizational needs. Pursues personal professional development as a model for staff.	—Mentoring/Employee Development.

Factor 2–5: Communication

Factor Description: This factor describes/captures the effectiveness of oral/written communications.

Expected Performance Criteria (Applicable to all contributions at all levels): Work is timely, efficient, appropriately coordinated and of acceptable quality.

Communications are clear, concise, and at appropriate level. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
LEVEL I:	
• Communicates routine task status/results as required	—Level of Interaction (Audience).
• Provides timely data and written analyses for input to management/technical reports or contractual documents.	—Written.
• Explains status/results of assigned tasks	—Oral.
LEVEL II:	
• Communicates team or group tasking results, internally and externally, at peer levels.	—Level of Interaction (Audience).
• Writes, or is a major contributor to, management/technical reports or contractual documents.	—Written.
• Presents informational briefings	—Oral.
LEVEL III:	
• Communicates project or program results to all levels, internally and externally	—Level of Interaction (Audience).
• Reviews and approves, or is a major contributor to/lead author of, management reports or contractual documents for external distribution. Provides inputs to policies.	—Written.
• Presents briefings to obtain consensus/approval	—Oral.
LEVEL IV:	
• Communicates complex technical, programmatic, and/or management information across multiple organizational levels to drive decisions by senior leaders internally and externally.	—Level of Interaction (Audience).
• Leads efforts in documenting diverse and highly complex information, concepts, and ideas in a highly responsive and effective manner. Authors and enables authoritative reports pertaining to multiple areas of expertise, incorporating diverse viewpoints, with minimal guidance from others. Reviews communications of others for appropriate and accurate content.	—Written.
• Demonstrates expert speaking skills and the adaptability to be effective in critical briefings.	—Oral.
LEVEL V:	
• Determines and communicates organizational positions on major projects or policies to senior level.	—Level of Interaction (Audience).
• Prepares, reviews, and approves major reports or policies of organization for internal and external distribution. Resolves diverse viewpoints/controversial issues.	—Written.
• Presents organizational briefings to convey strategic vision or organizational policies.	—Oral.

Factor 2–6: Resource Management

Factor Description: This factor describes/captures personal and organizational utilization of resources to accomplish the mission. (Resources include, but are not limited to, personal time, equipment and facilities, human resources, and funds.)

Expected Performance Criteria (Applicable to all contributions at all levels): Work is timely, efficient, appropriately coordinated and of acceptable quality. Resources are utilized effectively to accomplish mission. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
LEVEL I:	
• Uses assigned resources needed to accomplish tasks	—Scope of Responsibility.
• Plans individual time and assigned resources to accomplish tasks	—Planning/Budgeting.
• Effectively accomplishes assigned tasks	—Execution/Efficiency.
LEVEL II:	
• Plans and utilizes appropriate resources to accomplish project goals	—Scope of Responsibility.
• Optimizes resources to accomplish projects/programs within established schedules.	—Planning/Budgeting.
• Effectively accomplishes projects/programs goals within established resource guidelines.	—Execution/Efficiency.
LEVEL III:	
• Plans and allocates resources to accomplish multiple projects/programs	—Scope of Responsibility.
• Identifies and optimizes resources to accomplish multiple projects/programs goals	—Planning/Budgeting.
• Effectively accomplishes multiple projects/programs goals within established guidelines.	—Execution/Efficiency.
LEVEL IV:	
• Plans, allocates, and monitors resources in a complex environment with substantial instability in resources/requirements.	—Scope of Responsibility.
• Anticipates changes in workload and other resource requirements for multiple programs/projects and develops and advocates solutions in advance.	—Planning/Budgeting.
• Leads others in using resources more efficiently and implements innovative ideas to stretch limited resources.	—Execution/Efficiency.
LEVEL V:	
• Develops, acquires, and allocates resources to accomplish mission goals and strategic objectives.	—Scope of Responsibility.
• Formulates organizational strategies, tactics, and budget/action plan to acquire and allocate resources.	—Planning/Budgeting.
• Optimizes, controls, and manages all resources across projects/programs. Develops and integrates innovative approaches to attain goals and minimize expenditures.	—Execution/Efficiency.

3. Occupational Family DK—General Support

Factor 3–1: Problem Solving

Factor Description: This factor describes/captures personal and organizational problem solving.

Expected Performance Criteria (Applicable to all contributions at all levels): Work is timely, efficient, appropriately coordinated and of acceptable quality. Completed work meets project/program objectives. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
LEVEL I:	
• Conducts activities on a segment of a task. Assists supervisor or other appropriate personnel.	—Scope/Impact.
• Applies standard rules, procedures, or operations to resolve routine problems	—Complexity/Difficulty.
• Independently carries out routine tasks.	—Independence
• Takes initiative in selecting and implementing appropriate procedures	—Creativity.
LEVEL II:	
• Plans and conducts administrative activities for projects	—Scope/Impact.
• Develops, modifies, and/or applies rules, procedures, or operations to resolve problems of moderate complexity/difficulty.	—Complexity/Difficulty.
• Independently plans and executes assignments; resolves problems and handles deviations.	—Independence.
• Identifies and adapts guidelines for new or unusual situations	—Creativity.
LEVEL III:	
• Plans and conducts complex administrative activities	—Scope/Impact.
• Develops rules, procedures, or operations for complex/difficult organizational tasks	—Complexity/Difficulty.

Level descriptors	Discriminators
• Identifies issues and determines approaches and methods to accomplish tasks. Initiates effective actions and resolves related conflicts.	—Independence.
• Identifies issues requiring new procedures and develops appropriate guidelines	—Creativity.

Factor 3–2: Teamwork/Cooperation

Factor Description: This factor describes/captures individual and organizational teamwork and cooperation.

Expected Performance Criteria (Applicable to all contributions at all levels): Work is timely, efficient, appropriately coordinated and of acceptable quality. Personal and organizational interactions exhibit and foster cooperation and teamwork. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
LEVEL I:	
• Works with others to accomplish routine tasks	—Scope of Team Effort.
• Contributes ideas on routine procedures. Interacts cooperatively with others	—Contribution to Team.
• Regularly completes tasks in support of team goals	—Effectiveness.
LEVEL II:	
• Works with/leads to accomplish tasks	—Scope of Team Effort.
• Resolves administrative problems; facilitates cooperative interactions with others ..	—Contribution to Team.
• Guides others and coordinates activities in support of team goals. Proactively functions as an integral part of the team.	—Effectiveness.
LEVEL III:	
• Works with/leads others on complex issues/problems that may cross-functional areas.	—Scope of Team Effort.
• Applies expertise in resolving complex administrative issues. Promotes and maintains environment for cooperation/teamwork. Sets tone for internal/external cooperation.	—Contribution to Team.
• Leads and guides others in formulating and executing plans in support of team goals.	—Effectiveness.

Factor 3–3: Customer Relations

Factor Description: This factor describes/captures the effectiveness of personal and organizational interactions with customers (anyone to whom services or products are provided), both internal (within an assigned organization) and external (outside an assigned organization).

Expected Performance Criteria (Applicable to all contributions at all levels): Work is timely, efficient, appropriately coordinated and of acceptable quality. Personal and organizational interactions enhance customer relations and actively promote rapport with customers. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
LEVEL I:	
• Assists customer support activities	—Breadth of Influence
• Meets routine customer needs	—Customer Needs.
• Interacts with customers on routine issues within specific guidelines	—Customer Interaction Level.
LEVEL II:	
• Guides the administrative efforts of individuals or team members as they interact with customers.	—Breadth of Influence
• Independently interacts with customers to understand customer needs/expectations.	—Customer Needs.
• Interacts independently with customers to communicate information and coordinate actions.	—Customer Interaction Level.
LEVEL III:	
• Identifies, defines, and guides administrative efforts in support of customer interactions; coordinates and focuses activities to support multiple customers.	—Breadth of Influence.
• Establishes customer alliances and translates needs to customer service	—Customer Needs.
• Works independently with customers at all levels to define services and resolve non-routine problems.	—Customer Interaction Level.

Factor 3–4: Leadership/Supervision

Factor Description: This factor describes/captures individual and organizational leadership and/or supervision. Recruits, develops, motivates, and retains quality team members in accordance with EEO/AA and Merit Principles. Takes timely/appropriate personnel actions,

communicates mission and organizational goals; by example, creates a positive, safe, and challenging work environment; distributes work and empowers team members.

Expected Performance Criteria (Applicable to all contributions at all levels): Work is timely, efficient, appropriately coordinated and of acceptable quality. Leadership and/or supervision effectively promotes commitment to mission accomplishment. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
LEVEL I:	
• Takes initiative in accomplishing assigned tasks. Asks for assistance as appropriate.	—Leadership Role.
• Provides input in administrative/functional area	—Breadth of Influence.
• Seeks and takes advantage of developmental opportunities	— Mentoring/Employee Development.
LEVEL II:	
• Actively contributes as team member or leader; takes initiative to accomplish assigned projects.	— Leadership Role.
• Guides others in accomplishing projects	—Breadth of Influence.
• Identifies and pursues individual/team developmental opportunities	—Mentoring/Employee Development.
LEVEL III:	
• Provides guidance to individuals/teams; resolves conflicts. Expertise solicited by others.	— Leadership Role.
• Guides and accounts for results or activities of individuals, teams, or projects	— Breadth of Influence.
• Promotes individual/team development; leads development of training programs for self and others.	— Mentoring/Employee Development.

Factor 3–5: Communication

Factor Description: This factor describes/captures the effectiveness of oral/written communications.

Expected Performance Criteria (Applicable to all contributions at all levels): Work is timely, efficient, appropriately coordinated and of acceptable quality. Communications are clear, concise, and at appropriate level. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
LEVEL I:	
• Communicates routine task/status results as required	—Level of Interaction (Audience).
• Writes timely and accurate draft documentation	—Written.
• Explains status/results of assigned tasks.	—Oral.
LEVEL II:	
• Interprets and communicates administrative procedures within immediate organization.	—Level of Interaction (Audience).
• Prepares, coordinates, and consolidates documents, reports, or briefings	—Written.
• Communicates/presents internal administrative/functional procedures and tasks internally and externally.	—Oral.
LEVEL III:	
• Develops and advises on administrative procedures and communicates them to all levels, both internally and externally.	—Level of Interaction (Audience).
• Prepares, reviews, and/or approves documents, reports, or briefings	—Written.
• Explains and/or communicates complex/controversial administrative/functional procedures at all levels.	—Oral.

Factor 3–6: Resource Management

Factor Description: This factor describes/captures personal and organizational utilization of resources to accomplish the mission. (Resources include, but are not limited to, personal time, equipment and facilities, human resources, and funds.)

Expected Performance Criteria (Applicable to all contributions at all levels): Work is timely, efficient, appropriately coordinated and of acceptable quality. Available resources are utilized effectively to accomplish mission. Flexibility, adaptability, and decisiveness are exercised appropriately.

Descriptors indicate the type of contribution appropriate for the high end of each level. Descriptors are not to be used individually to assess contributions, but rather are to be taken as a group to derive a single evaluation of the factor.

Level descriptors	Discriminators
LEVEL I:	
• Uses assigned resources to accomplish tasks	—Scope of Responsibility
• Plans individual time and assigned resources to accomplish tasks	—Planning/Budgeting.

Level descriptors	Discriminators
• Effectively accomplishes assigned tasks	—Execution/Efficiency.
LEVEL II:	
• Identifies and uses resources to accomplish projects	—Scope of Responsibility.
• Plans resources to achieve project schedules	—Planning/Budgeting.
• Effectively accomplishes projects within established resource guidelines	—Execution/Efficiency.
LEVEL III:	
• Plans, acquires, and allocates resources to accomplish objectives	—Scope of Responsibility.
• Coordinates resources across projects	—Planning/Budgeting.
• Optimizes resource utilization across projects	—Execution/Efficiency.

Appendix D

INTERVENTION MODEL

Intervention	Expected effects	Measures	Data sources
1. COMPENSATION:			
a. Pay banding	Increased organizational flexibility.	Perceived flexibility	Attitude survey.
	Reduced administrative workload, paperwork reduction.	Actual/perceived time savings.	Personnel office data, PME results, attitude survey.
	Advanced in-hire rates	Starting salaries of banded v. non-banded employees.	Workforce data.
	Slower pay progression at entry levels.	Progression of new hires over time by band, career path.	Workforce data.
	Increased pay potential	Mean salaries by band, group, demographics.	Workforce data.
		Total payroll costs	Personnel office data.
	Increased satisfaction with advancement.	Employee perceptions of advancement.	Attitude survey.
	Increased pay satisfaction	Pay satisfaction, internal/external equity.	Attitude survey.
	Improved recruitment	Offer/acceptance ratios; Percent declinations.	Personnel office data.
b. Conversion buy-in	Employee acceptance	Employee perceptions of equity, fairness.	Attitude survey.
		Cost as a percent of payroll	Workforce data.
c. Pay differentials/adjustments	Increased incentive to accept supervisory/team leader positions.	Perceived motivational power.	Attitude survey.
2. PERFORMANCE MANAGEMENT:			
a. Cash awards/bonuses	Reward/motivate performance.	Perceived motivational power.	Attitude survey.
	To support fair and appropriate distribution of awards.	Amount and number of awards by group, demographics.	Workforce data.
		Perceived fairness of awards	Attitude survey.
		Satisfaction with monetary awards.	Attitude survey.
b. Performance based pay progression	Increased pay-performance link.	Perceived pay-performance link.	Attitude survey.
		Perceived fairness of ratings	Attitude survey.
	Improved performance feedback.	Satisfaction with ratings	Attitude survey.
		Employee trust in supervisors.	Attitude survey.
		Adequacy of performance feedback.	Attitude survey.
	Decreased turnover of high performers/Increased turnover of low performers.	Turnover by performance rating scores.	Workforce data.
	Differential pay progression of high/low performers.	Pay progression by performance scores, career path.	Workforce data.
	Alignment of organizational and individual performance objectives and results.	Linkage of performance objectives to strategic plans/goals.	Performance objectives, strategic plans.
	Increased employee involvement in performance planning and assessment.	Perceived involvement Performance management	Attitude survey/focus groups. Personnel regulations.

INTERVENTION MODEL—Continued

Intervention	Expected effects	Measures	Data sources
c. New appraisal process	Reduced administrative burden.	Employee and supervisor perceptions of revised procedures.	Attitude survey.
	Improved communication	Perceived fairness of process.	Focus groups.
d. Performance development	Better communication of performance expectations.	Feedback and coaching procedures used.	Focus groups.
			Personnel office data.
		Time, funds spent on training by demographics.	Training records.
	Improved satisfaction and quality of workforce.	Perceived workforce quality	Attitude survey.
3. "WHITE COLLAR" CLASSIFICATION:			
a. Improved classification systems with generic standards.	Reduction in amount of time and paperwork spent on classification.	Time spent on classification procedures..	Personnel office data.
		Reduction of paperwork/number of personnel actions (classification/promotion).	Personnel office data.
	Ease of use	Managers' perceptions of time savings, ease of use.	Attitude survey.
b. Classification authority delegated to managers.	Increased supervisory authority/accountability.	Perceived authority	Attitude survey.
	Decreased conflict between management and personnel staff.	Number of classification disputes/appeals pre/post.	Personnel records.
		Management satisfaction with service provided by personnel office.	Attitude survey.
	No negative impact on internal pay equity.	Internal pay equity	Attitude survey.
c. Dual career ladder	Increased flexibility to assign employees.	Assignment flexibility	Focus groups, surveys.
	Improved internal mobility	Perceived internal mobility	Attitude survey.
	Increased pay equity	Perceived pay equity	Attitude survey.
	Flatter organization	Supervisory/non-supervisory ratios.	Workforce data.
			Attitude survey.
	Improved quality of supervisory staff.	Employee perceptions of quality or supervisory.	Attitude survey.
4. MODIFIED RIF:	Minimize loss of high performing employees with needed skills.	Separated employees by demographics, performance scores.	Workforce data, attitude survey/focus group.
	Contain cost and disruption	Satisfaction with RIF Process.	Attitude survey/focus group.
		Cost comparison of traditional vs. Modified RIF.	Personnel office/budget data.
		Time to conduct RIF-personnel office data.	Personnel office data.
		Number of appeals/reinstatements.	Personnel office data.
5. HIRING AUTHORITY:			
a. Delegated Examining	Improved ease and timeliness of hiring process.	Perceived flexibility in authority to hire.	Attitude survey.
	Improved recruitment of employees in shortage categories.	Offer/accept ratios	Personnel office data.
		Percent declinations	Personnel office data.
		Timeliness of job offers	Personnel office data.
		GPAs of new hires, educational levels.	Personnel office data.
	Reduced administrative workload/paperwork reduction.	Actual/perceived skills	Attitude survey.
b. Term Appointment Authority	Increased capability to expand and contract workforce.	Number/percentage of conversions from modified term to permanent appointments.	Workforce data.
			Personnel office data.
c. Flexible Probationary Period	Expanded employee assessment.	Average conversion period to permanent status.	Workforce data.
			Personnel office data.
		Number/percentage of employees completing probationary period.	Workforce data.
			Personnel office data.

INTERVENTION MODEL—Continued

Intervention	Expected effects	Measures	Data sources
		Number of separations during probationary period.	Workforce data. Personnel office data.
6. EXPANDED DEVELOPMENT OPPORTUNITIES:			
a. Sabbaticals	Expanded range of professional growth and development.	Number and type of opportunities taken.	Workforce data.
	Application of enhanced knowledge and skills to work product.	Employee and supervisor perceptions.	Attitude survey.
b. Critical Skills Training	Improved organizational effectiveness.	Number and type of training, Placement of employees, skills imbalances corrected.	Personnel office data.
		Employee and supervisor perceptions.	Personnel office data. Attitude survey.
		Application of knowledge gained from training.	Attitude survey/focus group.
7. COMBINATION OF ALL INTERVENTIONS:			
All	Improved organizational effectiveness.	Combination of personnel measures.	All data sources.
	Improved management of workforce.	Employee/Management job satisfaction (intrinsic/extrinsic).	Attitude survey.
	Improved planning	Planning procedures	Strategic planning documents.
		Perceived effectiveness of planning procedures.	Attitude survey.
	Improved cross functional coordination.	Actual/perceived coordination.	Organizational charts.
	Increased product success	Customer satisfaction	Customer satisfaction surveys.
	Cost of innovation	Project training/development costs (staff salaries, contract cost, training hours per employee).	Demo project office records. Contract documents.
8. CONTEXT:			
Regionalization	Reduced servicing ratios/costs.	HR servicing ratios	Personnel office data, workforce data.
		Average cost per employee served.	Personnel office data, workforce data.
	No negative impact on service quality.	Service quality, timeliness	Attitude survey/focus groups.

[FR Doc. 2011–976 Filed 1–19–11; 8:45 am]

BILLING CODE 5001–06–P

FEDERAL REGISTER

Vol. 76 Thursday

No. 13 January 20, 2011

Part IV

Department of Agriculture

7 CFR Part 2904
Voluntary Labeling Program for Biobased Products; Final Rule

DEPARTMENT OF AGRICULTURE

7 CFR Part 2904

RIN 0503–AA35

Voluntary Labeling Program for Biobased Products

AGENCY: Departmental Management, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (USDA) is establishing a voluntary labeling program for biobased products under section 9002 of the Farm Security and Rural Investment Act of 2002, as amended by the Food, Conservation, and Energy Act of 2008. Under the voluntary labeling program, a biobased product, after being certified by USDA, can be marketed using the "USDA Certified Biobased Product" label. The presence of the label will mean that the product meets USDA standards for the amount of biobased content and that the manufacturer or vendor has provided relevant information on the product for the USDA BioPreferred Program Web site. This final rule applies to manufacturers and vendors who wish to participate in the voluntary labeling component of the BioPreferred Program. The final rule also applies to other entities (*e.g.,* trade associations) that wish to use the label to promote biobased products.

DATES: This final rule is effective February 22, 2011.

FOR FURTHER INFORMATION CONTACT: Ron Buckhalt, USDA, Office of the Assistant Secretary for Administration, Room 361, Reporters Building, 300 7th Street, SW., Washington, DC 20024; *e-mail: biopreferred@usda.gov;* phone (202) 205–4008. Information regarding the Federal Biobased Products Preferred Procurement Program (one part of the BioPreferred℠ Program) is available on the Internet at *http://www.biopreferred.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Authority
II. Background
III. Summary of Changes
IV. Discussion of Public Comments
V. Regulatory Information
A. Executive Order 12866: Regulatory Planning and Review
B. Regulatory Flexibility Act (RFA)
C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights
D. Executive Order 12988: Civil Justice Reform
E. Executive Order 13132: Federalism
F. Unfunded Mandates Reform Act of 1995
G. Executive Order 12372: Intergovernmental Review of Federal Programs
H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
I. Paperwork Reduction Act
J. E-Government Act Compliance
K. Congressional Review Act

I. Authority

Today's final rule establishes the voluntary labeling program for biobased products under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), as amended by the Food, Conservation, and Energy Act of 2008 (FCEA), 7 U.S.C. 8102 (referred to in this document as "section 9002").

II. Background

Overview of Section 9002. Section 9002 establishes a program for the Federal procurement of biobased products by Federal agencies and a voluntary program for the labeling of biobased products. These two programs, referred to collectively by USDA as the BioPreferred℠ Program, are briefly discussed below.

Federal Procurement of Biobased Products. Section 9002 requires Federal agencies to develop procurement programs that give a preference to the purchase of biobased products (hereafter referred to in this **Federal Register** notice as the "Federal preferred procurement program"). Federal agencies and their contractors are required to purchase biobased products, as defined in regulations implementing the statute, that are within designated items [1] when the cumulative purchase price of the item(s) to be procured is more than $10,000 or when the quantities of functionally equivalent items purchased over the preceding fiscal year equaled $10,000 or more. Each Federal agency and contractor must procure biobased products at the highest content levels within each product category unless the agency determines that the items are not reasonably available, fail to meet applicable performance standards, or are available only at an unreasonable price.

The final guidelines for the Federal preferred procurement program were published in the **Federal Register** on January 11, 2005 (70 FR 1792). The guidelines are contained in 7 CFR part 2902, "Guidelines for Designating Biobased Products for Federal Procurement."

Part 2902 is divided into two subparts, "Subpart A—General," and "Subpart B—Designated Items." Subpart A addresses the purpose and scope of the guidelines and their applicability, provides guidance on product availability and procurement, defines terms used in part 2902, and addresses affirmative procurement programs and USDA funding for testing. Subpart B identifies product categories and specifies their minimum biobased contents, the effective date of the procurement preference for biobased products within each product category, and other information (*e.g.,* biodegradability). USDA is responsible for designating biobased items at the highest practicable biobased content levels for the Federal agencies' preferred procurement programs.

As part of the Federal preferred procurement program, section 9002 also requires USDA to provide information to Federal agencies on the availability, relative price, performance, and environmental and public health benefits of products within such product categories and, as applicable under section 9002(e)(1)(C), to recommend the minimum level of biobased content to be contained in the products within a product category.

To date, USDA has identified 50 product categories in a variety of applications, including cafeteria ware, personal and institutional cleaning products, construction products, and lubricants and greases. There are presently approximately 5,100 individual BioPreferred Products (products that are within product categories that are eligible for Federal preferred procurement) within these 50 product categories.

Voluntary Labeling Program. Section 9002 also requires USDA to establish a voluntary labeling program under which USDA authorizes manufacturers and vendors of biobased products to use a "USDA Certified Biobased Product" label (hereafter referred to in this preamble as "the certification mark"). The voluntary labeling program is intended to encourage the purchase and use of biobased products by reaching beyond the Federal purchasing community and promoting the purchase of biobased products by commercial

[1] The term "designated item" refers to product categories (generic groupings of products that perform the same function) within which the products have been afforded a procurement preference by Federal agencies under the BioPreferred Program. For example, under the designated product category "mobile equipment hydraulic fluid," all brands and grades of hydraulic fluid formulated for use in mobile equipment and meeting the specified minimum biobased content are included in the procurement preference program.

entities and the general public. In establishing this program, USDA must identify the criteria to determine those products on which the certification mark may be used and must develop specific requirements for how the mark can be used. It is USDA's intent that the presence of the certification mark on a product will mean that the labeled product is one for which credible factual information is available as to the biobased content, consistently measured across labeled products by use of the American Society of Testing and Materials (ASTM) radioisotope test D6866.

In developing the voluntary labeling program, USDA held discussions with other agencies that have implemented labeling programs, such as the "ENERGY STAR®" program implemented by the U.S. Department of Energy and the U.S. Environmental Protection Agency (EPA). USDA has also consulted with representatives of the Department of Agriculture's National Organic Program and others of the Agricultural Marketing Service. Further, USDA consulted the Federal Trade Commission (FTC), which issues the "Guides for the Use of Environmental Marketing Claims" to ensure that the provisions of the voluntary labeling program are consistent with the Guides. USDA also held a public meeting on July 22, 2008, to seek input on the content and use of the certification mark from the public and industry stakeholders.

As part of the BioPreferred Program, on July 31, 2009, USDA published a proposed rule for the voluntary labeling program for biobased products under the authority of section 9002. This proposed rule can be found at 74 CFR 38295.

The following section of the preamble presents a summary of the changes that have been made to the rule as a result of USDA's consideration of the comments that were received on the proposed rule. Section IV presents a summary of the public comments received on the proposed voluntary labeling program and USDA's responses to the comments.

III. Summary of Changes

As a result of comments received on the proposed rule (section IV), USDA made changes to the rule, which are summarized below. USDA discusses the rationale for these changes in section IV.

Minimum biobased content. For finished biobased products that are not within the designated product categories and for intermediate ingredients or feedstocks that are also not within the designated product categories, USDA has lowered the applicable minimum biobased content from the proposed 51 percent to 25 percent.

Mature market products. As a result of USDA consideration of public comments concerning the difficulty of implementing case-by-case exemptions, USDA has decided to categorically exclude mature market products from the labeling program at this time.

Preliminary notice of violations. USDA has added a provision to the rule to provide manufacturers and vendors with a preliminary notice of violation.

Initial approval process. Based on a commenter's recommendation that USDA allow representative biobased content testing for products with similar biobased contents but slightly different formulations, USDA has agreed to allow representative content testing to suffice if the product's formulation does not vary by more than 3 percent for multiple products.

IV. Discussion of Public Comments

USDA solicited comments on the proposed rule for 60 days ending on September 29, 2009. USDA received comments from 25 commenters by that date. These comments were from individuals, manufacturers, and trade organizations.

Who can apply for the certification mark?

Comments: One industry commenter states that vendors, especially those who sell private-labeled manufactured products, should be allowed to apply for biobased labeling. An example is a product that has been labeled by the manufacturer for one purpose; and the vendor would like to package it under its private label and for a different application (*e.g.,* a road dust suppressant labeled by the manufacturer, could be labeled by a vendor as a "COAL dust control agent" under the vendor's private label). The latter product may require slight modifications by the manufacturer or be exactly the same. The vendor would use the documentation that the manufacturer has established along with additional information to apply for separate labeling.

One industry commenter supports both manufacturers and vendors being eligible to apply for the certification mark and stated that this approach provides the maximum flexibility for all participants.

One industry organization commenter and one industry commenter support manufacturers, but not vendors, being eligible to apply for the certification mark. The commenters state that it is the manufacturers who have the information on product composition (*e.g.,* whether a product meets the definition of a biobased product) and biobased content (*e.g.,* testing results on the formulated product). Having both vendors and manufacturers apply will result in USDA having to process many more applications for no reason. Furthermore, it is critical that manufacturers maintain control over who uses the certification mark on their products. Having a proliferation of vendors apply for the mark without the knowledge of the manufacturer will lead to confusion and potential misunderstandings.

One individual commenter does not believe it would be a good idea to allow vendors to be eligible to obtain the certification marks. The commenter pointed out that, as noted in the proposed rule, it is the manufacturer and not the vendor who determines a product's formulation and production process. In addition, some manufacturers have become very upset when finding out that some vendors of their products were participating in the BioPreferred Program without their knowledge. The commenter envisions lawsuits arising when allowing vendors to apply for labels without documented consent from the manufacturer.

Response: USDA continues to believe that the goals of the voluntary labeling program can be achieved, and the beneficial impacts of the BioPreferred Program can be increased, if both manufacturers and vendors are allowed to market and promote the manufacturers' biobased products with a credible biobased product labeling program. For example, many vendors purchase products from manufacturers and then repackage or offer these products as private label items. Allowing these vendors into the program will increase the number of biobased products in the market, thus furthering the goals of the program. Therefore, USDA will allow vendors as well as manufacturers to participate in the program as long as they meet all program requirements.

Applicable Minimum Biobased Contents

Comment: One industry commenter states that he believes that a minimum biobased content of 50 percent should be required for products not within product categories that have been identified for Federal preferred procurement. Requiring half or more of a product's content to be biobased will bring credibility to the certification mark and prevent potential "greenwashing" by allowing lower biobased content product manufacturers to advertise the certification mark.

Products containing less than 50 percent biobased content can still be identified through the BioPreferred designation process for Federal preferred procurement.

One industry commenter recommends that USDA consider lowering the biobased content level to 20 percent for intermediate ingredients and feedstocks to be eligible to receive the BioPreferred certification mark. The commenter has commercialized a family of unsaturated polyester resins that are used to fabricate fiberglass-reinforced and particulate reinforced composites used in an increasingly wide variety of applications in the transportation and building and construction industries. The biobased content in these commercially-available resins falls in the 8 to 22 percent range. They currently have developmental products with biobased content in the 30 to 40 percent range. The commenter recommends that the biobased content eligibility cut-off for a label be set at 20 percent, not only for these types of products but for chemical intermediates and feedstocks in general. The commenter believes that this level will stimulate further consumption of existing resins and incentivize companies to continue to develop biobased resins with even higher biorenewable content.

One industry organization commenter believes that for finished products that do not fall within an existing product category identified for Federal preferred procurement the default biobased content percentage should be lower (*e.g.,* 25 percent). More flexibility is needed in setting a default standard for finished biobased products that have not yet been identified for Federal preferred procurement. This is a new industry that is creating a range of end products, each of which needs to meet different performance standards depending upon the type of product. It is not always possible to meet accepted industry performance standards and achieve a 51 percent or greater biobased content.

One industry organization supports a minimum biobased content of anywhere between 20 and 51 percent for both intermediate ingredients and products that do not fall within an existing product category identified for Federal preferred procurement.

Two industry commenters believe the proposed 51 percent minimum biobased content is inappropriately high. One of the commenters states that they understand the desire to establish the highest possible biobased content, but that performance requirements in many applications cannot be met with such high biobased content. The commenter suggested that USDA review the minimum biobased contents that USDA has set for products within the existing product categories identified for Federal preferred procurement, and establish a minimum for products not within those categories which would be more inclusive than the proposed 51 percent. The commenter stated that this would allow program expansion without greatly increasing the administrative burden. The commenter stated that, for example, if the minimum biobased content was set at 20 percent, then 44 of the 49 categories of identified items would meet this criterion. Selecting 51 percent appears to be arbitrary as there is no rationale provided in the proposed rulemaking for this minimum. The commenter further stated that USDA has developed a rigorous process for identifying the BioPreferred Products that have been identified for Federal preferred procurement. The BioPreferred Products to date represent a reasonably sized "sample" of biobased products currently on the market. Selecting a minimum biobased content of 20 percent for the labeling program covers at least 90 percent of the product categories identified for preferred procurement to date by USDA. The other commenter notes that the existing minimums for several of the product categories are well below that 51 percent threshold and states that if the bar had been set so high when products within these categories were being developed, it could have inhibited that development. Additionally, these products were developed even before the incentive from USDA. To the degree that the USDA program will incentivize future development, setting the bar this high could inhibit that same development. The commenter believes it might be more realistic to set the default minimum biobased content somewhere in the lower end of the range (15 to 20 percent) of the minimum biobased contents specified for product categories already included in the BioPreferred Program, with the expectation that most products' biobased contents will increase as technology advances.

Two industry organization commenters and one industry commenter state that USDA's proposed approach to establishing and enforcing biobased content levels does not take into account the imprecision in the analytical testing method used to determine biobased content or manufacturing variations in the production of different batches of products or small formulation changes.

On the first point, the ASTM D6866 test method has precision of +/− 3 percent on the mean biobased content reported. Because of this, USDA has previously recognized the need for flexibility when establishing minimum biobased content levels for BioPreferred Products. The commenters urge that USDA take the same approach in the labeling rule. Products should be eligible for certification if their biobased content falls within 3 percentage points of the minimum content level and should be considered in compliance if their content falls within 3 percentage points of their label statement. Manufacturers should not have to reapply for certification if their product's biobased content falls within 3 percentage points of their label statement.

On the second point, the commenter stated that in any manufacturing process there will be some production variation. Also, small changes can be made to formulas over time. Therefore, the commenters urge USDA to allow a manufacturer applying for a label certification to establish a biobased content for the purpose of the label that may be below the actual D6866 test results in order to account for manufacturing variations. The commenter stated that, as currently written, the applicant does not appear to have that flexibility. The proposed rule appears to require that the percentage biobased content used for the label be exactly what is reported in the lab test results submitted with the application.

One industry commenter stated that he supports allowing intermediate ingredients such as biobased plastic resin to be eligible for the voluntary labeling program and that, for those products, the certification mark should reference the product's biobased content, with a minimum of 50 percent biobased content.

One industry organization commenter requests clarification of the definition of "intermediate ingredients or feedstocks," but states that he supports a required biobased content level of anywhere within 20 to 50 percent for intermediate ingredients and for the final products that are not within product categories identified for Federal preferred procurement. The commenter also supports the inclusion of biobased intermediates as eligible to receive the certification mark under the current rulemaking.

Response: The majority of the public comments received on the proposed 51 percent minimum biobased content for finished biobased products, as well as intermediate ingredients and feedstocks, that are not within product categories

identified for Federal preferred procurement recommended that the level be lowered. Based on USDA consideration of these public comments, as well as other factors, USDA has reconsidered the applicable minimum biobased content requirement and concluded that a 25 percent minimum biobased content is more appropriate.

As pointed out by the commenters, several product categories that have been identified for Federal preferred procurement have applicable minimum biobased contents less than the 51 percent minimum that had been proposed for (1) finished biobased products and (2) intermediate ingredients or feedstocks that are not within product categories that have been identified for Federal preferred procurement. For example, "general purpose laundry products" which were identified in Round 4 of the "Designation of Biobased Items for Federal Procurement" have an applicable minimum biobased content level of 34 percent, 17 percent lower than the proposed biobased content minimum for certification.

USDA considered the fact that, on a global basis, many other entities promoting the development and use of biobased products recognize those products that have biobased contents of less than the proposed 51 percent. For example, two European Union independent certifying organizations, DIN–CERTCO (Germany) and AB Vincotte (Belgium), specify 20 percent as the minimum acceptable biobased content for products they certify as biobased. The Japan BioPlastics Association, which certifies biobased products for Japan, Korea, and China, specifies 25 percent as the minimum acceptable biobased content for products they certify as biobased.

USDA also considered that adopting a lower minimum biobased content criteria for these products will allow a greater number of new biobased products to receive the benefits of the label. This, in turn, is expected to lead to increase sales of those biobased products. In addition, many of these new products will increase in biobased content over time with advances in materials engineering and technology. For example, the biobased foam used in automobiles originally had a biobased content in the 5 to 10 percent range but has now increased to over 30 percent biobased.

Therefore, USDA believes that lowering the applicable minimum biobased content for both finished products and intermediate materials that are not at present BioPreferred Products would further the goals of the program and allow for a greater number of biobased products to use the certification mark. This will create more visibility for the labeling program, helping to achieve the goals of the program, and further encourage emerging markets because it will, as one commenter noted, "incentivize future development."

Because of the variability in product testing, as noted by one commenter, USDA is setting the minimum biobased content levels for products eligible for the Federal preferred procurement program 3 percent lower than that of the tested product upon which the minimum level is based. However, for the labeling program, the 25 percent minimum biobased content is not based on testing of an actual product, but is a USDA policy decision based on consideration of the factors described above. Applicants must meet the minimum biobased content percentage they report for a product and should take the testing variability into account when applying for product certification. As such, a manufacturer or vendor may want to claim a more conservative biobased content percentage for a product in its application for certification to use the label. Thus, to ensure that test results consistently meet or exceed the biobased content stated in the application, manufacturers may want to claim a biobased content 3 to 5 percent lower than test results have indicated.

Comment: Two industry organization commenters urge USDA to clearly specify the procedure and steps by which an applicant can request an exception to any specific minimum biobased content chosen for the final rule.

Response: USDA is working to standardize this process and anticipates that it will be similar to the process used to set product minimum biobased contents for eligible products in the Federal preferred procurement program. Such a process would include identifying similar biobased products and their manufacturers and determining biobased contents for similar biobased products. USDA recognizes the difficulties involved in collecting biobased contents, due in large part to the unpredictability of manufacturer and vendor participation in providing products for testing. However, similar to the process used in the Federal preferred procurement program, the establishment of alternative minimum biobased contents for the labeling program will require a measure of flexibility to address the variability in product type and level of industry development. In general, the number of samples that should be obtained for the biobased content analysis would depend on the number of manufacturers of a product and similar products available. USDA would expect applicants to coordinate with program officials to identify and agree upon a reasonable number of samples for the analysis. Emphasis would be focused on obtaining the maximum number of samples possible without restricting the analysis process.

The Labeling of "Complex Products"

Comment: Three industry organizations strongly agree with USDA that complex products are finished products, are separate and distinct from biobased products, and should be included in the BioPreferred Program's labeling program. The commenters support including "complex products" in the labeling effort. The commenters believe that complex products can be included in the rule even in the absence of a test method to determine the overall biobased content of a complex product. If a complex product, such as a car, includes components that contain biobased products (*e.g.,* seats, headliners, dashboards), it is not practical, or even meaningful, to test and or calculate the overall biobased content of the car. Rather, there should be an option to label the components with the biobased content. Two of the commenters state that one approach for doing this would allow a component (*e.g.,* seat) that contained a "USDA Certified Biobased Product" to be eligible to use the certification mark. For example, if the foam used to make the seat had a certification to use the mark then that certification could be carried through to the seat. The mark could read: "Seat: Contains Foam with XX Percent Biobased Content." Another approach would be to allow the component to be tested separately for biobased content or a weighted average of the biobased ingredients could be calculated and if it met the default percentage it would be eligible for the certification mark. If it did not, the manufacturer or vendor could apply to USDA for an "alternative applicable minimum biobased content."

Three commenters propose that, to determine the biobased content of a complex product, an interim approach would be to (1) take a weighted sum (*e.g.,* weight of component 1 × new carbon content of the feedstock material used in component 1 + weight of component 2 × new carbon content of the feedstock material used in component 2; etc. until all components have been included) and then (2) normalize this number by the total

weight of the complex product. Consistent with USDA's current requirements, the new carbon content should be determined using ASTM D6866.

These commenters recommend that, as a long term approach, USDA continue to consult with ASTM to gather information on complex products to proceed with the development of a method that can be used to determine the biobased content of these products. Once an acceptable test method is available, the commenters agree that USDA should amend the voluntary labeling rule to allow for the labeling of complex products.

One industry commenter states that care should be taken to not complicate the labeling process. A wind generator that uses biobased grease or gear lubricants, and biobased composites for the blades should indicate that the blades are biobased and the gear lube is biobased. Trying to qualify what percent of the total wind generator is biobased would complicate the process.

One industry commenter suggests modifying the term "complex products" in the labeling program to "complex finished products" to avoid any confusion with polymer systems. The commenter believes that "complex finished products" can be included in the rule even in the absence a test method to determine the overall biobased content of a complex finished product.

One individual commenter believes that, for complex products, it would be unwise to base the biobased content on weighted averages for the biobased content of all the biobased components. This approach would be too costly for some product manufacturers to consider and could hinder participation in the program. In addition, the total error associated with the weighted average will increase considerably (due to cumulative errors) as the number of components within a complex product increases. As a result, the total error associated with any given item (or between individual products within an item) will be product-specific, which is undesirable from a designation perspective.

One industry commenter states that many of these complex products will contain components manufactured from biobased and non-biobased materials. In some cases, the use of biobased intermediate ingredients or feedstocks in components may not represent a significant amount of the finished product (*i.e.,* contains less than 51 percent biobased content). However, the use of biobased materials may represent a significant improvement for the finished product that should be encouraged.

One industry commenter also believes that it is important to look at subcategories as well as categories of products because there are often performance requirements that place limits on the amount of biobased materials that can be used for certain specific applications within the same product categories. For example, the amount of biobased content in foam used in automotive seating can vary from the amount used in foam seating for sofas due to performance requirements.

Response: USDA appreciates the comments on this subject but has decided it is best not to include complex products in the voluntary labeling program at this time. USDA recognizes the importance of complex products but believes there are many issues to be resolved before such products can be included in and recognized by the labeling program. These issues include establishing a minimum biobased content and other criteria for approval, development of an acceptable test procedure to determine the biobased content of complex products, and the appropriate certification mark content and placement. USDA does not want to delay the implementation of the labeling program for other categories of more simple, finished products while this development work for the labeling of complex products is being completed.

The Labeling of "Mature Market Products"

Comment: Six commenters agree with USDA's proposal that products that are considered to be "mature market products" (*i.e.,* products that had significant market penetration in 1972) should not be eligible for participation in the labeling program of the BioPreferred Program as mature market products could affect the entry of new (*i.e.,* post-1972) biobased products into market segments in which mature products already have significant market shares. The commenters believe that inclusion of "mature market products" would be counter to USDA's objective to promote development and adoption of new technologies and biobased products.

Two of the commenters questioned why the date of 1972 was selected as the cut-off year for products to be included in the "mature market" category and one commenter requested that USDA provide additional information including defense and rationale regarding the selection of 1972. The commenter notes that USDA may decide to allow manufacturers of mature market products to appeal and states that USDA should make clear the information regarding the criteria by which a manufacturer of mature market products can appeal, the details of the appeal process and how USDA will determine if an appeal is approved or not. The commenter also recommends that if manufacturers of "mature market products" are allowed to appeal, then the appeal process should include a public comment period to allow the public to review the appeal and to submit comment about it.

Two commenters recommend that USDA not allow manufacturers of biobased products to appeal, on a case-by-case basis, the exclusion of their mature market products. The commenters state that, in enacting section 9002, Congress made it clear that the purpose of the program, including the labeling program, was to grow the market for new biobased products. The value of the certification mark for manufacturers and vendors of these products is to inform consumers that these new and innovative products are available and that USDA has certified the biobased content. The "currency" of being a new and innovative product loses its meaning and quickly the label may become "devalued." Furthermore, mature market products have other already-established, and well known labels (like the cotton logo and FSC certification for wood and paper products) that they can use. The commenters recommended that any government label for mature market products be developed separately and under different authority than Section 9002.

One industry commenter states that the labeling of mature products would harm the BioPreferred Program's labeling process in the early stages. A 5- to 10-year delay before such mature products are allowed to be included and labeled would be helpful.

Two commenters are concerned that the proposed regulations exclude mature market products from the program, except on a case-by-case basis, and could be interpreted as excluding forestry materials that fit properly within the definition of biobased products in the authorizing legislation.[2] One of the commenters believes such an

[2] The definition of "biobased products" found in the 2008 Farm Bill is as follows: "The term 'biobased product' means a product determined by the Secretary to be a commercial or industrial product (other than food or feed) that is—(A) composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or (B) an intermediate ingredient or feedstock."

exclusion would be arbitrary and capricious in violation of the Administrative Procedure Act, 5 U.S.C. 706. Additionally, the commenter believes the proposed certification mark violates the consumer advertising rules of the FTC.

This commenter, and another individual commenter, believe that the exclusion of mature market products from automatic inclusion in the voluntary labeling program should be eliminated for the following reasons:

- There is no legitimate difference between new and mature products in a voluntary public information program;
- There is no guidance on recognizing a product as "new";
- The proposal provides for a case-by-case determination that would allow some mature market products to use the voluntary label; and
- USDA assumes that Congress intended that the voluntary label program exclude mature market products, but the legislative history does not reflect this interpretation.

One of the commenters states that USDA needs to understand that even "mature" products can be "renewed" through innovations and following new industry standards such as sustainable forestry management programs.

One industry commenter suggests that USDA extend applicability of the label to all biobased products. Alternatively, USDA should amend the proposed language on the label to clearly designate it as intended for emerging market products only.

One nonprofit organization commenter has concerns about the nature of this label on the consumer market especially where it might lead a consumer to make assumptions about the overall sustainability of their purchase. The BioPreferred Program seems to provide a quantitative basis to the natural content. However, the commenter believes that exceptions for materials like wool or cotton for rugs, for example, could mislead a consumer to make a less environmentally preferable choice if they relied on the certified biobased product certification mark.

One industry commenter believes that specifically excluding the mature market products will establish a system that creates the perception that USDA endorses the use of "new" products over mature market products, even if the new products contain less biobased materials than a competing mature product. This will, in turn, encourage consumers to make purchasing decisions that are counter to Congressional intent. For example, a paper plate, which USDA has characterized as a "mature market" product, could not use a certified biobased label despite the fact that it is made with close to 100% biobased material. On the other hand, a new plastic plate that is composed of only 51% corn-based PLA could qualify for the certification mark under USDA's proposed rule. This would be both confusing and misleading to the consumer resulting in the conclusion that the conspicuous use of a USDA-backed certification mark on the plastic plate constitutes a government endorsement. The consumer may also conclude that forestry practices, no matter how sustainable, are less environmentally preferable to synthetic polymers made from agricultural products. The commenter believes that excluding mature products will provide an unfair competitive disadvantage for these products and severely discount the environmental contributions of biobased forest products.

One industry commenter states that since the label will be limited to a small pool of biobased products, they are concerned that the proposed label will increase customer confusion in an already chaotic labeling environment. Consumers will have no basis to determine why one biobased product carries the certification mark and one does not. While the designation between emerging and mature market products may be acceptable in a relatively closed Federal purchasing system, expanding this concept to the broad consumer marketplace under a simplistic labeling scheme will only increase consumer confusion. The proposed on-product USDA label does not provide clarification that it is intended for emerging market products only. A consumer, looking at a mature market biobased product, will have no idea why it is not (or cannot be) USDA certified as biobased.

One environmental group commenter states that he does not understand why the labeling program would exclude mature market products while allowing biobased labeling of more recent entrants in the same market. This has the effect of favoring one biobased product over another based solely on their market maturity, rather than being based on any rational criteria related to reduced use of fossil fuels, carbon cycle benefits, or environmental sensitivity. The commenter states that the rules should be amended to avoid punishing environmentally favorable "mature" products, while encouraging environmentally less favorable "new" market entrants.

Response: USDA received numerous comments both for and against the exclusion of mature market products from the voluntary labeling program. While USDA has carefully considered the comments received on the subject, the intent of section 9002, as described in the conference report accompanying FSRIA, "is to stimulate the production of new biobased products and to energize emerging markets for those products." Thus, USDA believes it is appropriate for the guidelines to exclude products having mature markets from the program.

The conference report does not specifically state whether the language quoted above refers to only the Federal preferred procurement program, the voluntary labeling program, or both. However, USDA believes that the widespread labeling of mature market products could negatively affect the entry of new biobased products into market segments in which mature products already have significant market shares. Therefore, USDA continues to believe that it is reasonable to exclude mature market products from the labeling program, as it has done for the Federal preferred procurement program.

Regarding the 1972 cutoff year, as explained in the preamble to the final guidelines, the oil supply and price shocks that began in this country around 1972 provided the impetus for sustained serious new development of biobased alternatives to fossil-based energy and other products. Additionally, there was a return to existing, perhaps neglected or under-utilized, biobased products. Thus, at its discretion, USDA has selected 1972 as the baseline year in its mature market guidance, consistent with the approach taken for the Federal preferred procurement program. In using 1972 as a point in time standard, rather than a dividing line between two eras, USDA believes this can provide for the identification (for Federal preferred purchasing) and labeling of some products that would otherwise be excluded.

The Appropriate Lengths for the Certification Periods

Comment: Four commenters recommend that certifications should remain valid as long as the certified product is manufactured. However, any change that would have any effect on the new carbon content and impact biobased content would necessitate the product being retested and recertified using ASTM D6866. Since USDA will be implementing an audit and enforcement program, this program should be adequate to ensure that applicants remain in compliance with the BioPreferred Program.

One industry commenter states that the appropriate length of certification in the early stages should be longer (5 years) and once the industry matures, reduced to 3 years. A simple annual response to a survey by USDA indicating that there have not been any changes to the labeled product could help USDA monitor products that are discontinued and keep the vendors active.

Response: Most commenters agree with USDA's proposal that a product's certification should remain valid indefinitely unless USDA raises the minimum biobased content requirements for that specific product or the formulation of the product changes such that it falls below the minimum biobased content allowed for that product to be labeled. USDA has received no additional data or information to consider changing its decision in this regard and is making no change to the proposed regulation based on these comments.

Preliminary Notice of Violations

Comment: Two industry commenters support USDA adding a provision to allow for the Agency to issue "preliminary" notices of violation before violation notices are issued. It is a sensible safety valve to add to the regulations to prevent triggering violation notices prematurely. This step can provide time to allow a manufacturer or vendor to work with USDA to clarify whether, due to confusion or misinformation, a violation really has not occurred. Also, if there was a paperwork or recordkeeping error it could be corrected in response to a preliminary notice without triggering a violation notice and all its consequences.

Response: USDA agrees with the commenters and will include a provision for a preliminary notice of violation. Doing so will give manufacturers and vendors the opportunity to work with USDA to make corrections or clear up any issues which might place the manufacturer or vendor in violation. USDA believes that the labeling program is designed to encourage the production, marketing, and distribution of biobased products, not to be punitive in nature, and the use of a preliminary notice of violation will best serve the goals of the program.

Biobased Content Testing Facilities

Comment: Four commenters agree with USDA's proposal requiring that biobased content testing facilities be ISO 9001 conformant to promote data and results credibility. This would ensure that the manufacturer is complying with some basic quality requirements. One commenter believes ISO 17025 will be too demanding.

Two industry commenters also state that they support allowing biobased content to be tested by any third-party ASTM/ISO compliant test facility.

One industry organization commenter believes that USDA should not select a single standard, such as ISO 9001 or ISO 17025, for biobased content testing laboratories but rather should allow for the biobased content testing to be done by any third party ASTM/ISO compliant testing facility. The USDA Guidelines for Item Designation take this approach and the labeling rule should be consistent with the testing facility provisions in the Guidelines.

One individual commenter recommends that neither ISO certification nor ISO compliance should be a requirement. The commenter states that there are basically only two labs in the country that are performing biobased content determinations for the BioPreferred Program, and no new radiocarbon testing labs with interest in performing biobased content measurements have ever started up. Since there are so few suitable labs available, the commenter does not believe USDA should risk restricting the field further. The focus should be on qualifications rather than ISO compliance.

Response: USDA continues to believe that it is in the best interest of the labeling program that biobased testing be performed by ISO 9001 conformant testing facilities. This will ensure that biobased products using the certification mark meet the high standards of the program. USDA believes it is important that the presence of the certification mark on a product will clearly indicate that the product is one for which credible information is available as to the biobased content, consistently measured across labeled products, as use of the ASTM radioisotope test D6866 standard will provide.

Contents and Appearance of the Certification Mark

Comment: Three commenters agree that the material (*e.g.,* product, packaging or both product and packaging) to which the label applies should be clearly identified, and believe that USDA's suggested wording for "product" and "packaging" is clear.

One industry commenter states that he has no issues with the "FP" on the USDA certified biobased product graphic (i.e., the certification mark) and that as long as the program includes an educational campaign that describes the mark, there should be no consumer confusion about what it means.

Two commenters believe the way the "FP" lettering is placed on the certification mark may not be adequate to distinguish the products that are eligible for Federal preferred procurement. One commenter states that the "FP" visually seems to disappear on the mark. Also the letters "FP" are not likely to have any identifiable meaning to either Federal employees or the general public without an outreach and education program on what "FP" means and how the Federal preferred procurement program works. The commenter does believe that it is important for Federal buyers to have an easy way to recognize products that fall within designated product categories. The commenter suggests that the following language be on the final label (under the text that now reads "USDA Certified Biobased Product") for BioPreferred Products currently eligible for Federal preferred procurement: "Federal BioPreferred Designated Product." In addition, the commenter recommends implementing a targeted outreach and education campaign to Federal buyers to educate them on the meaning of the label for a product eligible for preferred Federal purchasing versus a product likely to be labeled that is not currently eligible.

Two commenters oppose the proposed "FP" designator to indicate that a product is eligible for Federal preferred procurement. One of the commenters does not believe that the "FP" designator is necessary to inform Federal procurement officials about these items because these officials already have access to a list of the products eligible for Federal procurement preference. The commenters believe that consumers will not recognize the "FP" lettering on products, nor will they understand that these products, or similar products, have undergone life cycle costs and environmental performance analyses. Incorporation of the "FP" lettering may confuse the consumer regarding the purpose of the certification mark and will unnecessarily clutter and interfere with what is otherwise needs to be a clean, simple graphic.

One commenter believes that the certification mark will provide little benefit to the average consumer and that using "FP" will tend to confuse matters, while another commenter believes that the "FP" information is irrelevant to the labeling program as currently proposed.

Four commenters disagree with the inclusion on the certification mark of information on product performance, life-cycle costs and environmental and

human health effects of the labeled products. The commenters believe trying to add this information would likely make the certification mark confusing to purchasers, is beyond the scope of the labeling program, and is not authorized by the statute.

One industry commenter states that the Farm Bill requires USDA to look at environmental impacts beyond biobased content as one of four criteria for the Federal preferred procurement program but that they do not think that this should be required for the voluntary labeling program. Biobased products manufacturers should be encouraged to provide additional environmental information and USDA should provide space on the website to communicate this rather than requiring it on, or near, the certification mark. If additional marketing claims are to be made on the package for purpose of communicating with consumers, this would fall under the jurisdiction of the FTC.

One industry commenter states that printing sustainability information on a bag or package is an issue that needs further consideration. This adds more cost and ink to each bag of insulation which may go to landfill or be recycled. This information is normally included in product literature and specifications. It is also typically on the website of the manufacturer. It is more sustainable to provide product information in this manner than to print it on the package.

Three commenters support including the percentage biobased content on the certification mark. One of these commenters believes this provides another critical way in which purchasers can select products that have the highest biobased content possible. Another commenter states that by displaying the percent biobased content, the consumer is able to make a purchasing decision based on actual content.

One industry organization commenter states that there is not complete agreement among manufacturers on whether biobased content should appear on the certification mark. The commenter believes that USDA should carefully weigh the pros and cons of this label content issue. One approach would be not to list any content information on the certification mark because the mark will only be used on products that met the minimum biobased content established by USDA. Another approach would be to add the words "Meets or Exceeds USDA Minimum Biobased Content." Another approach would be to give manufacturers the option of listing the biobased content percent on the mark or simply stating "Meets or Exceeds the USDA Minimum Biobased Content." If USDA requires that a specific biobased content percent be placed on the certification mark, then flexibility should be given to manufacturers to use a number that reflects testing and manufacturing variability, as long as the number equals or exceed the minimum content requirement.

One industry commenter states that including only the biobased content on the certification mark implies that only that criterion is relevant. USDA determines the minimum acceptable biobased content based on several factors, including commercially available offerings, performance requirements in the application, etc. Such multi-factor considerations have lead to a wide range of minimum acceptable biobased contents, from 7 to 95 percent, across the range of product categories and applications. If the certification mark exclusively highlights the biobased content, this could send a misleading signal to the consumer that biobased content is the only relevant factor. The commenter suggests that, instead of including the percent biobased content on the mark, include the BioPreferred Program website URL in that proposed location on the label/artwork. This would encourage consumers to become more informed about the program. Individual manufacturers would still have the option of including additional information regarding biobased content elsewhere on the package, separate from the label itself. Such claims would be subject to the guidance from the FTC "Guides for the Use of Environmental Marketing Claims."

One industry commenter suggests that including the biobased content on the label be left to the discretion of the various companies. The commenter states that the current state-of-the-art of biobased analytic calculation remains not very accurate and this could open the doors to issues when a specific number will be indicated on a certification mark.

One industry commenter states that as long as the products meet the minimum biobased content set by USDA, what relevance does "Product: x percent biobased" add? This would lead to a "specmanship" competition in the market.

One industry commenter recommended the following options for including the percent biobased content on the label (listed in order of preference):

A. Allow the manufacturers the option of listing the biobased content or the wording "Meets or Exceeds USDA Minimum Biobased Content";

B. Require the listing of actual biobased percent of the product (within the tolerance of standard test variability); or,

C. If manufacturing variability of actual percent content is a significant issue, then require a numerical percent value, but rather than requiring listing actual percent or the minimum required percent, the manufacturer has the option of stating a percent content higher than the minimum but lower than their "normal" tested value.

The commenter states that the BioPreferred Program would benefit by requiring one of the above label alternatives as they would serve as a continual incentive for manufacturers to maximize their biobased content. Conversely, it could be a deterrent to add lower cost non-renewable blends to a level just above the minimum allowed.

One biobased industry commenter would like to see a very simple label without the specific biobased content. The minimum biobased content is established for BioPreferred Products and for other products it will be 51 percent unless USDA approves an alternative. Therefore, a supplier simply needs to certify that their product meets the minimum standard for that product(s) and USDA needs to enforce to that biobased content level. If a company has a higher biobased content than that minimum, then they can market that product in their literature as such.

One industry commenter believes that the logo is quite large and that USDA should reconsider the size. Product labels have limited space, and the graphic as shown in the draft voluntary labeling rule, is overly large. Although the label can be reduced, it would be to the point of not being readable or recognizable.

One industry organization commenter supports the proposed requirement that the BioPreferred Program's Web site address either be on or in close proximity to the label. Directing people to the site will be a good way to educate them about biobased products and what the certification mark means.

One environmental group commenter states that the label should include a detailed information box adjacent to the logo, so the consumer knows the source of the bioproducts, the energy inputs used in their manufacture, and if any native ecosystems were degraded in the production process.

One industry organization commenter believes that products that use the biobased product label must also state on the label the biological components of the product.

One industry organization commenter believes that the information USDA proposes be included is reasonable and should be legible on the vast majority of products. For products that may be too small to affix the certification mark in a legible form, USDA should consider authorizing the use of a separate "hang tag" containing the certification mark information that could be attached to the product. This approach would address the small product issue without the need to change the overall design of the mark artwork and accompanying statement.

One individual commenter believes that, in order to better accommodate labeling of small products (*e.g.,* lip balm), it would be advantageous to also offer a version of the certification mark that does not contain the words "USDA Certified Biobased Product." Such a mark would be intended only for products where it would be very problematic to use the certification mark as currently proposed.

One industry commenter states that he believes USDA should budget an extensive education campaign to generate brand awareness of the certification mark both within Government and to the public. Similarly, brand guidelines should be developed to ensure proper stewardship of the mark.

One industry commenter states that the certification mark must be in full compliance with the FTC's Guides on the Use of Environmental Marketing Claims. The commenter also states that consumer testing must be undertaken to determine whether the intent of the certification mark is clearly understood.

Two industry commenters recommend that USDA develop and make available with its certification mark a simple set of guidelines regarding the proper usage of the mark and accompanying text to ensure a legible and consistent presentation of this information.

Response: As stated in the proposed rule, USDA will create guidelines to address recommended certification mark size, given the variability in biobased product and packaging dimensions. These guidelines are referred to in the proposed rule as the "Marketing Guides." These guides/guidelines will be available to manufacturers and vendors of labeled products to provide expanded discussions of, and guidance on resolving, implementation issues that may arise related to certification mark use. For example, USDA anticipates that there will be questions related to the best way to apply the certification mark on very small products, such as those within "lip care products", a product category whose products are identified for preferred Federal purchasing. USDA believes that the Marketing Guides, which can be updated frequently, are the most efficient way to keep certification mark users informed of guidance provided by USDA in response to implementation issues that arise. Additional information on sustainability and other data will be Web-hosted, not affixed to the mark.

Additionally, USDA consulted the FTC, which issues the "Guides for the Use of Environmental Marketing Claims" to ensure that the provisions of the voluntary labeling program were consistent with the Guides. If manufacturers or vendors include environmental claims about biobased products on their products/packaging (beyond the application of the certification mark) these statements and/or marketing language may be flagged and forwarded to the FTC for their review and follow-up.

Further, while USDA appreciates the concerns of commenters who would like to see more environmental and performance information on the certification mark, USDA believes that the certification mark needs to be kept as simple as possible to maintain legibility and clarity. Adding further information to the mark will only make it more difficult to read and understand, lessening the impact of the label and the BioPreferred Program.

While some commenters believed that the "FP" acronym proposed to appear on the certification mark was confusing, others believed that the acronym would be helpful to Federal procurement officials and also informative to the general public. Some commenters felt the biobased content percentage proposed to appear on the certification mark was confusing and/or misleading, and felt that a large-scale outreach and educational campaign may be necessary to educate potential buyers on the meaning and purpose of this information. USDA considered the comments related to the proposed content of the certification mark and believes that the mark would be most informative if it includes both the "FP" (if the product has been designated for Federal preferred procurement) and the biobased content percentage, as proposed. Also, to ensure that the certification mark clearly indicates whether it applies to the product, the packaging, or both, the mark will be available in the following variations: "USDA Certified Biobased Product", "USDA Certified Biobased Product: Package", or "USDA Certified Biobased Product & Package", to be used as appropriate.

Timeframe for Correcting Violations

Comment: Four commenters agree with USDA's recommendation for 30- and 60-day periods (from the date the notice of violation is received) for the offending party to correct violations before a notice of suspension or other remedy is sought. Two of the commenters state that to provide more flexibility, USDA could consider adding a provision for case-by-case extensions of the 30- and 60-day periods to deal with special or extenuating circumstances (such as late reporting by a lab).

One industry commenter states that notice of violations should be given 30 days to respond and 60 to 90 days to correct.

One industry association commenter proposes a 60-day time period to correct violations pertaining to biobased content to ensure adequate timing to correct any identified issues. In addition, the commenter agrees with USDA's recommendation for a 60-day period for the offending party to correct all other violations before a notice of suspension or other remedy is sought.

Response: Most of the commenters addressing this issue agreed with the proposed 60-day time period for correcting violations. However, USDA recognizes that as the voluntary labeling program is not a regulatory program but a market development program, USDA needs to be as understanding as possible while maintaining a firm date of enforcement. For these reasons, USDA has decided to allow 90 days for the correction of a violation once a notice of violation is received.

Recordkeeping

Comment: Four commenters support USDA's proposal that appropriate records be kept in order to allow USDA to verify all information associated with the labeling program and that these records be kept for at least 3 years beyond the end of the label certification period.

One commenter supports USDA's plan to require documentation supporting claims made on product packaging about the environmental and human health effects, life cycle costs, sustainability benefits, and performance of their products. This is especially important given the widespread misuse of biodegradability claims, and unsubstantiated compostability claims, being made by product manufacturers. When including claims regarding compostability on the certification mark or product packaging, manufacturers

should have to detail the specific environment in which the product will fully biodegrade and for which they can provide documentation.

One of the commenters states that records should not be required to be kept for analyses of environmental, health, sustainability benefits, life cycle costs, or product performance because these are outside the scope of the labeling program. Even if manufacturers or vendors are making specific claims in these areas, USDA does not have jurisdiction to enforce the validity of such claims. Also, records should not be required to be kept for formulation changes that are not relevant to the label criteria, such as changes in non-biobased ingredients, or changes in biobased ingredients that do not result in greater than a 3 percent change in the formula.

Response: Most of the commenters agreed with the recordkeeping requirements that USDA has proposed for the rule. USDA disagrees with the commenter who claims that the requirement to keep documentation to support environmental, health, sustainability benefits, life cycle costs, or product performance claims is outside the jurisdiction of USDA. Because the labeling of biobased products is voluntary, USDA believes that making the use of the label contingent upon keeping such documentation is justified and reasonable. If a labeled biobased product also includes such claims of product benefits without proper justification and documentation of the benefits, then UDSA believes that the integrity of the label is compromised. Thus, USDA does not believe that manufacturers who make such product benefit claims without documentation should be allowed to include the Certified Biobased Product label on their products.

Regarding the commenter's concern about formulation changes, USDA's intent is that manufacturers must keep records of changes in the product formulation that result in the products biobased content changing. USDA has clarified the text of the recordkeeping provisions in the final rule to limit the recordkeeping to formulations that affect the biobased content of the product.

Benefits and Costs

Comment: Three commenters agree that the benefits outweigh the costs of the program (*e.g.,* testing, submitting applications and associated information, and recordkeeping). One of the commenters adds that USDA must take great care to ensure that it emphasizes the collection and use of complete, technically sound information on which to base its decisions.

Response: The commenters generally agreed with the goals of the program and did not offer any specific data or suggestions that would necessitate any changes to the program.

Comment: One environmental group commenter states that USDA should prepare an environmental impact statement (EIS) to show the environmental impacts of these proposed rules and alternatives. The commenter also states that this program should avoid creating incentives to transfer of large acreage from bio-diverse "conservation reserve programs" to monocropping for biobased products and that the consequences must be disclosed in a National Environmental Policy Act (NEPA) analysis.

Response: While the commenter's concerns are appreciated, USDA believes that the rule complies with all regulatory requirements and does not agree that any additional NEPA analysis, such as an EIS, is also required.

Application Fee

Comment: Three commenters state that a proposed future application fee of $500 is reasonable as long as the fee is allocated towards a certification mark auditing and/or monitoring program.

One individual commenter states some fee is justified to help with implementing portions of the labeling program but that many companies are reluctant to participate in the BioPreferred Program because they are not convinced that doing so will increase product sales significantly. The commenter states that the economic benefits of participating in the BioPreferred Program are yet to be verified, so any fee should not exceed $500.

One commenter does not support imposition of any future labeling fees that would unduly burden companies, particularly small- and medium-size biobased product manufacturers. An application fee could cause an economic burden for companies with multiple products and small- and medium-size companies, and discourage them from applying for the label. For companies with multiple products, fees can add up quickly and adding another $500 per product on top of the testing fees could put the labeling program out of reach for many companies, particularly small- and medium-size companies.

Response: While most commenters support the collection of a fee, particularly if the proceeds from this fee supported efforts to audit/monitor compliance with the voluntary labeling program, USDA is not currently authorized to impose an application fee and, thus, cannot do so. USDA has, however, included in today's final rule the regulatory text necessary to implement a $500 application fee. The effective date of the fee provision is pending until USDA is granted the legislative authority to impose the fee. A **Federal Register** notice will be issued amending the final rule to add the effective date of the application fee provisions once the authority is granted.

General Comments

Comment: One environmental group states that the proposed rules over-generalize the benefits of biobased products and fail to recognize that some biobased products are more preferred than others. The commenter states that these rules raise the prospect of "greenwashing" by potentially misleading the public into thinking that some products are environmentally benign when they are not benign, relative to existing products or alternatives.

Response: While USDA appreciates the commenter's concerns, the purpose of the voluntary labeling program is to promote and increase the use of biobased products as defined in the rule. The labeling program is designed to support this goal by recognizing manufacturers and vendors that produce and market products that utilize biobased materials and by encouraging consumers outside the Federal Government to purchase such products. It is not USDA's intent to mislead or otherwise misinform the public about the potential benefits of one particular product over another. In addition, manufacturers and vendors are required to post certain information about their products on USDA's Web-hosted BioPreferred Program site.

Comment: One industry organization and two industry commenters state that Congressional intent in enacting section 9002 was to stimulate the development of a value-added biobased products industry with a focus on expanding demand for new uses and applications. This purpose was made even clearer when Congress enacted the 2008 Farm Bill and changed the name of the section 9002 program to the "Biobased Markets Program." To grow the market for biobased products, it is essential to recognize the role of the entire value chain, from feedstocks (*e.g.,* soy, corn, canola, sunflowers) to intermediate ingredients (*e.g.,* polyols, resins, biosolvents) to formulated products (*e.g.,* cleaners, lubricants, insulation, foams, plastics) to finished products

that contain biobased components (*e.g.,* chairs or bedding with biobased foam).

One industry commenter states that the voluntary labeling program presents the opportunity for USDA to affect stakeholders within the bioproducts/biomaterials value chain and create additional market pull for the biobased intermediates upon which the final products are based. Intermediates are derived more directly from agricultural products and encompass the transformational technologies that enable the final products to have biobased content. This is the essential link in converting agricultural feedstock to final products. Including intermediates along with final products is also critical to the success of the BioPreferred Program.

Response: USDA agrees with the commenters and has included intermediate ingredients and feedstocks in its proposed and final definition of "biobased product."

Definitions

Comment: One industry organization commenter states that to avoid ambiguity, USDA should include a definition of what is considered a "complex product" in the Definitions section of the rule.

One industry organization commenter and one industry commenter recommend that USDA include vendors, distributors, and re-packagers under the definition of "Designated Representative." As part of the application process, manufacturers could provide USDA with a list of the "designated representatives" who would be using the certification mark. USDA should also allow certified manufacturers to update this list from time to time without requiring that a new application being submitted. Finally, if a vendor, distributor, or re-packager is included as a "Designated Representative," they should be held directly accountable by USDA for any violations in how they use the certification mark or any changes they make to a product's biobased content that violates the use of the mark. Section 2904.7 of the proposed rule would need to be modified to make sure that manufacturers are not held responsible for the way the mark is used by the vendors, distributors, or re-packagers that are listed as "Designated Representatives." It is important that USDA hold the vendors, distributors, and re-packagers to the same standards that they will hold the manufacturer and use the same enforcement mechanisms against those entities if a violation occurs. In addition, USDA should clarify the definition of "Manufacturer" to include any "vendor" that alters a product. Such a vendor should be considered a formulator and formulators should be considered manufacturers.

Two industry organization commenters state that the proposed labeling contains a definition of "Intermediate Ingredients or Feedstocks" that varies from the statutory definition. USDA adds the following language to the definition: "For the purposes of this subpart, intermediate ingredients or feedstocks do not include raw agricultural or forestry materials, but represent those materials that can be put into a new cycle of production and finishing processes to create finished materials, ready for distribution and consumption." The commenter states that USDA provides no justification for this additional language, the language is inconsistent with the statute, and it should not be included in the labeling program rule.

Two commenters state that the proposed labeling rule's definition of "Intermediate Ingredients or Feedstocks" needs more clarity. One of the commenters states that all of the currently designated items appear to be finished products (*e.g.*, something a consumer could buy) and that he does not understand how any intermediate itself could be identified as a BioPreferred Product (a product eligible for preferred Federal purchasing). The commenter asked whether polymers would be considered to be intermediates, since they would be converted into finished products which may be eligible for Federal preferred procurement.

One individual commenter states that a biobased product is defined as a commercial or industrial product that is A) composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials, or B) an intermediate ingredient or feedstock. The commenter believes USDA should consider removing part "B" from the definition since it is redundant. The commenter believes that anything falling into part B will also fall within the definition provided in part A.

One commenter feels it is very important that the Agency carefully define what "renewable" means. Without a specific definition, the commenter felt, a surge in biobased agriculture could spawn a severe uptick in unsustainable agriculture, the use of genetically modified organisms, and toxic farming chemicals that would be even more polluting to the land and water. The commenter stated that this has already been the case with corn-based fuels and industrialized farming. The commenter suggests adding these definitions to the renewable criteria—"Bio material is (1) grown in a sustainable manner, including in relation to soils, waterways, forests, and animals, (2) does not take away from the natural biodiversity of the material in the wild, organic, and farmed environments, (3) does not pollute or degrade soils and waterways as materials are grown and managed, and (4) genetically modified plants should not be acceptable as renewable."

Response: USDA is in the process of completing a "term definitions" section on the BioPreferred Program Web site and will consider the various comments received on the definitions in the development of that section. Regarding the comment concerning the definition of a "complex product", a complex product is a finished, consumer product composed of many different types of components. Today's rule does not contain provisions to allow for the labeling of complex products.

Regarding the definition of "biobased product," USDA makes no change to this definition as it thinks it is important to point out that for the purposes of this subpart "intermediate ingredients or feedstocks" can meet the definition of a "biobased product."

Regarding the definition of "intermediate ingredients or feedstocks," one commenter opposed USDA's proposed addition of the following language to the statutory definition: "For the purposes of this subpart, intermediate ingredients or feedstocks do not include raw agricultural or forestry materials, but represent those materials that can be put into a new cycle of production and finishing processes to create finished materials, ready for distribution and consumption." USDA proposed the definition that included this sentence to clarify that it does not intend for the label to be used on raw, unprocessed agricultural or forestry materials such as corn kernels, soybeans, or forestry thinnings. However, once these raw materials have been "processed" into feedstock materials such as corn starch, soybean oil, or wood fibers, they can be labeled as intermediate ingredients or feedstocks if they meet the other criteria for certification. USDA does not believe that the proposed definition is inconsistent with the statutory language that states that an intermediate ingredient or feedstock means "* * * a material or compound *made* in whole or in significant part *from* biological products * * *."

Criteria for Obtaining Certification

Comment: One industry organization commenter recommends that USDA clarify and explicitly state whether domestic biobased carbon content is required. On "Criteria for Obtaining Certification," biobased product is defined with the language "including renewable domestic agricultural materials." The commenter states that it appears that domestic versus foreign source new carbon content is irrelevant in the label application.

Response: The regulations implementing the biobased preference program under 7 CFR 2902.2 define biobased products as "A product determined by USDA to be a commercial or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products or renewable domestic agricultural materials (including plant, animal, and marine materials) or forestry materials."

Subsequent amendments to 7 CFR 2902.4(b)(3) clarify that biobased products from any designated country would receive the same preference extended to U.S.-sourced biobased products.

As stated in CFR 2902.4(b)(3) "In implementing the preference program, Federal agencies shall treat as eligible for the preference biobased products from 'designated countries', as that term is defined in section 25.003 of the Federal Acquisition Regulation, provided that those products otherwise meet all requirements for participation in the preference program."

Designated countries include countries that have entered into specific trade agreements with the United States (such as the North American Free Trade Agreement [NAFTA]) or offer reciprocal equal treatment to U.S.-sourced goods. However, manufacturers and vendors must register their products with USDA in order to qualify as an approved supplier of biobased products.

Comment: One environmental group commenter states that an additional criterion should be included in the labeling evaluation. The commenter states that production of the biobased product should not result in net reduction in biological carbon storage in ecosystems such as forests, woodlands, rangelands, grasslands, wetlands, croplands, waterways, etc.

Response: USDA appreciates the commenter's concerns but believes that these concerns fall outside the scope of the voluntary labeling program.

Criteria for Obtaining Certification—Criterion 1: Biobased Product

Comment: One industry consultant commenter states that the USDA Certified Biobased Product Label implies a biobased product results in climate change impact reduction and energy/environmental security compared to non-biobased products. However, this is not backed up by a product life-cycle analysis.

Response: The aims of the labeling program are to increase the purchase and use of sustainable biobased products while providing "green" jobs and new markets for farmers, manufacturers, and vendors. USDA is hosting an informational BioPreferred Program Web site and requires manufacturers and vendors to provide relevant information concerning their products for posting on this site so that purchasers may access the information for use in making purchasing decisions.

Comment: One environmental group commenter states that the proposed criteria for Biopreferred Products include: "Renewable domestic agricultural materials and forestry materials." These criteria raise some important questions such as: (i) Does the word "renewable" describe just agricultural products, or also forestry materials? It should be clarified that renewable modifies both agriculture and forestry products.

(ii) What is the definition of renewable? Products derived from logging mature and old-growth forests, or habitat of imperiled or declining species, or short-rotation logging are not renewable and should be excluded.

Response: The statutory definition refers to "biological products, including renewable domestic agricultural materials and forestry materials." 7 U.S.C. 8101(4). USDA considers the qualifier "domestic," as well as the qualifier "renewable," to apply to both agricultural materials and forestry materials. The Guidelines for implementing the BioPreferred Program include the following definition for the term "forestry materials": "materials derived from the practice of planting and caring for forests and the management of growing timber. Such materials must come from short rotation woody crops (less than 10 years old), sustainably managed forests, wood residues, or forest thinnings." Thus, products derived from mature and old growth forests would be excluded.

Criteria for Obtaining Certification—Criterion 2: Minimum Biobased Content

Comment: One industry organization commenter states that it should be made clear at the beginning of the rule with a definition or in every criterion that biobased content is verified based on an analytical test (ASTM Method D6866).

Response: USDA points out that the definition of "biobased content" in this subsection clearly states that "For BioPreferred Products (products that have been identified for Federal preferred procurement), the biobased content shall be defined and determined as specified in the applicable section of subpart B of part 2902. For all other products, the biobased content is to be determined using ASTM Method D6866, Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis."

Comment: One industry organization commenter states that criterion 2 seems to duplicate criterion 1. The commenter states that the term "significant part" (from criterion 1) would be the same as "at or above its applicable minimum biobased content" (from criterion 2). The commenter states that criterion 2 needs to be more clear to distinguish it from criterion 1.

Response: USDA continues to believe that it is important to retain the language of both Criterion 1 and Criterion 2. Criterion 1 states that a biobased product must be composed "in whole or significant part of biological products, including renewable domestic agricultural materials and forestry materials; or (B) an intermediate ingredient or feedstock." Criterion 2 expands upon this criterion by further explaining how "significant" is determined for each type of product within the three biobased product groups: BioPreferred Products (those that have been identified for preferred Federal purchasing), finished biobased products that are not currently BioPreferred Products, and products that are intermediate ingredients or feedstocks that are also not currently recognized as BioPreferred Products.

Comment: One industry organization commenter believes that any biobased claim on a product with less than 95 percent biobased content should not be permitted to use the "artwork" or certification mark. It may, however, state "made with * * *" based on the amount of biobased material verified in the product where the claim is being made (not in small print that is not readily apparent to the consumer). While this was partially addressed by requiring the product statement with the artwork, allowing the use of the artwork is misleading. This program will mislead consumers into thinking they are purchasing a biobased product that has better attributes than other products.

Response: USDA continues to believe that the goal of program is to encourage the production and purchase of biobased products. Rather than being exclusionary, USDA thinks it is important to set the minimum biobased content for items at levels that will allow for a larger number of participants while maintaining meaningful standards. This will further the goals of the program by allowing for greater manufacturer and vendor participation, greater purchasing and, as a consequence, greater awareness of the BioPreferred Program.

Comment: One individual commenter noted that ASTM test method D6866 has been renamed for simplicity and to better reflect the broad applicability of the test method. The final rule should reflect this change. The title of the method is now "Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis."

Response: USDA agrees with the commenter and has revised the rule to reflect this test method name change.

Criteria for Obtaining Certification—Criterion 2: Minimum Biobased Content—Products That Are Intermediate Ingredients or Feedstocks That Are Not Within Product Categories Identified for Federal Preferred Procurement

Comment: One industry association commenter states that USDA has provided a definition of "intermediate ingredients or feedstocks" that varies from the statutory definition.[3] In the proposed rule, USDA adds the following language to the definition, "For the purposes of this subpart, intermediate ingredients or feedstocks do not include raw agricultural or forestry materials, but represent those materials that can be put into a new cycle of production and finishing processes to create finished materials, ready for distribution and consumption." USDA provides no justification for this additional language which is ambiguous and should not be included in the labeling rule.

Response: USDA believes that the additional language does not change the definition in any significant way, but simply further clarifies USDA's intent to exclude raw agricultural or forestry materials from the labeling program at this time. USDA further believes that it is important to include this language in the regulatory text (*i.e.,* the text of part 2904) rather than only presenting it in the preamble.

Comment: One industry commenter states that, as proposed, the default minimum for intermediate ingredients and feedstocks is equal to the default minimum for finished products. Regardless of what the default minimum is in the final rule, it is still unclear how the minimum biobased content of a feedstock translates into the minimum biobased content of the final product. If the feedstock is above the minimum, but the finished product is below the minimum due to other non-biobased ingredients, would that finished product be eligible? Conversely, if a feedstock were below the minimum, but the finished product above the minimum due to other biobased ingredients, would that finished product be eligible for the certification mark? The commenter requested that USDA provide additional clarity on this matter.

Response: The commenter asks if the feedstock is above the minimum, but the finished product is below the minimum due to other non-biobased ingredients, is the finished product eligible? No, the finished product in this example would not be eligible for use of the certification mark as the finished product would not meet the 25 percent minimum biobased content requirement. However, any biobased component of the finished product with a minimum 25 percent biobased content itself would be eligible for use of the mark as a biobased feedstock. Alternatively, if a finished product composed of several biobased feedstocks of varying percentages of biobased content has a biobased content in sum that equals or exceeds 25 percent, this finished product would be eligible for use of the mark, though not all of its individual components may be eligible.

Criteria for Obtaining Certification—Alternative Minimum Biobased Content Analysis

Comment: One industry commenter agrees with the proposal to have a procedure whereby manufacturers, vendors, and trade associations can request an alternative minimum biobased content for products which are not within a designated category. The commenter encouraged USDA to ensure that this procedure be as streamlined as possible and suggested that leveraging the designation process may be a route to streamlining.

One industry commenter opposes the concept of allowing manufacturers to apply for alternative applicable minimum biobased contents.

One industry organization commenter agrees with USDA's approach to the establishment of alternative minimum contents for the labeling program. However, the commenter states that the proposed rule provides the opportunity to request that USDA approve an alternative to the default content percentage for finished products that do not fall within a USDA designated item category but that the proposed rule language does not provide this same option for intermediate ingredients and feedstocks. The preamble to the rule indicates that USDA intended that the same option be available for intermediate ingredients and feedstocks. The commenter strongly supports this provision for finished products as well as intermediate ingredients and feedstocks and requests that USDA correct the final rule language so the "alternative applicable minimum biobased content" provision is included for intermediate ingredients and feedstocks.

Response: USDA continues to believe that offering a procedure whereby manufacturers, vendors, and trade associations can request an alternative minimum biobased content for products is in the best interest of the labeling program. USDA agrees with the commenter that the intent of the program is to allow, under consultation with USDA, an alternative minimum biobased content for intermediate ingredients and feedstocks as well as finished products that are not currently BioPreferred Products. USDA has revised the appropriate rule language (section 2904.4) to reflect this intent.

Initial Approval Process—Justification for Required Information

Comment: One biobased industry commenter states that the proposed rule requires that each finished product be tested under ASTM D6866. The commenter states that they have eight hydraulic oils that can be listed under the program and each has exactly the same feedstock as the biobased content. The commenter recommends that they be able to certify in a lab per the proposed rule the common feedstock (in this case vegetable oil) as biobased and then be able to use that feedstock as a basis to calculate finished product biobased content. The commenter states that the number of products they have, given that many have only very slightly different viscosities and additives, will result in more testing costs than needed and cause them to carefully evaluate whether they should list them on the program based on the testing costs. The

[3] The definition of "intermediate ingredient or feedstock" found in the 2008 Farm Bill is as follows: "The term 'intermediate ingredient or feedstock' means a material or compound made in whole or in significant part from biological products, including renewable agricultural materials (including plant, animal, and marine materials) or forestry materials, that are subsequently used to make a more complex compound or product."

commenter thinks this recommendation ensures the program standards are met and allows a low cost of participation.

Response: USDA agrees with the commenter's recommendation and will allow representative content testing to suffice provided the product formulation does not vary more than 3 percent for multiple products with a common feedstock. This will facilitate manufacturers and vendors more rapidly and economically adding more biobased products to the labeling program without unnecessary regulatory obstacles.

Initial Approval Process—BEES/Life Cycle Analysis

Comment: One industry commenter states that designated biobased products were required to be evaluated using life cycle assessment (LCA), specifically using the Building for Environmental and Economic Sustainability (BEES) analyses. With the BEES analyses, purchasers have been able to better understand the environmental impacts and aspects of biobased products. By undertaking BEES analyses, biobased product manufacturers have been able to set themselves apart from other manufacturers in their proactive stance toward environmental issues, thereby generating environmental awareness in the biobased community and beyond. The commenter is very concerned that the proposed labeling program has eliminated the requirement to perform an LCA. The commenter presented the following concerns:

A. Biobased products potentially have significant impacts on climate change, biodiversity, food security, and many other impact categories. Without the application of LCA to these products, it is impossible to tell what actions should be pursued to make these products more environmentally friendly.

B. By omitting the requirement for an LCA-based labeling program, USDA is losing a major opportunity toward the global competitiveness of U.S. Agricultural Products.

C. USDA's proposed biobased certification mark does not follow the international consensus standards on Ecolabels (the ISO 14020 series) because it does not take environmental life cycle consideration into account.

D. USDA is missing an opportunity to build overall LCA capacity and competitiveness in the U.S. Requiring LCAs of biobased products would help supply U.S. average data on their environmental impacts.

The commenter urges USDA to reconsider the elimination of environmental LCAs from their biobased products labeling scheme. Its inclusion made the program a strong driver for sustainability and helped biobased American products be more competitive not only through Federal purchases but also in national and international markets.

One environmental group states that the rules should reflect the carbon consequences of the underlying production processes, including long-term, life-cycle effects. The simple fact of being biobased does not guarantee that a product is preferred from the standpoint of environmental or social values. It is far better to conduct a more comprehensive evaluation of the life-cycle impacts of alternative products.

Response: USDA has given extensive consideration to the subject of LCA and, specifically, the BEES analysis. This subject was the primary topic of a public meeting hosted by USDA in Washington, DC on January 5, 2010 (visit the BioPreferred Program Web site to read a transcript of the meeting). Opinions vary widely among Federal agency personnel, industry representatives, members of the academic community, and the general public regarding the accuracy of, and the usefulness of, the results of these analyses. USDA is currently continuing its efforts to formulate a final decision on any requirements to perform LCA analyses on products in conjunction with the BioPreferred Program. At this time, USDA is performing BEES analyses on a small number of sample products within each product category as part of the identification of product categories for Federal preferred procurement. For the voluntary labeling program, the only requirement is that claims made by manufacturers regarding the environmental or life cycle benefits of their labeled products must be supported by appropriate documentation. USDA believes this requirement is a reasonable way to discourage false or undocumented claims on labeled products. Once USDA has made a final decision about the role of LCA or environmental analyses for products identified and certified by the BioPreferred Program, that decision and any associated requirements for participants in the program will be announced in the **Federal Register** with an opportunity for public comment.

Violations—Audit Program

Comment: One industry organization commenter believes that USDA should, as proposed, implement its own audit program, with particular focus on ensuring that the biobased content of the products actually being marketed with the certification mark meet the minimum criteria. USDA's enforcement program should also be directed to take action against those who use the certification mark or create a similar label of their own and place it on products without the USDA biobased product certification. The commenter urges USDA to add explicit language to its proposed rule to cover violations and enforcement mechanisms for "Use of the Certification Mark Without Certification," which would include using the certification mark or a facsimile or other artwork or statements that imply a product is a "USDA Certified Biobased Product" when it is not. In addition, USDA should work closely with the FTC to encourage FTC to pursue its enforcement authority against any stakeholder who makes misleading or false claims that state or imply that they have USDA certification to use the certification mark when they do not.

To maintain the integrity of the mark, one industry commenter supports a strong and fair product audit and certification mark enforcement program and believes that USDA should, as proposed, implement its own audit program and the $500 fee suggested should be used to set up such program.

One individual commenter does not believe it is a good use of taxpayer dollars to inspect manufacturer and vendor facilities (including their records, etc.) as part of a random audit program. This will be very costly and time consuming, at a time when the public eye on government waste is at a high point. The commenter states that simply visiting retail facilities and testing the biobased content of labeled products purchased from those facilities is the best way to conduct the audit program. That approach will address the most important aspects of an audit program.

One nonprofit organization states that, as with any labeling program, they do not believe that affidavits from manufacturers suffice for label certification and that without adequate verification, testing and inspection that a program of this size would not be able to maintain integrity over time and ultimately would cloud an already murky green labeling marketplace.

Response: USDA received several comments for and against the imposition of an auditing requirement. USDA continues to believe that adequate recordkeeping and auditing are necessary to ensure the standards of the program and will work with other agencies, as appropriate, to make certain that manufacturers and vendors comply with all labeling program regulations.

Violations—Other Remedies

Comment: One government agency commenter states that, if a manufacturer of a labeled product were found to be in violation of the labeling rule requirements, USDA could supply the name of the manufacturer to the General Services Administration (GSA) and they would add the name to the Excluded Parties List. This list is checked by buyers as part of a responsibility determination before making an award, so if the manufacturer's/vendor's name is on the list, they would not be awarded a contract with the Federal government.

Response: The proposed rule (at 74 FR 38316) already includes the penalty suggested by the commenter. It states that, in cases of violations, "* * * USDA may pursue suspension or debarment of the entities involved in accordance with part 3017 of this title." As of the publication date of the proposed rule, part 3017 provided for the inclusion of a name on GSA's Excluded Parties List System once the party is suspended or debarred.

V. Regulatory Information

A. Executive Order 12866: Regulatory Planning and Review

Executive Order 12866 requires agencies to determine whether a regulatory action is "significant." This final rule has been reviewed under Executive Order (EO) 12866 and has been determined to be significant. Today's rule establishes a voluntary labeling program that allows manufacturers and vendors of certified biobased products to use the "USDA Certified Biobased Product" certification mark. Although the labeling program is voluntary, there will be costs associated with meeting the criteria for, and applying for, certification to use the label.

1. Costs of the Rule

The primary costs associated with participating in this program are those for developing applications, testing to document the biobased content of products, providing information to USDA for posting by USDA on the USDA BioPreferred Program Web site, maintaining applicable records, and redesigning the product packaging to incorporate the certification mark. USDA estimates that the combined annualized cost of the voluntary program to manufacturers and vendors would average approximately $2,813,811 per year for the first three years of the program. USDA estimates an average of 352 manufacturers and vendors per year will submit applications to participate in the labeling program for the first three years of the program. This yields an average annualized cost per manufacturer/vendor of approximately $7,994.

The level of presumed impact is not expected to exceed $100 million because of the offsetting nature of the voluntary labeling program (*i.e.,* an increase in demand for biobased products is likely to be offset by a decrease in demand for non-biobased products). While USDA believes that the program is likely to have a widespread effect on the marketplace (including shifting purchases away from non-biobased products toward the purchase of biobased products), it is not expected to have a widespread adverse effect on the economy. Additional information regarding the primary industry sectors expected to be affected by today's final rule is presented under the discussion of the Regulatory Flexibility Act below.

2. Benefits of the Rule

As an integral part of USDA's BioPreferred Program, the voluntary labeling program may raise public awareness of, and increase the demand for, biobased products. While the benefits of the labeling program are not quantifiable at this time, an increased demand for biobased products will, in turn, achieve the benefits as outlined in the objectives of section 9002: To increase domestic demand for many agricultural commodities that can serve as feedstocks for production of biobased products; to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and to enhance the Nation's energy security by substituting biobased products for products derived from imported oil and natural gas. On a national and regional level, today's final rule may result in expanding and strengthening markets for biobased materials used in these items. The program is also expected to promote economic development for biobased product manufacturers and vendors by creating new jobs and providing new markets for farm commodities.

B. Regulatory Flexibility Act (RFA)

Under the RFA, an agency is required to prepare an initial regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities, and the agency can provide a factual basis to support the certification. Based upon its assessment of the projected impact of this rulemaking, USDA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small businesses, small organizations, and small governmental jurisdictions. Of these three types of entities, the labeling requirements in today's rulemaking would be applicable to small businesses only. For purposes of assessing the impacts on small entities, a small business is defined by the RFA using the definitions for small business based on Small Business Administration (SBA) size standards, which vary depending on the type of business (e.g., less than 500 employees, less than 1,000 employees). Most of the manufacturing companies and vendors associated with products within items that USDA has designated or proposed for designation would qualify as small businesses under SBA guidelines.

To assess the potential effects of this rulemaking on small businesses, USDA conducted a review of U.S. Census Bureau data compiled by the Small Business Administration's (SBA) Office of Advocacy. USDA identified six North American Industrial Classification System (NAICS) categories under which many biobased products are manufactured: Petroleum lubricating oil and grease manufacturing, plastics material and resin manufacturing, soap and other detergent manufacturing, urethane and other foam product (except polystyrene) manufacturing, carpet and rug mills manufacturing, and fertilizer manufacturing. USDA then used the Census Bureau data to determine the number of small businesses in those categories and the average total receipts for those businesses. This data and the associated analysis was valuable in determining whether the rulemaking would have a significant economic impact on a substantial number of small businesses. Based upon the data and accompanying analysis, USDA identified 2,493 small businesses in the six identified manufacturing categories. The total receipts for these small businesses averaged $11.4 million. USDA will note, however, that this average receipt data does not convey the differences between certain manufacturing categories, such as those reflected between the plastics materials and carpet manufacturing sectors. Additional information supporting USDA's analysis is available in the following table. USDA requests comments on the quality of this analysis and ways to improve it.

NAICS category *	Number of small businesses	Small business total receipts ($ in thousands)	Average small business receipts ($ in thousands)
Petroleum lubricating oil and grease manufacturing	261	3,354,088	12,850.91
Plastics material and resin manufacturing	475	10,929,491	23,009.45
Soap and other detergent manufacturing	623	5,351,973	8,590.65
Urethane and other foam product (except polystyrene) manufacturing	413	2,815,231	6,816.54
Carpet and rug mills manufacturing	258	1,733,880	6,720.47
Fertilizer manufacturing	463	4,133,533	8,927.72

* Information provided in this table is available on the SBA's Office of Advocacy Web site and was derived from the U.S. Census Bureau's 2007 Survey of Business Owners. The information can be found at: *http://www.sba.gov/advo/research/data.html#susb.*

Census Bureau data on firm size also indicates that, collectively, more than 91 percent of the firms in the six categories meet the SBA definition of small business. Despite the high percentage of program participants that will be small businesses, the total number of small businesses affected by this rulemaking will not be substantial. USDA estimates that 352 manufacturers and vendors will apply to participate in the program annually. That number would represent around 14 percent of the total small businesses identified in the six NAICS categories identified above. The 14 percent figure can likely be further reduced when considering that the six NAICS categories represent only product manufacturing and not product vendors. In addition, the 352 manufacturers and vendors cited above does not reflect solely small businesses since large businesses will also be eligible to participate in the program.

The benefit-cost analysis USDA conducted for the rule, discussed in Section VI.A.1. above, indicates that the annualized cost associated with participating in the voluntary labeling program is about $7,994 on average and, relative to total receipts by small businesses in the NAICS categories where many biobased products are manufactured, appears not to represent an undue burden in most cases.

In some cases, however, where a small business may experience a burden of conducting multiple biobased content tests as a result of manufacturing multiple biobased products, USDA has decided to reduce the testing burden. As indicated earlier in the preamble of this rule, USDA has agreed to allow representative product testing for products with a similar formulation. This allowance should further reduce any undue burden faced by small businesses participating in the program.

Moreover, participation in the voluntary labeling program would provide manufacturers and vendors a marketing advantage over those who choose not to participate. This marketing advantage could lead to greater sales, thus offsetting some of the costs associated with participating in the labeling program.

Finally, the program requirements for the voluntary labeling program are applicable to all manufacturers and vendors of biobased products seeking to use the certification mark under this program, regardless of the size of their business. For instance, all manufacturers and vendors are required to submit an application, conduct certain testing, and provide to USDA certain information that USDA will post to the BioPreferred Program Web site. These requirements are necessary to certify biobased products and are independent of the size of the manufacturer or vendor. The integrity of the labeling program would be compromised if biobased products manufactured by small businesses were allowed to be subject to different criteria in order to reduce costs to small businesses.

C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

D. Executive Order 13132: Federalism

This rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

E. Unfunded Mandates Reform Act of 1995

This rule contains no federal mandates as defined under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

F. Executive Order 12372: Intergovernmental Review of Federal Programs

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The rule does not impose any mandate on tribal governments or impose any duties on these entities. Thus, no further action is required under Executive Order 13175.

H. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520), the information collection provisions associated with this final rule have been submitted to the Office of Management and Budget (OMB) for approval as a new collection and assigned OMB number 0503–XXXX. In the publication of the proposed rule on July 31, 2009, USDA solicited comments on the estimated burden. USDA received no public comment letters in response to this solicitation. This information collection requirement will not become effective until approved by OMB. Upon approval of this information collection, USDA will publish a notice in the **Federal Register**.

I. E-Government Act Compliance

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

information pertinent to E-Government Act compliance related to this rule, please contact Ron Buckhalt at (202) 205–4008.

J. Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). This rule will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, that includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. USDA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**.

List of Subjects in 7 CFR Part 2904

Biobased products, Labeling.

For the reasons stated in the preamble, the U.S. Department of Agriculture (USDA) is amending 7 CFR chapter XXIX as follows:

CHAPTER XXIX—OFFICE OF ENERGY, DEPARTMENT OF AGRICULTURE

■ 1. A new part 2904 is added to chapter XXIX to read as follows:

PART 2904—VOLUNTARY LABELING PROGRAM FOR BIOBASED PRODUCTS

Sec.

2904.1 Purpose and scope.
2904.2 Definitions.
2904.3 Applicability.
2904.4 Criteria for product eligibility to use the certification mark.
2904.5 Initial approval process.
2904.6 Appeals process.
2904.7 Requirements for the use of the certification mark.
2904.8 Violations.
2904.9 Recordkeeping requirements.
2904.10 Oversight and monitoring.

Authority: 7 U.S.C. 8102.

PART 2904—VOLUNTARY LABELING PROGRAM FOR BIOBASED PRODUCTS

§ 2904.1 Purpose and scope.

The purpose of this part is to set forth the terms and conditions for voluntary use of the "USDA Certified Biobased Product" certification mark. This part establishes the criteria that biobased products must meet in order to be eligible to become certified biobased products to which the "USDA Certified Biobased Product" mark can be affixed, the process manufacturers and vendors must use to obtain and maintain USDA certification, and the recordkeeping requirements for manufacturers and vendors who obtain certification. In addition, this part establishes specifications for the correct and incorrect uses of the certification mark, which apply to manufacturers, vendors, and other entities. Finally, this part establishes actions that constitute voluntary labeling program violations.

§ 2904.2 Definitions.

Applicable minimum biobased content. The biobased content at or above the level set by USDA to qualify for use of the certification mark.

ASTM International (ASTM). American Society for Testing and Materials is a nonprofit organization that provides an international forum for the development and publication of voluntary consensus standards for materials, products, systems, and services.

Biobased content. The amount of biobased carbon in the material or product expressed as a percent of weight (mass) of the total organic carbon in the material or product. For BioPreferred Products (products that have been identified for Federal preferred procurement), the biobased content shall be defined and determined as specified in the applicable section of subpart B of part 2902. For all other products, the biobased content is to be determined using ASTM Method D6866, Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis.

Biobased product. A product determined by the Secretary to be a commercial or industrial product (other than food or feed) that is:

(1) Composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or

(2) An intermediate ingredient or feedstock. For the purposes of this subpart, the term 'biobased product' does not include motor vehicle fuels, heating oil, electricity produced from biomass, or any mature market products.

BioPreferred Product. A biobased product that meets or exceeds minimum biobased content levels set by USDA, and that is found within any of the product categories that have been identified, in subpart B of 7 CFR part 2902, whose products within are eligible for Federal preferred procurement/purchasing.

Certification mark. A combination of the certification mark artwork (as defined in this subpart); one of three statements identifying whether the USDA certification applies to the product, the package, or both the product and package; and, where applicable, the letters "FP" to indicate that the product is within a designated product category and eligible for Federal preferred procurement. The certification mark is owned, and its use is managed by, USDA (standard trademark law definition applies).

Certification mark artwork. The distinctive image, as shown in Figures 1–3, that identifies products as USDA Certified.

Figure 1. USDA Certified Biobased Product Certification Mark

(Note: actual size will vary depending on application.)

Figure 2. USDA Certified Biobased Product: Package Certification Mark

(Note: actual size will vary depending on application.)

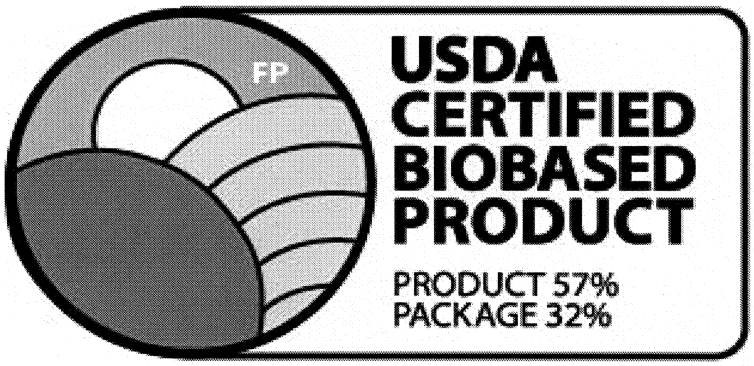

Figure 3. USDA Certified Biobased Product & Package Certification Mark

(Note: actual size will vary depending on application.)

Certified biobased product. A biobased product for which the manufacturer or vendor of the product has received approval from USDA to affix to the product the "USDA Certified Biobased Product" certification mark.

Days. As used in this part means calendar days.

Designated item. For the purposes of this part means product categories (generic groupings of products that perform the same function) within which the products have been afforded a procurement preference by Federal agencies under the BioPreferred Program. These BioPreferred Products have been identified for Federal preferred procurement under subpart B of part 2902 of this title.

Designated representative. An entity authorized by a manufacturer or vendor to affix the USDA certification mark to the manufacturer's or vendor's certified biobased product or its packaging.

Intermediate ingredients or feedstocks. Materials or compounds made in whole or in significant part from biological products, including renewable agricultural materials (including plant, animal, and marine materials) or forestry materials, that are subsequently used to make a more complex compound or product. For the purposes of this subpart, intermediate ingredients or feedstocks do not include raw agricultural or forestry materials, but represent those materials that can be put into a new cycle of production and finishing processes to create finished materials, ready for distribution and consumption.

ISO. The International Organization for Standardization, a network of national standards institutes working in partnership with international organizations, governments, industries, business, and consumer representatives.

ISO 9001 conformant. An entity that meets all of the requirements of the ISO 9001 standard, but that is not required to be ISO 9001 certified. ISO 9001 refers to the International Organization for Standardization's standards and guidelines relating to "quality management" systems. "Quality management" is defined as what the manufacturer does to ensure that its products or services satisfy the customer's quality requirements and comply with any regulations applicable to those products or services.

Manufacturer. An entity that performs the necessary chemical and/or mechanical processes to make a final marketable product.

Mature market products. Biobased products that are not eligible for Federal preferred procurement or labeling as defined under subpart B of part 2902 of this title because they had significant national market penetration in 1972.

Other entity. Any person, group, public or private organization, or business other than USDA, or manufacturers or vendors of biobased products that may wish to use the "USDA Certified Biobased Product" certification mark in informational or promotional material related to a certified biobased product.

Program Manager. The manager of the BioPreferred Program.

USDA. The United States Department of Agriculture.

Vendor. An entity that offers for sale final marketable biobased products that are produced by manufacturers.

§ 2904.3 Applicability.

(a) *Manufacturers, vendors, and designated representatives.* The requirements in this part apply to all manufacturers and vendors, and their designated representatives, who wish to participate in the USDA voluntary labeling program for biobased products. Manufacturers and vendors wishing to participate in the voluntary labeling program are required to obtain and maintain product certification.

(b) *Other entities.* The requirements in this part apply to other entities who wish to use the certification mark in promoting the sales or the public awareness of certified biobased products.

§ 2904.4 Criteria for product eligibility to use the certification mark.

A product must meet each of the criteria specified in paragraphs (a) and (b) of this section in order to be eligible to receive biobased product certification.

(a) *Biobased product.* The product for which certification is sought must be a biobased product as defined in § 2904.2 of this part.

(b) *Minimum biobased content.* The biobased content of the product must be equal to or greater than the applicable minimum biobased content, as described in paragraphs (b)(1) through (b)(4) of this section.

(1) *BioPreferred Products.*

(i) *Product is within a single product category.* If the product is within a single product category that, at the time the application for certification is submitted, has been designated by USDA for Federal preferred procurement, the applicable minimum biobased content is the minimum biobased content specified for the item as found in subpart B of 7 CFR part 2902.

(ii) *Product is within multiple product categories.* If a biobased product is marketed within more than one product category identified for preferred Federal purchasing, uses the same packaging for each product, and the applicant seeks certification of the product, the product's biobased content must meet or exceed the specified minimum biobased content for each of the applicable product categories in order to use the certification mark on the product. However, if the manufacturer packages the product differently for each product category, then the applicable minimum biobased contents are those established under paragraph (b)(1)(i) of this section for each product category for which the applicant seeks to use the certification mark.

(2) *Finished biobased products that are not BioPreferred Products.*

(i) If the product is not an intermediate ingredient or feedstock, and is not within a product category eligible for Federal preferred procurement at the time the application for certification is submitted, the applicable minimum biobased content is 25 percent. Manufacturers, vendors, groups of manufacturers and/or vendors, and trade associations may propose an alternative applicable minimum biobased content for the product by developing, in consultation with USDA, and conducting an analysis to support the proposed alternative applicable minimum biobased content. If approved by USDA, the proposed alternative applicable minimum biobased content would become the applicable minimum biobased content for the product to be labeled.

(ii) If a product certified under paragraph (b)(2)(i) of this section is within a product category that USDA subsequently designates for Federal preferred procurement, the applicable minimum biobased content shall become, as of the effective date of the final designation rule, the minimum biobased content specified for the item as found in subpart B of 7 CFR part 2902.

(3) *Products that are intermediate ingredients or feedstocks.*

(i) If the product is an intermediate ingredient or feedstock that is not eligible for Federal preferred procurement at the time the application for certification is submitted, the applicable minimum biobased content is 25 percent. Manufacturers, vendors, groups of manufacturers and/or vendors, and trade associations may propose an alternative applicable minimum biobased content for the product by developing, in consultation with USDA, and conducting an analysis to support the proposed alternative applicable minimum biobased content.

If approved by USDA, the proposed alternative applicable minimum biobased content would become the applicable minimum biobased content for the intermediate ingredient or feedstock product to be labeled.

(ii) If a product certified under paragraph (b)(3)(i) of this section is within a category that USDA subsequently designates for Federal preferred procurement, the applicable minimum biobased content shall become, as of the effective date of the final designation rule, the minimum biobased content specified for the item as found in subpart B of 7 CFR part 2902.

§ 2904.5 Initial approval process.

(a) *Application.* Manufacturers and vendors seeking USDA approval to use the certification mark for an eligible biobased product must submit a USDA-approved application for each biobased product. A standardized application form and instructions are available on the USDA BioPreferred Program Web site (*http://www.biopreferred.gov*). The contents of an acceptable application are as specified in paragraphs (a)(1) through (a)(4) of this section.

(1) *General content.* The applicant must provide contact information and product information including all brand names or other identifying information, biobased content and testing documentation, intended uses, and, if applicable, the corresponding product category classification for Federal preferred procurement. The applicant must attach to the application documentation demonstrating that the reported biobased content was tested by a third-party testing entity that is ISO 9001 conformant.

(2) *Certifications.* The applicant must certify in the application that the product for which use of the certification mark is sought is a biobased product as defined in § 2904.2 of this part.

(3) *Commitments.* The applicant must sign a statement in the application that commits the applicant to submitting to USDA the information specified in paragraph (c)(1) through (c)(4) of this section, which USDA will post to the USDA BioPreferred Program Web site, and to providing USDA with up-to-date information for posting on this Web site.

(4) *Application fee.* Effective (date to be added after authority to collect fee is granted), applicants must submit an application fee of $500 with each completed application for certification. Instructions for submitting the application fee are available on the USDA BioPreferred Program Web site (*http://www.biopreferred.gov*), along with the application form and instructions.

(b) *Evaluation of applications.* (1) USDA will evaluate each application to determine if it contains the information specified in paragraph (a) of this section. If USDA determines that the application is not complete, USDA will return the application to the applicant with an explanation of its deficiencies. Once the deficiencies have been addressed, the applicant may resubmit the application, along with a cover letter explaining the changes made, for re-evaluation by USDA. USDA will evaluate resubmitted applications separately from first-time applications, and those with the earliest original application submittal date will be given first priority.

(2)(i) USDA will evaluate each complete application to determine compliance with the criteria specified in § 2904.4. USDA will provide a written response to each applicant within 60 days after the receipt of a complete application, informing the applicant of whether the application has been conditionally approved or has been disapproved.

(ii) For those applications that are conditionally approved, a notice of certification, as specified in paragraph (c) of this section, must be issued before the use of the certification mark can begin.

(iii) For those applications that are disapproved, USDA will issue a notice of denial of certification and will inform the applicant in writing of each criterion not met. Applicants who receive a notice of denial of certification may appeal using the procedures specified in § 2904.6.

(c) *Notice of certification.* After notification that its application has been conditionally approved, the applicant must provide to USDA (for posting by USDA on the USDA BioPreferred Program Web site) the information specified in paragraphs (c)(1) through (c)(4) of this section. Once USDA confirms that the information is received and complete, USDA will issue a notice of certification to the applicant. Upon receipt of a notice of certification, the applicant may begin using the certification mark on the certified biobased product.

(1) The product's brand name(s), or other identifying information.

(2) Contact information, including the name, mailing address, email address, and telephone number of the applicant.

(3) The biobased content of the product.

(4) A hot link directly to the applicant's Web site (if available).

(d) *Term of certification.*

(1) The effective date of certification is the date that the applicant receives a notice of certification from USDA. Except as specified in paragraphs (d)(2)(i) through (d)(2)(iii) of this section, certifications will remain in effect as long as the product is manufactured and marketed in accordance with the approved application and the requirements of this subpart.

(2)(i) If the product formulation of a certified product is changed such that the biobased content of the product is reduced to a level below that reported in the approved application, the existing certification will not be valid for the product under the revised conditions and the manufacturer or vendor, as applicable, and its designated representatives must discontinue affixing the certification mark to the product and must not initiate any further advertising of the product using the certification mark. USDA will consider a product under such revised conditions to be a reformulated product, and the manufacturer or vendor, as applicable, must submit a new application for certification using the procedures specified in paragraph (a) of this section.

(ii) If the product formulation of a certified product is changed such that the biobased content of the product is increased from the level reported in the approved application, the existing certification will continue to be valid for the product.

(iii) If the applicable required minimum biobased content for a product to be eligible to display the certification mark is revised by USDA, manufacturers and vendors may continue to label their previously certified product only if it meets the new minimum biobased content level. In those cases where the biobased content of a certified product fails to meet the new minimum biobased content level, USDA will notify the manufacturer or vendor that their certification is no longer valid. Such manufacturers and vendors must increase the biobased content of their product to a level at or above the new minimum biobased content level and must re-apply for certification within 60 days if they wish to continue to use the certification mark. Manufacturers and vendors who have re-applied for certification may continue using the existing certification mark until they receive notification from USDA on the results of their re-application for certification.

§ 2904.6 Appeal processes.

An applicant for certification may appeal a notice of denial of certification to the Program Manager. Entities that have received a notice of violation, and manufacturers and vendors of certified biobased products who have received a notice of suspension or revocation, may appeal to the Program Manager.

(a)(1) Appeals to the Program Manager must be filed within 30 days of receipt by the appellant of a notice of denial of certification, a notice of violation, a notice of suspension, or a notice of revocation. Appeals must be filed in writing and addressed to: Program Manager, USDA Voluntary Labeling Program for Biobased Products, Room 361, Reporters Building, 300 Seventh Street, SW., Washington, DC 20024.

(2) All appeals must include a copy of the adverse decision and a statement of the appellant's reasons for believing that the decision was not made in accordance with applicable program regulations, policies, or procedures, or otherwise was not proper.

(b)(1) If the Program Manager sustains an applicant's appeal of a notice of denial of certification, USDA will issue a notice of certification to the applicant for its biobased product.

(2) If the Program Manager sustains a manufacturer's or vendor's appeal of a notice of violation, USDA will rescind the notice and no further action will be taken by USDA.

(3) If the Program Manager sustains a manufacturer's or vendor's appeal of a notice of suspension, the manufacturer, vendor, and their designated representative(s) may immediately resume affixing the certification mark to the certified biobased product and USDA will reinstate the product's information to the USDA BioPreferred Program Web site.

(4) If the Program Manager sustains a manufacturer's or vendor's appeal of a notice of revocation, the manufacturer or vendor, and its designated representatives may immediately resume affixing the certification mark to the certified biobased product and sell and distribute the certified biobased product with the certification mark. In addition, USDA will reinstate the product's information to the USDA BioPreferred Program Web site.

(c) If the Program Manager sustains a manufacturer's or vendor's appeal of its product's exclusion from the program, the manufacturers or vendors may then apply for certification to use the certification mark on that product, as specified in § 2904.5(a) of this part.

(d) Appeals of any of the Program Manager's decisions may be made to the USDA Assistant Secretary for Administration. Appeals must be made, in writing, within 30 days of receipt of the Program Manager's decision and addressed to: Assistant Secretary for Administration, Room 209A, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–0103. If the Assistant Secretary for Administration sustains an appeal, the provisions of paragraph (b) of this section will apply.

§ 2904.7 Requirements associated with the certification mark.

(a) *Who may use the certification mark*?

(1) *Manufacturers and vendors.* Only manufacturers and vendors who have received a notice of certification, or designated representatives of the manufacturer or vendor, may affix the official certification mark (in one of the three variations, as applicable) to the product or its packaging. A manufacturer or vendor who has received a notice of certification for a product under this part:

(i) May use the certification mark on the product, its packaging, and other related materials including, but not limited to, advertisements, catalogs, specification sheets, procurement databases, promotional material, Web sites, or user manuals for that product, according to the requirements set forth in this section; and

(ii) Is responsible for the manner in which the mark is used by its companies, as well as its designated representatives, including advertising agencies, marketing and public relations firms and subcontractors.

(2) *Other entities.*

(i) Other entities may use the mark to advertise or promote certified biobased products in materials including, but not limited to, advertisements, catalogs, procurement databases, Web sites, and promotional and educational materials, as long as the manufacturer or vendor of the product, or one of their designated representatives, has affixed the mark to the product or its packaging.

(ii) Other entities may use the certification mark; the phrase "USDA Certified Biobased Product/Package/Product & Package," as applicable; and the BioPreferred Program name in general statements as described in paragraph (b) of this section, as long as the statements do not imply that a non-certified biobased product is certified.

(b) *Correct usage of the certification mark.*

(1) The certification mark can be affixed only to certified biobased products and their associated packaging.

(2) The certification mark may be used in material including, but not limited to, advertisements, catalogs, procurement databases, Web sites, and promotional and educational materials to distinguish products that are certified for use of the label from those that are not certified. The certification mark may be used in advertisements for both certified biobased products and non-certified/labeled products if the advertisement clearly indicates which products are certified/labeled. Care must be taken to avoid implying that any non-certified products are certified.

(3) The certification mark may be used without reference to a specific certified biobased product only when informing the public about the purpose of the certification mark. For example, the following or similar claim is acceptable: "Look for the 'USDA Certified Biobased Product' certification mark. It means that the product meets USDA standards for the amount of biobased content and the manufacturer or vendor has provided relevant information on the product to be posted on the USDA BioPreferred Program Web site." This exception allows manufacturers, vendors, and other entities to use the certification mark in documents such as corporate reports, but only in an informative manner, not as a statement of product certification.

(4) The certification mark may appear next to a picture of the product(s) or text describing it.

(5) The certification mark must stand alone and not be incorporated into any other certification mark or logo designs.

(6) The certification mark may be used as a watermark provided the use does not violate any usage restrictions specified in this part.

(7) The text portion of the certification mark must be written in English and may not be translated, even when the certification mark is used outside of the United States.

(c) *Incorrect usage of the certification mark.*

(1) The certification mark shall not be used on any product that has not been certified by USDA as a "USDA Certified Biobased Product."

(2) The certification mark shall not be used on any advertisements or informational materials where both certified biobased products and non-certified products are shown unless it is clear that the certification mark applies to only the certified biobased product(s).

(3) The certification mark shall not be used to imply endorsement by USDA or the BioPreferred Program of any particular product, service, or company.

(4) The certification mark shall not be used in any form that could be misleading to the consumer.

(5) The certification mark shall not be used by manufacturers or vendors of

certified products in a manner disparaging to USDA or any other government body.

(6) The certification mark shall not be used with an altered certification mark or incorporated into other label or logo designs.

(7) The certification mark shall not be used on business cards, company letterhead, or company stationery.

(8) The certification mark shall not be used in, or as part of, any company name, logo, product name, service, or Web site, except as may be provided for in this part.

(9) The certification mark shall not be used in a manner that violates any of the applicable requirements contained in this part.

(d) *Imported products.* The certification mark can be used only with a product that is certified by USDA under this part. The certification mark cannot be used to imply that a product meets or exceeds the requirements of biobased programs in other countries. Products imported for sale in the U.S. must adhere to the same guidelines as U.S.-sourced biobased products. Any product sold in the U.S. as a "USDA Certified Biobased Product/Package/ Product & Package" must have received certification from USDA.

(e) *Contents of the certification mark.* The certification mark shall consist of the certification mark artwork, the biobased content percentage, and one of the three variations of text specified in paragraphs (e)(1) through (e)(3) of this section, as applicable.

(1) USDA Certified Biobased Product.

(2) USDA Certified Biobased Product: Package.

(3) USDA Certified Biobased Product & Package.

(f) *Physical aspects of the certification mark.* The certification mark artwork may not be altered, cut, separated into components, or distorted in appearance or perspective. Certification marks that are applied to biobased products that have been designated for preferred Federal procurement will include the letters "FP" as part of the certification mark artwork. The certification mark must appear only in the colors specified in paragraphs (f)(1) through (f)(3) of this section, unless approval is given by USDA for an exception.

(1) A multi-color version of the certification mark is preferred. The certification mark colors to be applied will be stipulated in the "Marketing Guides" document available on the USDA BioPreferred Program Web site (*http://www.biopreferred.gov*).

(2) A one-color version of the certification mark may be substituted for the multi-color version as long as the one color used is one of the multi-color choices reapplied without modification. Further guidance on the one-color certification mark application will also be detailed in the "Marketing Guides."

(3) A black and white version of the certification mark is acceptable.

(g) *Placement of the certification mark.*

(1) The certification mark can appear directly on a product, its associated packaging, in user manuals, and in other materials including, but not limited to, advertisements, catalogs, procurement databases, and promotional and educational materials.

(2) The certification mark shall not be placed in a manner that is ambiguous about which product is a certified biobased product or that could indicate certification of a non-certified product.

(3) When used to distinguish a certified biobased product in material including, but not limited to, advertisements, catalogs, procurement databases, Web sites, and promotional and educational materials, the certification mark must appear near a picture of the product or the text describing it.

(i) If all products on a page are certified biobased products, the certification mark may be placed anywhere on the page.

(ii) If a page contains a mix of certified biobased products and non-certified products, the certification mark shall be placed in close proximity to the certified biobased products. An individual certification mark near each certified biobased product may be necessary to avoid confusion.

(h) *Minimum size and clear space recommendations for the certification mark.*

(1) The certification mark may be sized to fit the individual application as long as the correct proportions are maintained and the certification mark remains legible.

(2) A border of clear space must surround the certification mark and must be of sufficient width to offset it from surrounding images and text and to avoid confusion. If the certification mark's color is similar to the background color of the product or packaging, the certification mark in a contrasting (i.e., black, white) color may be used.

(i) *Where to obtain copies of the certification mark artwork.* The certification mark artwork is available at the USDA BioPreferred Program Web site *http://www.biopreferred.gov*.

§ 2904.8 Violations.

This section identifies the types of actions that USDA considers violations under this part and the penalties (e.g., the suspension or revocation of certification) associated with such violations.

(a) *General.* Violations under this section occur on a per product basis and the penalties are to be applied on a per product basis. Entities cited for a violation under this section may appeal using the provisions in § 2904.6. If certification for a product is revoked, the manufacturer or vendor whose certification has been revoked may seek re-certification for the product using the procedures specified under the provisions in § 2904.5.

(b) *Types of violations.* Actions that will be considered violations of this part include, but are not limited to, the following specific examples:

(1) *Biobased content violations.* The Program Manager will utilize occasional random testing of certified biobased products to compare the biobased content of the tested product with the product's applicable minimum biobased content and the biobased content reported by the manufacturer or vendor in its approved application. Such testing will be conducted using ASTM Method D6866. USDA will provide a copy of the results of its testing to the applicable manufacturer or vendor.

(i) If USDA testing shows that the biobased content of a certified biobased product is less than its applicable minimum biobased content, then a violation of this part will have occurred.

(ii) If USDA testing shows that the biobased content is less than that reported by the manufacturer or vendor in its approved application, but is still equal to or greater than its applicable minimum biobased content(s), USDA will provide written notification to the manufacturer or vendor. The manufacturer or vendor must submit, within 90 days from receipt of USDA written notification, a new application for the lower biobased content. Failure to submit a new application within 90 days will be considered a violation of this part.

(A) The manufacturer or vendor can submit in the new application the biobased content reported to it by USDA in the written notification.

(B) Alternatively, the manufacturer or vendor may elect to retest the product in question and submit the results of the retest in the new application. If the manufacturer or vendor elects to retest the product, it must test a sample of the current product.

(2) *Certification mark violations.*

(i) Any usage or display of the certification mark that does not conform to the requirements specified in § 2904.7.

(ii) Affixing the certification mark to any product prior to issuance of a notice of certification from USDA.

(iii) Affixing the certification mark to a certified biobased product during periods when certification has been suspended or revoked.

(3) *Application violations.* Knowingly providing false or misleading information in any application for certification of a biobased product constitutes a violation of this part.

(4) *USDA BioPreferred Program Web site violations.* Failure to provide to USDA updated information when the information for a certified biobased product becomes outdated or when new information for a certified biobased product becomes available constitutes a violation of this part.

(c) *Notice of violations and associated actions.* USDA will provide the applicable manufacturer or vendor or their designated representatives and any involved other entity known to USDA written notification of any violations identified by USDA. USDA will first issue a preliminary notice that apparent violations have been identified. If satisfactory resolution of the apparent violation is not reached within 30 days from receipt of the preliminary notice, USDA will issue a notice of violation. Entities who receive a notice of violation for a biobased content violation must correct the violation(s) within 90 days from receipt of the notice of violation. Entities who receive a notice of violation for other types of violations also must correct the violation(s) within 90 days from receipt of the notice of violation. If the entity receiving a notice of violation is a manufacturer, a vendor, or a designated representative of a manufacturer or vendor, USDA will pursue notices of suspensions and revocation, as discussed in paragraphs (c)(1) and (c)(2) of this section. USDA reserves the right to further pursue action against these entities as provided for in paragraph (c)(3) of this section. If the entity receiving a notice of violation is an "other entity" (*i.e.,* not a manufacturer, vendor, or designated representative), then USDA will pursue action according to paragraph (c)(3) of this section. Entities that receive notices of suspension or revocation may appeal such notices using the procedures specified in § 2904.6.

(1) *Suspension.*

(i) If a violation is applicable to a manufacturer, vendor, or designated representative and the applicable entity fails to make the required corrections within 90 days of receipt of a notice of violation, USDA will notify the manufacturer or vendor, as appropriate, of the continuing violation, and the USDA certification for that product will be suspended. As of the date that the manufacturer or vendor receives a notice of suspension, the manufacturer or vendor and their designated representatives must not affix the certification mark to any of that product, or associated packaging, not already labeled and must not distribute any additional products bearing the certification mark. USDA will both remove the product information from the USDA BioPreferred Program Web site and actively communicate the product suspension to buyers in a timely and overt manner.

(ii) If, within 30 days from receipt of the notice of suspension, the manufacturer or vendor whose USDA product certification has been suspended makes the required corrections and notifies USDA that the corrections have been made, the manufacturer or vendor and their designated representatives may, upon receipt of USDA approval of the corrections, resume use of the certification mark. USDA will also restore the product information to the USDA BioPreferred Program Web site.

(2) *Revocation.*

(i) If a manufacturer or vendor whose USDA product certification has been suspended fails to make the required corrections and notify USDA of the corrections within 30 days of the date of the suspension, USDA will notify the manufacturer or vendor that the certification for that product is revoked.

(ii) As of the date that the manufacturer or vendor receives the notice revoking USDA certification, the manufacturer or vendor and their designated representatives must not affix the certification mark to any of that product not already labeled. In addition, the manufacturer or vendor and their designated representatives are prohibited from further sales of product to which the certification mark is affixed.

(iii) If a manufacturer or vendor whose product certification has been revoked wishes to use the certification mark, the manufacturer or vendor must follow the procedures required for original certification.

(3) *Other remedies.* In addition to the suspension or revocation of the certification to use the label, depending on the nature of the violation, USDA may pursue suspension or debarment of the entities involved in accordance with 7 CFR part 3017. USDA further reserves the right to pursue any other remedies available by law, including any civil or criminal remedies, against any entity that violates the provisions of this part.

§ 2904.9 Recordkeeping requirements.

(a) *Records.* Manufacturers and vendors shall maintain records documenting compliance with this part for each product that has received certification to use the label, as specified in paragraphs (a)(1) through (a)(3) of this section.

(1) The results of all tests, and any associated calculations, performed to determine the biobased content of the product.

(2) The date the applicant receives certification from USDA, the dates of changes in formulation that affect the biobased content of certified biobased products, and the dates when the biobased content of certified biobased products was tested.

(3) Documentation of analyses performed by manufacturers to support claims of environmental or human health benefits, life cycle cost, sustainability benefits, and product performance made by the manufacturer.

(b) *Record retention.* For each certified biobased product, records kept under paragraph (a) of this section must be maintained for at least three years beyond the end of the label certification period (*i.e.,* three years beyond the period of time when manufacturers and vendors cease using the certification mark). Records may be kept in either electronic format or hard copy format. All records kept in electronic format must be readily accessible, and/or provided by request during a USDA audit.

§ 2904.10 Oversight and monitoring.

(a) *General.* USDA will conduct oversight and monitoring of manufacturers, vendors, designated representatives, and other entities involved with the voluntary product labeling program to ensure compliance with this part. This oversight will include, but not be limited to, conducting facility visits of manufacturers and vendors who have certified biobased products, and of their designated representatives. Manufacturers, vendors, and their designated representatives are required to cooperate fully with all USDA audit efforts for the enforcement of the voluntary labeling program.

(b) *Biobased content testing.* USDA will conduct biobased content testing of certified biobased products, as described in § 2904.8(b)(1) to ensure compliance with this Part.

(c) *Inspection of records.* Manufacturers, vendors, and their designated representatives must allow Federal representatives access to the records required under § 2904.9 for

inspection and copying during normal Federal business hours.

Dated: January 10, 2011.

Pearlie S. Reed,

Assistant Secretary for Administration, U.S. Department of Agriculture.

[FR Doc. 2011–968 Filed 1–19–11; 8:45 am]

BILLING CODE 3410–39–P

FEDERAL REGISTER

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Part V

The President

Proclamation 8623—Religious Freedom Day, 2011
Proclamation 8624—Martin Luther King, Jr., Federal Holiday, 2011

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Title 3—

The President

Proclamation 8623 of January 14, 2011

Religious Freedom Day, 2011

By the President of the United States of America

A Proclamation

Our Nation was founded on a shared commitment to the values of justice, freedom, and equality. On Religious Freedom Day, we commemorate Virginia's 1786 Statute for Religious Freedom, in which Thomas Jefferson wrote that "all men shall be free to profess, and by argument to maintain, their opinion in matters of religion." The fundamental principle of religious freedom—guarded by our Founders and enshrined in our Constitution's First Amendment—continues to protect rich faiths flourishing within our borders.

The writ of the Founding Fathers has upheld the ability of Americans to worship and practice religion as they choose, including the right to believe in no religion at all. However, these liberties are not self-sustaining, and require a stalwart commitment by each generation to preserve and apply them. Throughout our Nation's history, our founding ideal of religious freedom has served as an example to the world. Though our Nation has sometimes fallen short of the weighty task of ensuring freedom of religious expression and practice, we have remained a Nation in which people of different faiths coexist with mutual respect and equality under the law. America's unshakeable commitment to religious freedom binds us together as a people, and the strength of our values underpins a country that is tolerant, just, and strong.

My Administration continues to defend the cause of religious freedom in the United States and around the world. At home, we vigorously protect the civil rights of Americans, regardless of their religious beliefs. Across the globe, we also seek to uphold this human right and to foster tolerance and peace with those whose beliefs differ from our own. We bear witness to those who are persecuted or attacked because of their faith. We condemn the attacks made in recent months against Christians in Iraq and Egypt, along with attacks against people of all backgrounds and beliefs. The United States stands with those who advocate for free religious expression and works to protect the rights of all people to follow their conscience, free from persecution and discrimination.

On Religious Freedom Day, let us reflect on the principle of religious freedom that has guided our Nation forward, and recommit to upholding this universal human right both at home and around the world.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 16, 2011, as Religious Freedom Day. I call on all Americans to commemorate this day with events and activities that teach us about this critical foundation of our Nation's liberty, and to show us how we can protect it for future generations here and around the world.

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

[FR Doc. 2011–1304
Filed 1–19–11; 11:15 am]
Billing code 3195–W1–P

Presidential Documents

Proclamation 8624 of January 14, 2011

Martin Luther King, Jr., Federal Holiday, 2011

By the President of the United States of America

A Proclamation

Half a century ago, America was moved by a young preacher who called a generation to action and forever changed the course of history. The Reverend Dr. Martin Luther King, Jr. devoted his life to the struggle for justice and equality, sowing seeds of hope for a day when all people might claim "the riches of freedom and the security of justice." On Martin Luther King, Jr., Federal Holiday, we commemorate the 25th anniversary of the holiday recognizing one of America's greatest visionary leaders, and we celebrate the life and legacy of Dr. King.

Dr. King guided us toward a mountaintop on which all Americans—regardless of skin color—could live together in mutual respect and brotherhood. His bold leadership and prophetic eloquence united people of all backgrounds in a noble quest for freedom and basic civil rights. Inspired by Dr. King's legacy, brave souls have marched fearlessly, organized relentlessly, and devoted their lives to the unending task of perfecting our Union. Their courage and dedication have carried us even closer to the promised land Dr. King envisioned, but we must recognize their achievements as milestones on the long path to true equal opportunity and equal rights.

We must face the challenges of today with the same strength, persistence, and determination exhibited by Dr. King, guided by the enduring values of hope and justice embodied by other civil rights leaders. As a country, we must expand access to opportunity and end structural inequalities for all people in employment and economic mobility. It is our collective responsibility as a great Nation to ensure a strong foundation that supports economic security for all and extends the founding promise of life, liberty, and the pursuit of happiness to every American.

Dr. King devoted his life to serving others, reminding us that "human progress is neither automatic nor inevitable. Every step toward the goal of justice requires sacrifice, suffering, and struggle—the tireless exertions and passionate concern of dedicated individuals." Commemorating Dr. King's life is not only a tribute to his contributions to our Nation and the world, but also a reminder that every day, each of us can play a part in continuing this critical work.

For this reason, we honor Dr. King's legacy with a national day of service. I encourage all Americans to visit www.MLKDay.gov to learn more about service opportunities across our country. By dedicating this day to service, we move our Nation closer to Dr. King's vision of all Americans living and working together as one beloved community.

NOW, THEREFORE, I BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 17, 2011, as the Martin Luther King, Jr., Federal Holiday. I encourage all Americans to observe this day with appropriate civic, community, and service programs in honor of Dr. King's life and lasting legacy.

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

[FR Doc. 2011–1303
Filed 1–19–11; 11:15 am]
Billing code 3195–W1–P

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To amend the Federal Water Pollution Control Act to clarify Federal responsibility for stormwater pollution. (Jan. 4, 2011; 124 Stat. 4128)

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To designate the facility of the United States Postal Service located at 100 Commerce Drive in Tyrone, Georgia, as the "First Lieutenant Robert Wilson Collins Post Office Building". (Jan. 4, 2011; 124 Stat. 4130)

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